International Journal Of Humanities Education And Social Sciences ***(IJHESS)*** *E-ISSN:* **2808-1765**
Volume 4, Number 2, October, *Page. 760 – 774*
Email : editorijhess@gmail.com

Prospects for the Application of Unexplained Wealth Order in the Forfeiture of Assets Proceeds of Corruption in Indonesia

Ikhwanul Hakim[1)], Setiawan Noerdajasakti[2)], Yuliati[3)]
[1,2,3)]Fakultas Hukum, Universitas Brawijaya, Indonesia

*Corresponding Author
Email: **hakimikhwan@student.ub.ac.id**

Abstract

This research focuses on discussing two things, namely (1) how the legal politics of regulating asset forfeiture for corruption crimes in Indonesia and (2) what are the prospects for applying the unexplained wealth order in asset forfeiture for corruption crimes in Indonesia. in this study it was found that: first, the legal politics of asset forfeiture for corruption crimes in Indonesia is still mainly oriented towards the process of asset forfeiture based on conviction, asset forfeiture can only be carried out if there is a judge's decision that is legally binding. However, if in the course of a criminal case there are difficulties in proof, the defendant dies in the judicial process, and after a court decision with permanent legal force it is known that there are assets or assets owned by the perpetrator that are the proceeds of crime, a civil lawsuit can be filed. however, it is different from the concept of unexplained wealth contained in the Criminal Asset Forfeiture Bill which has a broader dimension of civil filing. And the filing of a civil lawsuit is not an alternative to the criminal justice process. Asset forfeiture lawsuits through the criminal process can be filed before, during and after criminal judgements, in order to avoid obfuscation and the disappearance and conversion of assets resulting from corruption crimes. Secondly, the prospect of implementing unexplained wealth in Indonesia has existed through the establishment and drafting of the Criminal Asset Forfeiture Bill. However, this bill is not equipped with the obligation to reverse the burden of proof, which is identical to the proof of ownership of assets contained in the Anti-Corruption Law. In the future, it is necessary to equalise the reversal of the burden of proof that should be carried out by the owner of the asset to facilitate the proof process and assist the legal apparatus.

Keywords: Unexplain Wealth ; Asset Forfeiture; Non Conviction Based Asset Forfeiture

INTRODUCTION

The political law of eradicating corruption has not been able to comprehensively restore the results of state financial losses. There have been many efforts through various regulations implemented by the government in returning asset recovery against state financial losses caused by acts of corruption, in fact it has not been proportional to the amount of state financial losses themselves. Based on the results of the report released by the KPK, it shows that throughout 2022 the KPK succeeded in recovering assets returned to the state treasury totalling 575.54 billion. ith various instruments used in the context of asset recovery such as confiscation, payment of restitution and fines for corruptors. However, this is not proportional to the amount of potential state financial losses arising from corruption offences that occurred throughout 2022. Based on the results of the Indonesia Corruption Watch (ICW) report throughout 2022 the KPK handled 612 suspects in corruption offences with a potential state financial loss of 33.6 trillion.

The element of state financial loss itself is one of the essential elements in the crime of corruption. The position of state financial loss as one of the elements of a criminal offence also has a long dynamic. The Constitutional Court Decision Number 003/PUU-IV-2006 established that the criminal offence of corruption is a formal offence, As long as the action already exists, whether or not it has the potential to lose state finances, it is considered to have committed a criminal act of corruption. However, the development of time and the life of legal interpretation,

through the Constitutional Court's decision Number 25/PUU-XIV/2016 which positions the element of state financial loss as an element that must be fulfilled first by deleting the phrase can in the provisions of Article 2 of Law Number 3 of 2001 concerning the Eradication of Corruption (Corruption Crime Law). This affects the policy of eradicating corruption that is oriented towards the recovery of state financial losses.

Efforts to recover state financial losses are carried out through several anti-corruption eradication policies, namely through the instrument of confiscation of corruption proceeds, The use of criminal sanctions instruments of restitution and fines as well as asset forfeiture owned by corruptors. Regarding asset forfeiture itself, in addition to criminal efforts, the doctrine and application of asset forfeiture through non-criminal mechanisms are also possible as an effort to recover and return state financial losses that can be pursued by the state. The concept of Unexplain wealth order (UWOS), is an asset forfeiture effort carried out without having to wait for a conviction verdict that states the guilt or proof of a person committing a corruption crime.

Efforts to implement the unexplain wealth order itself are also supported by the legal politics of eradicating corruption offences and through the legal politics of confiscating the proceeds of crime. Unexplain wealth itself has the same goal as the application of Illicit inreachment which has been implemented in Indonesia. Illicit Inreachment itself is an act of asset forfeiture carried out by the state against perpetrators of corruption whose perpetrators have been criminally convicted and proven to have committed the crime of corruption. However, due to the nature of the crime of corruption as an extra ordinary crime, which is committed with unusual and complex modes and methods. Instead, it requires the perpetrators of corruption to hide their wealth through family, relatives and or other people with the aim of eliminating suspicion of the increase and ownership of their wealth and assets.

An illustration of the inability of legal instruments to eradicate corruption offences to go into more detail in terms of returning and seizing assets owned by perpetrators of corruption. The provisions of Article 18 of Law No. 31 of 2009, where the seizure of assets and assets owned by the perpetrator only, however, the hidden assets are untouched. Handling corruption offences and recovering state financial losses. The imperfection of efforts to recover state financial losses is due to the absence of standards used by judges in imposing the amount of restitution to be paid in proportion to the money that has been earned by corruptors or the amount of proceeds that can be proven.

