

Authority Of The Public Prosecutor In Confiscation Of Asset For Perpetrators Of Money Laundering Criminal Acts With Offshore Conversion Scheme

Angelica Laura

angelicalaura@student.ub.ac.id

Faculty of Law, Universitas Brawijaya, Indonesia

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Abstract

The purpose of this research is to analyze the law in Indonesia which regulates the confiscation of assets of perpetrators of money laundering crimes using overseas conversion schemes which place assets resulting from criminal acts abroad, as well as identifying the scope of the Public Prosecutor's authority in handling money laundering criminal cases with an offshore conversion scheme. By using normative juridical research methods, it was found that currently the main regulation for money laundering criminal cases is Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Meanwhile, the authority of the Prosecutor as Public Prosecutor is regulated in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. There are progressive steps in the preparation of legal regulations in the field of money laundering, namely the drafting of the Draft Law on Asset Confiscation which allows the Public Prosecutor as the executor of the judge's decision to carry out asset confiscation in rem, as well known as non-conviction based forfeiture asset, that means legal action against the assets themselves, not against to the asset itself. individual (in personam) as in ordinary criminal cases.

I. Introduction

Along with the development of globalization, the handling of money laundering crimes is also increasingly complex because it involves funds, facilities, and infrastructure across countries. The construction of the criminal law system in force in Indonesia aims to uncover the crimes that occur, find the perpetrators, and impose penalties on the perpetrators in the form of corporal punishment and/or fines. In reality, the criminal law system with the concept of follow the suspect does not have a deterrent effect and is not effective enough to suppress the crime rate if it is not accompanied by efforts to confiscate and seize the proceeds and instruments of the crime (FILLAH, 2023).

To improve prevention and prosecution of money laundering crimes, progressive actions are needed, especially at the prosecution and execution stages through the follow the money approach that focuses on assets as a result of money laundering crimes. Money or assets are the focal point that supports money laundering activities, so law enforcement needs to prioritize tracing money or assets resulting from criminal acts rather than looking for perpetrators of crimes. The money laundering processes that are generally used are: Placement, Layering, and Integration. These three money laundering processes are basically a means that aims to break down or separate money that is the result of crime with the perpetrators of the crime and the original crime committed by the perpetrator (Tanjung, 2024). The predicate crimes that generate wealth are mentioned in Article 2 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering in the TPPU Law, namely: corruption, bribery, narcotics, psychotropics, labor smuggling, migrant smuggling, crimes in the fields of banking, capital markets, insurance, customs, excise, human trafficking, illegal arms trade, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting, gambling, prostitution, taxation, forestry, environment, maritime and fisheries, or other crimes that are subject to imprisonment of 4 (four) years or more. The follow the money strategy approach as regulated in the TPPU Law is in reality still inadequate because basically the approach is carried out after a court decision is issued (post-conviction forfeiture). In the TPPU trial, the Prosecutor must determine the predicate crime to be formulated in the indictment (La Ode & Yulestari, 2024).

Along with the advancement of information technology, the financial system also opens up a gap for increasing complexity of the modus operandi of perpetrators of money laundering crimes. The development of this technology includes the development of the financial sector which allows financial transactions that cross jurisdictional boundaries between countries. One method of money laundering that aims to manipulate and change the status of illegal funds (proceeds of crime) into legal funds is by offshore conversion . Based on the assessment of foreign risks (Foreign Outward Risk) by the Financial Services Authority's APU PPT Handling Group in 2021, there is a mapping of the threat level of Money Laundering Crimes ("TPPU") in Offshore Laundering, namely money laundering carried out abroad whose original crime occurred in Indonesia (Musa, Thalib, & Khalid, 2022).