On the other hand, efforts to recover state financial losses from the proceeds of corruption also encounter a difficult path, seen from the complex and complicated characteristics of corruption crimes and the modes used so varied in hiding and transferring assets from crime. The detailed characteristics of proving corruption offences take a long time, while the corruptor's efforts to hide the proceeds of corruption have been carried out since the beginning of the corruption. The lengthy process of proving and handling corruption offences makes it possible for corruptors to move their funds so that they cannot be detected as funds or assets resulting from crime. In fact, it is not uncommon for assets from corruption to be fled and secured abroad to avoid asset trecking by law enforcement, such as in the Edy Tansil case, Global Bank, and BLBI cases.

The development of global law that is concerned with corruption, considers that confiscation and seizure of assets resulting from corruption is an essential handling in tackling corruption crimes that occur. Confiscation and seizure of assets become an important part of the investigation and prosecution stages of corruption offences. In order to strengthen the practice of asset confiscation and forfeiture, some countries have tried to shift the criminal scarcity by using a civil approach to address the losses incurred as a result of corruption crimes of state officials. Efforts to recover state financial losses through asset forfeiture in civil channels have

then proven effective in several countries. Australia has succeeded in reducing state financial losses through the application of unexplain wealth orders which are even applied to every state. The development of law in Indonesia itself specifically in the Anti-Corruption Law has recognised asset forfeiture using civil channels. However, the asset forfeiture scheme used in Indonesia is different from the application of the unexplained wealth order which is based on the principle of non-conviction based asset forfeiture. This research is not the first time research on the regulation and application of unexplain wealth order in Indonesia, previous research conducted by the World Bank that tries to see how the regulation and application of unexplain wealth order against the assets of the proceeds of crime that have been applied in several countries in the world.

RESEARCH METHODS

This research uses a normative juridical research method, the process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand. This research using two types of approaches, namely a statutory approach that tries to review and discuss the legal politics of asset forfeiture from corruption in Indonesia. comparative country approach to see the practice of applying unexplain wealth in Australia and Ireland as a trend of international adoption. This research also uses secondary data, namely data sourced from existing library materials. The secondary data in this study are in the form of research legal materials, namely (1) primary legal materials, namely the laws and regulations used in the analysis of this writing are Law Number 31 of 1999 concerning Eradication of Corruption Crimes, Law Number 8 of 2010 concerning Eradication of Money Laundering Crimes, Law Number 7 of 2006 concerning Ratification of the United Nations Corruption Against Corruption, Constitutional Court Number 003 / PUU-IV-2006 and Constitutional Court 25 / PUU-XIV / 2016; (2) secondary legal materials in this research are sourced from books and journals that review the seizure of criminal assets through civil channels and (3) tertiary legal materials in the form of websites and media articles.

RESULT AND DISCUSSION

1. Legal Politics of Asset Forfeiture for Corruption Crimes in Indonesia

Globally, there are two mechanisms for asset forfeiture of corruption crimes. Both mechanisms have at least the same objectives and reasons, but are pursued by different channels, namely asset forfeiture using criminal channels and asset forfeiture of corruption crimes through civil channels. Both asset forfeiture mechanisms have at least two reasons in common, namely: (1) those who commit corruption offences must not be allowed to benefit from the crimes committed, the proceeds of crime must be confiscated in order to compensate victims, be it the state or individual individuals; (2) unlawful acts must be deterred and hindered by removing the economic benefits of the crime and preventing further criminal acts.

Asset forfeiture against unlawful increase in wealth by using criminal law instruments is based on the conviction based asset forfeiture approach, namely the concept of punishment accompanied by asset forfeiture. The criminalisation of unreasonable increase in assets owned by public officials is known as illicit inreachment.

Asset confiscation using non-conviction based forfeiture is also known as civil confiscation, in rem confiscation which then in some countries later referred to it in their legal products as unexplain wealth orders. Asset seizure using seizure without conviction is also known as civil seizure, in rem seizure which some countries refer to in their legal products as unexplained wealth order.

The legal politics of eradicating corruption in Indonesia has undergone significant development, with the adoption and requirement of the state to establish a way or mechanism to recover the results of state financial losses through the confiscation of assets owned by the perpetrators of corruption, which should be suspected that these assets are assets owned from the proceeds of corruption.

In terms of Indonesian positive law, efforts to confiscate assets resulting from corruption crimes already exist. However, only asset forfeiture is carried out entirely through criminal channels. A person can only have his/her assets confiscated and taken after a court decision with permanent legal force so that they can be counted as confiscated goods to compensate for state financial losses.

This refers to several laws that separately regulate efforts to confiscate assets from the proceeds of crime. This includes Indonesia's ratification of UNCAC through the enactment of Law Number 7/2006 on Ratification of UNCAC. The urgency of ratifying UNCAC as a national legal instrument of member countries is to perfect regulations that are engaged in anti-corruption.

This convention provides a breath of fresh air for asset forfeiture that can be carried out through the methods of tracing, freezing, confiscating, seizing and returning assets and state finances. There are at least several important recommendations that require the ratification of UNCAC as national law. Through this convention, member states are obliged to establish mechanisms to confiscate assets resulting from corruption offences.

Referring to the conception of UNCAC, the state can seize assets owned by perpetrators of corruption through criminal and civil channels. In the criminal concept, it is carried out in stages, namely: First, conducting asset tracing of things that can be suspected of being the proceeds of corruption crimes, in order to identify evidence of ownership and storage of the assets concerned. Second, freezing assets by not using, transferring and moving or even changing the form of the assets concerned.

Third, confiscate assets as a form of permanent deprivation of wealth based on a court decision with permanent legal force. The fourth is the return of assets or property to the victim's country. There is a fundamental difference between Illicit Inreachment and unexplained wealth order in criminal asset forfeiture. Firstly, in terms of the subject, illicit inreachment only applies to state officials, while the unexplained wealth order applies to asset forfeiture of illegally increased wealth by any person.

Fourth, for the object of confiscation that illicit inreachment itself focuses on acts of self-enrichment, while unexplained wealth itself asset forfeiture is carried out against all alleged wealth or assets obtained from criminal offences or issues of unlawful ownership of property.

Fifth, the mechanism taken in handling asset forfeiture through illicit inreachment is carried out through criminal channels based on the principle of conviction based asset forfeiture, While unexplain wealth can only carry out asset forfeiture based on non-conviction based asset forfeiture, filing asset forfeiture through civil channels does not actually eliminate the essence

and handling of cases through criminal channels, the paradigm of crime prosecution based on non-conviction based asset forfeiture can be carried out before, during and even after the criminal trial is carried out and at a later date assets are found that are still missing from the previous confiscation which assets or property are suspected of being the proceeds of crime, then an asset forfeiture lawsuit can be filed.

Sixth, the form of sanctions that can be given to the perpetrators of crime, namely in the illiciti inreachment approach in the form of punishment and additional sanctions of asset forfeiture, payment of compensation or fines in a certain amount. Meanwhile, the Unexplain wealth type of sanction is determined by a court decision in the form of confiscation of assets or property owned by the perpetrator of the crime.

Asset forfeiture itself is not only regulated in the ratification of UNCAC, but in the Anti-Corruption Law there are actually provisions and regulations regarding the forfeiture of assets resulting from corruption crimes. Based on the provisions of Article 18A, asset forfeiture is classified as a form of additional punishment outside of the additional criminal provisions stipulated in the Criminal Code, in the form of confiscation of tangible or intangible movable or immovable property used to commit a criminal offence or property resulting from a corruption offence, as well as items that replace these items. Even for defendants who die during the judicial process and there is sufficient evidence pointing to their assets as the proceeds of a criminal offence or assets used to commit a corruption offence, the panel of judges based on the demands of the public prosecutor issued a decision containing the confiscation of the defendant's goods or assets.

The Anti-Money Laundering Law, which is closely related to the crime of corruption as the initial criminal offence, also regulates the confiscation of assets resulting from crime. Referring to the provisions contained in Article 9 of the Anti-Money Laundering Law, it is stated that if the corporation is unable to pay the fine, it will be replaced by the seizure of assets or assets owned by the corporation or assets owned by the corporate controller.

The use of asset forfeiture instrument in the Anti-Money Laundering Law is only used as an alternative if the company concerned, which is the subject of ML, does not have the ability to pay restitution as decided by the panel of judges. In contrast, asset forfeiture in the Anti-Corruption Law is used as one of the complementary additional punishments contained in the Criminal Code.

Through the UNCAC, it attempts to propose that asset forfeiture of perpetrators of corruption is not only through criminal channels, but is expected to be carried out using civil channels. The specification of this provision is contained in Article 54 paragraph (1) letter c of UNCAC which states that "consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the ofender cannot be prosecuted by reason of death, fluigh or absence or in other appropriate cases". This provision provides an explanation for the use of civil proceedings in specific corruption cases that are not accommodated by the existing laws of the various member states.

In the context of the existing legal politics of asset forfeiture in Indonesia, the use of civil channels as an effort to seize assets and recover state financial losses already exists. In addition to efforts to seize assets through the criminal route, there is actually a path that is used using the civil lawsuit route, through a lawsuit that can be filed by the State Attorney, as we understand

that the Anti-Corruption Law allows the State Attorney to pursue the return of state financial losses through civil channels for several reasons, namely: First, if the investigator is of the opinion that a case he is handling does not have sufficient evidence to prove the elements of a corruption crime, but there are real state financial losses incurred, then the investigator can submit the investigation files to be submitted to the State Attorney for a civil lawsuit or submitted to the relevant institution or agency to file a state financial loss lawsuit (Article 32 paragraph (1) of the Anti-Corruption Law).

Second, if the perpetrator of a corruption crime dies during the investigation stage or dies during the judicial process in court, the relevant agencies and the State Attorney can file a lawsuit. Third, after a court decision that has permanent legal force and it is found that there are still assets or assets resulting from corruption crimes, it is also a necessity for the State Attorney to file a lawsuit to confiscate the assets owned by the perpetrators of corruption crimes. Fourth, against an acquittal verdict and there has been a real loss of state finances.

Although there are civil channels provided in the Anti-Corruption Law, the use of civil channels to recover state financial losses is only an alternative when criminal instruments cannot accommodate criminal charges. In addition to assets that are only tied to the corrupt perpetrator himself, to hidden assets, which are transferred to other people, as well as to assets or assets that have been converted in the form of shares or other forms that aim to obscure their existence. Through the Asset Forfeiture Bill, the proceeds of criminal offences, although not specifically applicable to the type of corruption offence, also apply to the type of wealth obtained from the proceeds of crime. Through the Asset Forfeiture Bill, the proceeds of criminal offences, although not specifically applicable to the type of corruption offence, also apply to the type of wealth obtained from the proceeds of crime.

The Asset Forfeiture Bill at least expands the reasons for filing a lawsuit for asset forfeiture through civil channels. The reasons that can be used as reasons for filing an asset forfeiture lawsuit are: 1) the suspect or defendant dies during the judicial process, absconds, is permanently ill or has an unknown whereabouts that can hinder the criminal justice process, while the proceeds of crime have been known and there is a loss of state finances, then asset confiscation can be pursued through civil channels to restore state financial losses; (2) the defendant is acquitted of all charges; (3) the criminal case cannot be tried; (4) the defendant has been convicted by a court that has obtained permanent legal force, but it is later discovered that the convicted person has property or assets that are the proceeds of a crime that has not previously been traced or has not been known by the prosecutor.