In its development, the Indonesian Attorney General's Office has formed an Asset Recovery Center (PPA) to assist in handling asset recovery both domestically and abroad. An example of a case that occurred in 2024 was the confiscation of assets of the convicted Jiwasraya corruption case, Benny Tjokosaputro alias Bentjok, in the form of a villa worth IDR 38.8 billion located on Kerry Drive, Queenstown, New Zealand. In the process, the Invercargill High Court of New Zealand has granted a confiscation order or Forfeiture order on a non-conviction based forfeiture asset (in rem) application submitted by the New Zealand Police Asset Recovery Unit through the Crown Solicitor (like a state attorney) based on a request from the Attorney General's Office Asset Recovery Center (Setiawan & Sahari, 2022).

offshore conversion scheme is carried out by diverting illegal funds to tax haven countries, then depositing them in banks or other financial institutions in the area. Furthermore, the illegal funds are used to purchase assets and investments (fund investments). In tax haven countries , tax laws tend to be looser, bank secrecy rules are quite strict, and business procedures are easy, so that if the perpetrator of money laundering goes to a tax haven country , he gets protection for the confidentiality of business transactions, company formation and trust fund business activities (Ghifari, 2024). The loose nature of tax laws and strict bank secrecy rules provide an opportunity for money laundering from criminal acts (Lengkong, 2023). For example, Switzerland is one of the countries that is quite loose

in implementing legal provisions regarding the origin of customer funds originating from foreign countries, but is very strict in implementing aspects of bank secrecy , so that foreign funds suspected of being the result of crime that are placed in that country are not easily repatriated (Zikril Akbar Tanjung, 2024).

The term “ offshore ” refers to a sector in a jurisdiction that provides financial services to non-residents . Regulations related to offshore transactions tend to be minimal, but provide confidentiality protection. In this study, non-residents are Indonesian citizens who place their wealth or assets abroad (Rasidi, 2022). Meanwhile, the tax haven countries in question are countries where the wealth or assets of perpetrators of money laundering crimes are placed. Several countries that provide convenience in placing the wealth or assets of perpetrators of money laundering crimes include Switzerland, Panama, the Bahamas, the Antilles, the Cayman Islands, and the British Virgin Islands. Because the financial system in these countries is anonymous and has a minimum of transparency , asset tracing activities will be difficult to carry out (Pandiangan & Simarmata, 2025).

2. Research Method

The research used in this paper is normative juridical, namely legal research that places law as a building of normative systems, including principles, norms, rules of laws and regulations, and doctrines (Apriliani & Simangunsong, 2025). This research was conducted with a statutory regulatory approach , especially on regulations regarding money laundering crimes, as well as regulations of the Attorney General's Office of the Republic of Indonesia which regulate the authority of prosecutors in handling money laundering cases with offshore conversion schemes to the authority of prosecutors in seizing the assets of perpetrators of criminal acts that have been placed abroad. In addition, this research was conducted with a conceptual approach regarding the understanding and concepts relevant to the offshore conversion scheme and criminal law policies in positive law and in the Draft Law on Confiscation of Assets Related to Criminal Acts (Koto, 2021).

3. Results and Discussion

A. Urgency of Arranging Asset Confiscation for Money Laundering Criminals Who Place Their Assets Abroad with Offshore Conversion Schemes

Based on the Criminal Procedure Code (KUHP), the following may be subject to confiscation:

- a. Objects or bills of a suspect or defendant which are wholly or partly suspected of being obtained from criminal acts or as the result of criminal acts;
- b. Objects that have been used directly to commit a crime or to prepare for it;
- c. Objects used to obstruct criminal investigations;
- d. Objects specifically made or intended to commit a crime;
- e. Other objects that have a direct relationship to the crime committed.

Criminal procedure law in Indonesia allows for the confiscation of assets from criminal acts through criminal prosecution. The Public Prosecutor must prove the guilt of the defendant and prove that the related assets are the proceeds of a criminal act. This shows that the confiscation of assets under Indonesian law uses the concept of conviction based assets forfeiture. Conviction based assets forfeiture is the confiscation of assets from criminal acts based on the guilt of the defendant, or in other words, the confiscation of assets from criminal acts depends on the success of the investigation and prosecution (Atmaji, Pinasang, & Setlight, 2023).