Through this bill, it then provides more specific qualifications for assets that can be filed for civil asset forfeiture, namely against assets: (1) assets of criminal offences or assets obtained directly or indirectly from criminal offences, whether they have been donated to other parties, or assets that have been converted into other forms to obscure the proceeds of crime related to the ways of obtaining them; (2) assets that are known or reasonably suspected of being used to commit or launch crimes committed by the perpetrator; (3) other assets that legally belong to the perpetrator; (4) assets found by law enforcement officials that are suspected of being the proceeds of criminal offences committed by the perpetrator.

In addition to the objects of forfeiture as described above, assets that are not balanced with income or not balanced with the source of addition to income or the origin of the acquisition

cannot be proven legally and are suspected of being related to criminal assets and assets that are confiscated objects obtained from the proceeds of a criminal offence or used to commit a criminal offence.

This bill closes off the possibility of utilisation or criminals being able to enjoy the proceeds of the crimes they have committed. The application of the unexplain wealth order itself, in terms of its development, is a form of expansion of the paradigm of combating corruption offences that has developed globally. If previously the eradication of corruption crimes was only oriented towards arresting criminals to stop their criminal acts through a suspected oriented perspective, it has developed into a profit oriented perspective, which is an approach or paradigm that prioritises crime eradication oriented towards the results of crime obtained. The emphasis is no longer on the criminal personal. The emphasis is no longer on the personal criminal offender, but on the assets of the proceeds of crime controlled by the offender in rem fractus scelesis).

This asset-orientated perspective is a development of the notion of crime does not pay, and the crime does not pay approach is not a new idea. This idea of fairness is similar to the doctrine of unjust enrichment in a treaty or the doctrine that an unlawful cause does not give rise to a claim, which is known as one form of manifestation of the principle of lawful cause in an act of agreement in Article 1320 of the Civil Code.

In the criminal approach, crime does not pay is a principle that affirms that no one is allowed to benefit from the violation of the law, so that all assets related to the crime committed can be the object of confiscation. Asset forfeiture through this approach is also a way to control the benefits obtained by someone who commits a crime as well as functioning as a mechanism that creates a deterrence effect or demotivates someone to commit a crime.

2. Prospect of Uneplain Wealt Arrangement in Asset Forfeiture of Corruption Crime.

The problems of corruption that are carried out with increasingly varied, complicated, complex and multidimensional modes then require the UN at the same time as the drafting of the UNCAC convention to provide a basis of reference for the implementation of new mechanisms that are introduced globally as a tool or instrument to carry out asset recovery against the proceeds of corruption. At least the UN also compiled comprehensive implementation guidelines that can be carried out by member countries that ratified UNCAC into their national legal systems.

The UN in the formulation of UNCAC also provides an explanation in the form of guidelines for the application of non-conviction based forfeiture in the legal system of each country with 36 principles called key concepts. However, this paper does not review the entire key concept. However, this paper will review and look at several key concepts that can support their application in Indonesia, as well as in terms of the application of key concepts that are not applied as a whole in a country, which is adjusted to the needs of handling corruption in each country.

Key concepts 1 and 2 explain the fundamental characteristics of non-conviction based forfeiture, which is not a substitute for the use of criminal law instruments, but a standalone instrument. Likewise, due to the nature of asset forfeiture against the proceeds of crime, in confiscation using civil channels, the State Attorney or represented by other parties in each member state, is required to prove how the relationship between the asset and the criminal offence committed.

Forfeiture of rights through civil mechanisms is also possible retroactively from asset forfeiture laws, if the criminal approach cannot be used to ensnare and return the proceeds of crime that have expired or have occurred before the existence of laws that criminalise such actions, then through civil approaches can be applied retroactively. The retroactive principle

itself in the civil approach already exists, and is not the result of the application of unexplained wealth. The existence of the retroactive principle in the civil approach itself can be found through the broad interpretation of unlawful acts in the civil approach. Not only limited to the meaning of acts that are contrary to the law, but also acts that are contrary to the rights of others are also classified as unlawful acts without recognising the limitation of years of validity.

The existence of the retroactive principle in efforts to confiscate assets resulting from corruption crimes provides an opportunity for the state, it is important to recover state financial losses that have passed and cannot be dealt with using a criminal approach. The retroactive principle itself in the civil approach already exists, and is not the result of the application of unexplained wealth. The existence of the retroactive principle in the civil approach itself can be found through the broad interpretation of unlawful acts in the civil approach. Not only limited to the meaning of acts that are contrary to the law, but also acts that are contrary to the rights of others are also classified as unlawful acts without recognising the limitation of years of validity.

The existence of the retroactive principle in efforts to confiscate assets resulting from corruption crimes provides an opportunity for the state, it is important to recover state financial losses that have passed and cannot be dealt with using a criminal approach. The 10th key concept also provides an explanation of how confiscation is carried out without prior notice to increase success in the asset forfeiture process, as well as to avoid perpetrators of corruption in order to hide their property and assets.

In this case, the application of the unexplained wealth order with the principle of non-conviction based asset forfeiture has been applied in several countries which can be an example for Indonesia to apply asset forfeiture through civil channels. The design of the principle of non-conviction based asset forfeiture developed by the UN is not specific to a particular legal culture or a jurisdictional classification of a country. However, its applicability is made universal so that it can be applied by all countries in recovering assets from corruption offences. This paper attempts to look at the practice of applying unexplained wealth or the use of the principle of non conviction based forfeiture in the confiscation of assets of corruption offences in two countries, namely Australia and Ireland.

In the evaluation of the implementation of the Unexplain wealth order conducted by Booz Allen Hamilton, at least emphasises several countries that apply unexplain wealth which has become an international trend and a reference, namely Australia and Ireland. The implementation of Unexplain wealth order in all criminal offences along with the reversal of the burden of proof as practised in Australia. Australia was one of the first countries to implement forfeiture of assets or wealth that cannot be explained as to its source of income.

The legal basis for the confiscation of the proceeds of crime in Australia can be traced back to the early 1980s when the Australian Ministerial Police Council in conjunction with the Standing Committee of the Attorney-General of Australia developed a comprehensive legal basis governing the property of the proceeds of crime and the prevention of unjust enrichment. The legal basis for the confiscation of proceeds of crime in Australia can be traced back to the early 1980s when the Australian Ministerial Police Council in conjunction with the Standing Committee of the Attorney-General of Australia developed a comprehensive legal basis governing the property of proceeds of crime and the prevention of unjust enrichment.

The Australian Taxation Act states that tax authorities can require taxpayers to account for assets and assets that are suspected to be in excess of a taxpayer's financial means. However, this proposal was initially accommodated by the Attorney General's Standing Committee in 1985, which then legally came into effect in 1987. The paradigm built in accommodating the confiscation of assets from crimes committed by the state at that time was still based on conviction, which was contained in the Proceeds of Crime Act (PoCA). At least the PoCA explains some of the nuts and bolts of the arrangement, namely: (1) a restraining order against

unlawfully acquired assets, in order to restrict a person's ability to use, alter or dispose of the assets concerned; (2) requiring the owner of the assets concerned to appear in court to prove the source of the assets and (3) requiring a person to pay a specified sum of money to the state based on the difference between the calculation of legally acquired income.[1] Even the regulation of unexplained wealth in Australia requires all states to have their own laws and provisions in regulating unexplained wealth. In fact, the PoCA also allows the state to be able to return confiscated funds to the aggrieved community or victims of the criminal offence in question.

Secondly, the application of unexplained wealth in Ireland has two legal bases governing the forfeiture of proceeds of crime through civil channels. The first instrument is set out in The Proceeds of Crime Act (PoCa) and the second is set out in the Criminal Asset Bureau (CAB) Act. In 1996 Ireland developed for the first time the proceeds of crime asset forfeiture framework set out in the PoCA, making Ireland one of the first countries in Europe to reverse the burden of proof for civil asset forfeiture claims, in an academic and crime control approach that moved from a reactive belief in proving criminal offences to a proactive crime control strategy by law enforcement agencies.

The application of civil asset forfeiture in Ireland is not new. In fact, the enactment of the PoCA and CAB Act was based on the evolving legal doctrine of nemodat quod non habet which means that a thief cannot have a legal title to stolen property. The application of civil asset forfeiture in Ireland is not new. In fact, the enactment of the PoCA and the CAB Act is based on the evolving legal doctrine of nemodat quod non habet which means that a thief cannot have legal title to stolen property.

Aside from these two pieces of legislation, asset forfeiture of proceeds of crime is also spread across a number of Irish laws. The Offenses Against the State Act of 1985 sets out a brief scheme of confiscation, creation and forfeiture of assets, where the Minister for Justice has reasonable grounds to believe that the property of an individual or organisation has been unlawfully seized, where through this law gives great authority to the minister of justice to issue a decree ordering financial institutions deposited in related bank accounts to the state for crimes and losses owned by the state. This law also requires the reversal of the burden of proof to the owner of the property or assets concerned to show and prove the validity of the assets owned.

In the context of legal development in Indonesia, efforts to apply unexplained wealth to all types of assets and wealth that are considered unnatural have existed. This is as contained in the urgency of the establishment of the Criminal Assets Forfeiture Bill, namely (1) optimising the recovery of criminal assets; (2) optimising asset recovery against the proceeds of criminal acts that cannot or are difficult to prove the criminal act; (3) the application of unexplain wealth and (4) the establishment of asset forfeiture procedural law.

The emergence of the initiation of the formation of the Bill on Asset Forfeiture of criminal offences is based on the conditions of law and the rules of asset forfeiture that can only be carried out after a conviction decision if the decision mentions asset forfeiture. On the other hand, there is a need to seize assets using civil channels to avoid disguise and transfer of assets abroad or by using other people's names to obscure ownership of these assets. The criminal asset forfeiture bill itself has been included and registered in the 2020-2024 national legislation programme. However, until now the bill has not yet reached an agreement and is still hampered in the legislative process. The tug of war between the interests of each faction hinders the follow-up process of the discussion of the Asset Forfeiture Bill.

Apart from the proposals contained in the Asset Forfeiture Bill, asset forfeiture from money laundering offences can also be carried out by the state through civil mechanisms, but only if the perpetrator dies during the judicial process. Unlike the unexplained wealth approach, which is not a substitute for criminal charges, and can be filed at any time, both before, during and after a legally binding decision, if it is known that there are assets and assets from crime, a civil asset forfeiture lawsuit can be filed.

Of course, the application of the unexplain wealth order in Indonesia is not smooth, at least there are several obstacles in the effort to apply it in the Indonesian legal system. Technically and juridically, in relation to the civil process or mechanism, there are no contradictions with the approach used in the eradication of corruption, especially in relation to the process of proving specific assets owned by the perpetrator. There are some difficulties in the process of asset forfeiture through civil channels seen from the formal aspect.

The characteristics of civil procedural law that uses formal evidentiary law, which fundamentally requires the process of proof to be imposed on those who postulate. This principle is derived from the principle of civil procedure law, namely actori incumbit onus probandi, as stated in the provisions of Article 163 HIR concerning the distribution of the burden of proof before the judge, where both parties have an obligation to prove their respective arguments. who must prove the allegations.

In this case, the State Attorney is required to prove the sources of assets owned by the perpetrators of corruption to be proven before the trial. The State Attorney is required to carry out real proof of the existence of state financial losses, namely state financial losses related to or resulting from criminal offences committed by the public official concerned.