While the rules regarding asset confiscation in Law Number 31 of 1999 concerning the Eradication of Corruption allow the State Attorney or handed over to the injured agency to file a civil lawsuit against its heirs. This means that the public prosecutor must still prove the defendant's guilt, and to avoid the court's decision not being implemented, it is possible to file a civil lawsuit against a deceased defendant (Bagus Tunggal Putra, 2024).

Asset confiscation with the concept of Non Conviction Based (NCB) Asset Forfeiture is known in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Crimes ("TPPU Law"). NCB Asset Forfeiture is a concept of asset confiscation that makes assets that are the result or means of a crime positioned as legal subjects or parties in a case, so that the parties consist of the state (represented by the public

prosecutor) against assets suspected of being the result or means of a crime (as the respondent). This concept allows for asset confiscation without having to wait for a criminal verdict for the perpetrator (Nur, 2021).

Article 67 of the TPPU Law authorizes investigators to submit an application to the District Court to decide that assets suspected of being the result of a crime be made state assets or returned to those entitled. In other words, prosecutions aimed at assets use civil mechanisms (Hulu, Simanjuntak, Limbong, & Sagala, 2019). However, there are technical-juridical difficulties in confiscating assets using civil mechanisms (Hakim, 2019). The civil procedural law used is fully subject to ordinary civil procedural law which, among other things, adheres to the principle of formal proof. The burden of proof lies on the party arguing (the state attorney who must prove) the equality of the parties, as well as the obligation of the judge to try to reconcile the parties. Meanwhile, the state attorney (JPN) as the plaintiff must prove in real terms that there has been a state loss (Sihombing & Siregar, 2020). Namely, state financial losses due to or related to the actions of the suspect, defendant, or convict; the existence of property belonging to the suspect, defendant, or convict that can be used to return state financial losses. In addition, as is generally the case with civil cases, it takes a very long time until there is a legally binding legal decision (Rahmayanti, Maulana, Alvin, & Paly, 2020).

The development of international law shows that the seizure and confiscation of assets resulting from criminal acts are the most important part of efforts to suppress crime rates. In addition to uncovering criminal acts and finding the perpetrators, the seizure and confiscation of proceeds and instruments of criminal acts are the main part of the investigation, inquiry and prosecution of criminal acts. In addition, in order to strengthen existing criminal provisions, several countries have adopted provisions derived from civil provisions to demand the return of criminal proceeds. This shows the importance of the concept of Non-Conviction Based Asset Forfeiture in the confiscation of assets resulting from money laundering (Fairuz, 2023).

In relation to international law, Indonesia has ratified the United Nations Convention Against Corruption through Law Number 7 of 2006. Article 54 paragraph (1) letter b

of the UNCAC requires each State Party to guarantee the confiscation of proceeds of crime from other countries related to money laundering cases. In addition, this paragraph also opens up the possibility for each State Party to determine the process of confiscating assets in rem. For this reason, the UNCAC recommends the adoption with improved procedures for cases where a criminal conviction cannot be obtained, namely when the defendant has died, fled, and for other reasons. For cases like this, the preparation of an Asset Confiscation Law with the concept of Non-Conviction Based Asset Forfeiture/NCB is the most appropriate solution (Aulia, TL, & Murdiono, 2024).

The difficulty faced in adopting asset confiscation with the concept of Non-Conviction Based Asset Forfeiture/NCB in Indonesia is that Indonesian criminal procedure law requires the fulfillment of material and formal elements (subject and object), so that the defendant's guilt must be proven first. Whereas if civil procedure law is used, it will be subject to formal civil procedure law, so that the state attorney must still prove in real terms that there has been a state loss due to the defendant's actions. Such procedural law is not in line with the concept of asset confiscation mandated in the UNCAC (Simanjuntak, Widiarty, & Damian, 2022).