The existence of a separate level of difficulty in proving the ownership and source of assets sourced from the proceeds of crime certainly contradicts the concept of proving property ownership in the law on corruption offences. In the Anti-Corruption Law, the basic foundation is laid to facilitate the identification and proof of ownership of assets owned by the perpetrators of the criminal offence concerned with the scheme of applying the reverse burden of proof. The agreement on the use of the reverse burden of proof in terms of ownership of assets of the perpetrators of corruption in the provisions of Article 37 paragraph (3) of Law No. 31 of 1999 which confirms that the defendant is obliged to provide information about all his assets and the assets of his wife or children and family or corporation that are considered to have a relationship with the defendant.

UsageThe use of the principle of reversal of the burden of proof for perpetrators of corruption offences against property and assets owned by themselves, their families, and their families. Property and assets owned by themselves, family and relatives who have a relationship with the criminal offence committed by the perpetrator is based on the applicability of the presumption of guilt. The use of the principle of reversal of the burden of proof for perpetrators of corruption offences against property and assets owned by themselves, their families and relatives that have a relationship with the criminal offences committed by them is based on the applicability of the principle of presumption of guiltypresumption of coruption, so that all assets and assets owned by the perpetrators of corruption are worthy of the presumption of guilt.and assets owned by the perpetrator of corruption should be presumed to be the proceeds of a corruption offence as long as the perpetrator is unable to prove corruption offences as long as the perpetrator is unable to prove the source and income of the wealth from lawful sources income from halal sources.

This is the reason why the bill on asset forfeiture of criminal offences establishes a special procedural law to handle the civil process in asset forfeiture of criminal offences, including corruption offences. Although there is a special procedural law that is trying to be built and the Asset Forfeiture Bill, this Bill is still unable to accommodate the system of reversing the burden

of proof to the perpetrators of crimes for their assets, so that the heavy burden of proof is still in the hands of the State Attorney.

The need for the use of reverse burden of proof in terms of asset forfeiture, where all assets suspected of being the proceeds of crime including the proceeds of corruption must be able to be charged with reverse proof in addition to efforts to facilitate the State Attorney in proving ownership and alleged assets or assets resulting from corruption, the reversal of the burden of proof is also based on the protection of assets fought by him through the mechanism of proof before the trial, to avoid the arbitrariness of the state attorney in arguing that the assets he owns are assets resulting from corruption.[2] In the balanced probability principles approach, Oliver Stolpe argues that the use of the reverse burden of proof approach must prioritise between personal balance and the confiscation of assets that are strongly suspected of being the proceeds of corruption, Therefore, the perpetrators of corruption offences, as people who understand their sources of income and revenue, are given the right to defend their wealth and assets. However, the Asset Forfeiture Bill also allows a person to object to an application for asset forfeiture with the obligation to prove ownership and the source of legally acquired assets. However, if the owner of the asset is unknown, or has passed away, the trial will be conducted in absentia or by proxy, which may prejudice the rights of the asset owner.

Referring to this, it is necessary to improve the evidentiary mechanism by involving the asset owner from the beginning of the asset forfeiture request through a reversal of the burden of proof, as also applied in the Anti-Corruption Law in Article 37 which requires perpetrators of corruption offences to prove the sources of ownership of their assets. It is not much different from the reasons for applying the increased burden of proof in the Anti-Corruption Law in several perspectives, namely: (1) in the human rights approach, everyone has the right to enjoy their wealth, so that every legal action carried out by the government must at least be carried out in order to uphold the rights of asset owners, by being given the opportunity to actively prove the source of wealth and assets owned by the respondent, to avoid arbitrariness of the State Attorney and judicial institutions.

Secondly, from a practical point of view, there is a requirement for proof for the respondent to reveal and explain the source of assets and wealth that he has from legitimate sources or not, so that there is certainty about the confiscation and confiscation that can be carried out by the state by paying attention to how capable and how logical the respondent is able to prove the source of assets and wealth from legitimate ways and work.

Judging from the development and dynamics of the implementation of corruption law in Indonesia, after Indonesia ratified UNCAC through Law No. 7 of 2006, Indonesia is also obliged to implement the principles contained in UNCAC which specifically regulates the eradication of corruption. The obligation to regulate and pursue asset forfeiture using civil channels as an enhancement to the asset forfeiture process carried out using criminal justice channels, without being dependent on one another.

After the ratification and retification of UNCAC in Indonesia, the obligation to further regulate the principles of crime eradication in UNCAC was then accommodated by Law No. 7 of 2006 as well as in terms of the obligation to implement the provisions of Chapter V of UNCAC which regulates and requires member states to regulate special procedures regarding tracing, blocking, confiscation and confiscation of assets of corruption. Referring to this, the prospect of applying the unexplain wealth order as an instrument of asset forfeiture of corruption crimes that can be carried out through the civil court process in the Anti-Corruption Law in the future, as a

form of accommodating the provisions of UNCAC as well as improving the instrument of asset forfeiture of corruption crimes in Indonesia. besides In addition, it is also a form of adjustment to the previous proposal, which includes which contains reverse proof of ownership and property owned by the perpetrator of a corruption offence that is petitioned in the owned by the perpetrators of corruption offences that are requested in the civil court to be confiscated. Court to be confiscated. In addition, the reason for the need to be included in the proposed amendments to the Anti-Corruption Law is as a form of leniency. Amendment to the Anti-Corruption Law as a form of specialist lex of asset forfeiture of corruption offences in the future.

CONCLUSION

This study found that: first, the legal politics of asset forfeiture for corruption crimes in Indonesia is still primarily oriented towards the process of conviction-based asset forfeiture, asset forfeiture can only be carried out if there is a judge's decision that is legally binding. However, if in the criminal case there are difficulties in proof, the defendant dies during the judicial process, and after a permanent court decision it is known that there are assets owned by the perpetrator that are the proceeds of crime, a civil lawsuit can be filed. However, in contrast to the concept of unexplained wealth contained in the Criminal Asset Forfeiture Bill, which has a broader dimension of civil filing by detailing the reasons for a civil lawsuit, namely (1) the suspect or defendant dies during the judicial process, escapes, is permanently ill or has an unknown whereabouts that can hinder the criminal justice process, while the results of the crime are known and there are state financial losses, then asset forfeiture can be pursued through civil channels to restore state financial losses; (2) the defendant is acquitted of all charges; (3) the criminal case cannot be tried; (4) the defendant has been convicted by a court that has obtained permanent legal force but it is later discovered that the convicted person has property or assets that are the proceeds of a crime that has not previously been traced or has not been known by the prosecutor.

The filing of a civil lawsuit is not an alternative to the criminal justice process. The lawsuit for asset forfeiture through the civil process can be filed before, during and after the criminal decision, in order to avoid obfuscation and the disappearance and conversion of assets resulting from corruption crimes. Second, the prospect of implementing unexplained wealth in Indonesia has existed through the establishment and drafting of the Criminal Asset Forfeiture Bill. However, this bill is not equipped with the obligation to reverse the burden of proof, which is identical to the proof of ownership of property contained in the Anti-Corruption Law. In the future, it is necessary to equalise the reversal of the burden of proof that should be carried out by the owner of the asset to facilitate the process of proof and assist the legal apparatus that is fixed in the Criminal Asset Forfeiture Bill and it is necessary to regulate lex speasialis unexplained wealth in the Anti-Corruption Law as well as adjustments to the principle of reversal of the burden of proof in the Anti-Corruption Law as proposed by the author

REFERENCES

Ali, Ahmad, (2018) Heryani,Wiwie, *Asas- Asas Hukum Pembuktian Perdata,* Kencana Media Press, Jakarta.

Albert, Porajow, DF.,(2010), *Non Conviction Based Asset Forfeiture Sebagai Alternative Memperoleh Kembali Kekayaan Negara yang Hilang Karena Tindak Pidana yang bBerkaitan dengan Perekonomian Negara,* Universitas Indonesia Press, Jakarta.

Australian Federal Police, "Criminal As Confiscation Taskforce", dikunjungi pada tanggal 2 Februari 2024, https://www.afp.gov.au/sites/default/files/PDF/CACT-Brochure-a.pdf.

Australian National Audit Office, "Proceeds Of Crime", dikunjungi pada tanggal 2 Februari 2024, https://www.anao.gov.au/work/performance-audit/proceeds-crime.Azwar, Muhammad F, Karim,MS, "The Concept of Non Conviction Based Asset Forfeiture As a Legal Policy in Assets Criminal Action of Coruption", Legal Brief, Vol. 11, No. 5, 2022, (Desember, 2022),

Anggita,Astrid B., Dudung Hidayat, "Eksistensi Jaksa Sebagai Pengacara Negara Dalam Melaksanakan Gugatan Pembayaran Uang Pengganti (Studi Kasus Perkara Korupsi di Kabupaten Cirebon)", Hukum Responsif, Vol.9, No. 2, (Agustus 2018)

Bru, J. Piere, Hauch, Jeane, "*Unexplain wealth* Orders: Toward a New Frontier in Asset Recovery", dikunjungi pada 3 Februari 2024, https://star.worldbank.org/publications/unexplained-wealth-orders-toward-new-frontier-asset-recovery.

Criminal Defences Lawyers Australia, "Guide to Explain Wealth in Australia", dikunjungi pada tanggal 2 Februari 2024, https://www.lexology.com/library/detail.aspx?g=9e956926-36bf-42bc-946b-79410c08decf.

Direktorat Kekayaan Negara, "Pengelolaan Aset yang Dirampas Melalui Mekanisme Non Conviction Based Asset Forfiture suatu op Perbandiangan Antara Indonesia dan Thailand", dikunjungi 3 Februari 2024, https://www.djkn.kemenkeu.go.id/artikel/baca/16101/Pengelolaan-Aset-yang-Dirampas-melalui-Mekanisme-Non-Conviction-Based-Asset-Forfeiture-Suatu-Perbandingan-Indonesia-Thailand.html

Divisi Hukum dan Monitoring Peradilan ICW, "Laporan Hasil Pemantauan Tren Penindakan Korupsi Tahun 2022", dikunjungi pada 3 Febaruari 2024, https://antikorupsi.org/sites/default/files/dokumen/Tren%20Penindakan%20Tahun%202022.pdf

Fajrin, Yaris A, Triwijaya, AF., "Asset Forfeiture Punishment for Coruptor in the Perspektif of Indonesia's Social Justice", Fiat Justitia, Volume 13, Nomor 3, (Juli, 2019)

Fitriyani, Desi, Maizaroh,Muthiah "Posibilitas in Rem Asset Forfeiture Sebagai Upaya Asset Recovery di Indonesia", aml/cft Journal Anti Money Laundering/ Countering the Financing of Terrorism, Vol, 01, No, 02, (2023).

Ginting, Jamin, Perjanjian Internasional Dalam Pengembalian Aset Hasil Korupsi di Indonesia, Jurnal Dinamika Hukum, Vol. 11, No. 2, (September 2011)

Greenbergh, Theodore S., Linda M. Samuel, (2009), *A Good Practice fo Non Conviction Based Asset Forfeiture,* The World Bank, Washington Dc.