B. Regulation of the Authority of the Public Prosecutor in Handling Money Laundering Cases with Offshore Conversion Schemes Involving Objects in the Form of Assets Abroad

Legally, a prosecutor based on Article 1 of the Republic of Indonesia Law Number 11 of 2021 concerning the Republic of Indonesia Prosecutor's Office (RI Prosecutor's Office Law) is a civil servant with a functional position that has special characteristics and carries out its functions and authorities based on the Law. In the civil field, the duties of a prosecutor are based on Staatsblad Number 522 of 1922 which is still in effect today. In relation to Asset Confiscation, the role of the State Attorney in this mechanism is very important because at every stage the State Attorney is the main holder of responsibility for asset confiscation, both pre-judicial and post-judicial (Nasution & Bangun, 2020).

Basically, in rem confiscation has the same purpose as criminal confiscation, namely

to seize the proceeds of crime, but with a different process (Yusuf, Kurniawati, & Ningsih, 2023). This mechanism places the state as the plaintiff and the assets as the defendant, while the parties involved in the confiscation process are the intervening parties (claimants) (MUHAJMIN, 2018). Article 1 number 8 of the Asset Confiscation Bill states the definition of In Rem confiscation, which means an act of the state taking over assets through a court decision in a civil case based on stronger evidence that the assets are suspected of originating from a crime or used for a crime. It is explicitly stated here that assets suspected of being from and for a crime are tried in a civil court (Cahyadi, 2020).

In relation to assets as a means of money laundering, perpetrators often use a corporate vehicle scheme, meaning that corporations are used to hide the identities of the perpetrators and the proceeds of money laundering. For example, PT. AAG and its 14 subsidiaries were proven to have committed a crime by selling crude oil products of PT. AAG to paper companies abroad that are still affiliated with PT. AAG. If referring to the TPPU Law, corporations have been recognized as subjects of criminal law. However, the law has not implemented the concept of Non-Conviction Based Asset Forfeiture (Mas & Hamid, 2020).

Meanwhile, the Draft Criminal Code ("RKUHP") has regulated criminal liability for corporations, both legal entities and non-legal entities. The provisions in the RKUHP can ensnare perpetrators who have corporations that transact from and to abroad. In the RKUHP, the Prosecutor has the authority to prosecute corporations that have been recognized as legal subjects.

4. Conclusion

The conclusions of this study are as follows:

- 1) The legal basis for the seizure of assets in rem with the concept of Non-Conviction Based Asset Forfeiture is an important element to provide authority to the Public Prosecutor without having to prove the elements of guilt of the perpetrator. Such regulations aim to provide legal certainty in seizing assets resulting from or means of money laundering crimes even though the defendant have died, run away, and

for other reasons.

- 2) The Draft Asset Confiscation Law regulates in rem asset confiscation, giving the Public Prosecutor the authority to sue assets as legal subjects through civil procedural law mechanisms. In addition, the Draft Criminal Code also allows the Prosecutor to sue corporations that are recognized as legal subjects. In its development, the crime of money laundering with an offshore conversion scheme allows the accused to form a corporation that is established abroad, so that these two legal bases strengthen the Prosecutor's authority in eradicating money laundering crimes involving transnational transactions.

Suggestion

1. Since the biggest challenge in implementing the concept of in rem asset confiscation is separating the relationship between assets resulting from money laundering and the perpetrators, it is necessary to implement an application that focuses on the concept of follow the money. This is solely aimed at returning losses due to money laundering, so that the objectives of adopting the UNCAC that has been ratified by Indonesia can be achieved.
2. The Asset Confiscation Bill that allows for in rem asset confiscation and the Criminal Code Bill that allows prosecutors to prosecute corporations as legal subjects are very necessary to strengthen the authority of prosecutors in eradicating the crime of money laundering, so both bills need to be passed immediately.

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