Gray,Antony Davidson " Forfeiture Provisions and the Criminal/ Civil Divide, New Criminal Law Review : An International and Interdiciplinary Journal, Vol. 15, No. 1Hariman Satria, "Ke Arah Pergeseran Beban Pembuktian", Jurnal Integritas, Vol. 3, No. 1, (2017)

Hukum Online, "Hukum Perdata Tak Mengenal Asas Non Retroktif", dikunjungi pada tanggal 5 Februari 2024, https://www.hukumonline.com/berita/a/hukum-perdata-tak-mengenal-nonretroaktif-hol18271/.

Hurd, Heidi, (2010), Unjust Enrichment : A Study of Private Law and Public Laws, New York, Cambridge University Press.

Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa", Al Adl, Volume IX, No. 3,(Desember 2017

Indonesia Coruption Watch, "Indonesia Harus Atur Norma-Norma UNCAC Untuk Jerat Koruptor Canggih", dikunjungi pada tanggal 5 Februari 2024, https://www.antikorupsi.org/id/article/indonesia-harus-atur-norma-norma-uncac-untuk-jerat-koruptor-canggih.

Indonesian Coruption Watch, "Naskah Akademik dan RUU Tipikor Usul Inisiatif Masyarakat", dikunjungi pada tanggal 3 Februari 2024, https://antikorupsi.org/sites/default/files/dokumen/NA_dan_RUU_Tipikor.pdf

Jaya,Arizon M., (2017), "Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi", Jurnal Cepalo, 1(1).

King,Colin, "Civil Forfeiture in Ireland: Rwo Decades of the Proceeds of Crime Act and Criminal Asset Bureau", University Of Sussex, dikunjungi pada tanggal 2 Febaruari 2024, https://www.dsps.unict.it/sites/default/files/Civil%20forfeiture%20in%20Ireland%20-%202%20decades.pdf

Lilik Mulyadi, Pembuktian Terbalik Kasus Korupsi, https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/pembuktian_terbalik_kasus_korupsi.pdf

Liz Campbell, The Recovery of Criminal Assets in New Zealand, Ireland and England, Edinburg Research Explore, http://www.nzlii.org/nz/journals/VUWLawRw/2010/2.pdf

LK2I, Melihat Masa Depan Regulasi Illicit Inreachment : Sebuah Ancaman Bagi Pejabat atau Pelanggaran Hak Asasi ?, https://lk2fhui.law.ui.ac.id/portfolio/melihat-masa-depan-regulasi-illicit-enrichment-sebuah-ancaman-bagi-pejabat-publik-atau-pelanggaran-hak-asasi/.

Naskah Akademik Rancangan Undang-Unang Tentang Perampasan Aset Tindak Pidana, https://bphn.go.id/data/documents/na_ruu_tentang_perampasan_aset.pdf.

Nugraha, Xavier, Maria, Ave " Non Conviction Based Asset Forfeiture Sebagai Formulasi Baru Upaya Stolen Asset Recovery Tindak Pidana Korupsi di Indonesia", Jurnal Majalah Hukum Nasional, Vol. 49, No. 1 (2019).

Romantz, David S.,*Civil Forfeiture and The Constitution : A Legislative Abrogation of Right and Judicia Response : The Guilt of the Res,* Suffolle University Law Review, Vol 52, Issues No 1.

Saputra, Noverdi P., *Politik Hukum dan Muatan Pengaturan Dalam Pembentukan Undang-Undang Tentang Perampasan Aset,* Info Singkat DPR RI, Vol. XVI, No. 10

Sagita, Afrianto, (2017), "Pembalikan Beban Pembuktian Sebagai Kebijakan Hukum Pidana dalam Undang-Undang Tindak Pidana Korupsi", Jurnal Hukum Respublica, 17 (1),Taniady, Vicko, Riwayanti , Novi W., "Reformulasi Beban Pembuktian Terbalik Berlandaskan Asas Presumption of Guilty Terhadap Kasus TPPU di Indonesia", IPMHI Law Jurnal, Vol.1, No. 2, (Desember 2021).

Sari, Ayu K., Puspawati,I GA., " Penerapan Sistem Pembuktian Terbalik Dalam Upaya Pemberantasan Tindak Pidana Korupsi", dikunjungi pada tanggal 2 Februari 2024, file:///C:/Users/ASPIRE%203/Downloads/5364-1-8522-1-10-20130501.pdf

Rahayu,Kurnia Yunita, Harbowo, Nikolaus "Kepentingan Politisi Hambat Pembahasan RUU Perampasan Aset", dikunjungi pada tanggal 3 Februari 2024, https://www.kompas.id/baca/polhuk/2023/06/20/kepentingan-politis-hambat-pembahasan-ruu-perampasan-aset

Parlement of Australia, *Unexplain wealth* Legislation Amandement Bill 2018, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd02.

Parliement of New South Wales, "*Unexplain wealth* (Common Wealth Powers) Bill 2018", dikunjungi pada tanggal 3 Febaruari 2024, https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-77017/link/25

PPATK, Implementasi UNCAC di Indonesia, dikungjungi tanggal 3 Februari 2024, https://ppid.ppatk.go.id/wp-content/uploads/2020/08/4.19-Naskah-Akademis-Undang-Undang-Perampasan-Aset.pdf

Rahayuningsih, Teotik, Perampasan Aset Hasil Tindak Pidana Perbankan dalam Rangka Pemberntasan Tindak Pidana Pencucian Uang, dikunjungi pada tanggal 2 Febaruari 2024, file:///C:/Users/ASPIRE%203/Downloads/693-1531-1-SM.pdf.

The Nemo Dat Quod Non Habet Rule, dikunjungi pada 4 februari 2024, https://www.lawteacher.net/

Yayasan LembagaBantuan Hukum Indonesia, Illicit Inrechment, https://antikorupsi.org/sites/default/files/dokumen/YLBHI_PPT%2520Illicit%2520Enrichment-Alvon.pdf