Abstract. The criminal act of corruption, defined as the abuse of power for personal gain, is essentially a matter of social injustice. Corruption is considered an extraordinary crime because it is carried out in a systematic way, and the impact caused might adversely affect the economic life and national development. For this reason, handling cases of corruption requires extensive legal actions and extraordinary measures. The Corruption Eradication Law of the Republic of Indonesia regulates the process of returning assets resulting from corruption through civil and criminal channels, but asset returns in corruption cases are still considered to be not effective, as it takes long to pass a court decision. Taking into account the duration of asset seizure in the case of the criminal act of corruption, the idea emerged that asset seizure can be carried out before a court decision is passed, notably by way of applying the Asset Forfeiture Bill to raise the return on state financial losses. Thus, a breakthrough is needed to accelerate the discussion process concerning the Asset Forfeiture Bill which has gone through a long process of ratification since it was initiated in
early 2010 and introduced into National Legislation Program (Prolegnas) 2023, so that it could be promptly discussed and passed by the Government and Parliament. This research is a legal study, which implies the analysis of laws and regulations, based on dogmatics, legal theory, and legal philosophy. The purpose of this article is to examine the provisions of Article 18 Para (1), (2), and (3) of the Law on the Eradication of Criminal Acts of Corruption No.31 (1999). Meanwhile, asset seizure through the civil route approach is also regulated in the provisions of Article 32 Para (1), Article 33, Article 34, and Article 38(C) of the Law No.31 (1999) with amendments in Law No.20 (2001) on the Eradication of Criminal Acts of Corruption. The Asset Forfeiture Bill should be discussed and passed by the Government and Parliament as soon as possible, so that the return of state financial losses in cases of criminal acts of corruption could be enhanced.

**Keywords:** asset grabbing, corruption, state losses.

**INTRODUCTION**

Criminal acts with economic motives that were originally conventional in nature have become increasingly complex with the times. In Indonesia, the recovery of assets resulting from corruption involves authorities and responsibilities in various administrative and law enforcement institutions and agencies. The recovery of assets resulting from the criminal act of corruption must be carried out effectively, efficiently, transparently and accountably, in order to unite authorized administrative and law enforcement bodies of ministries, institutions, and agencies into one system, which should be is integrated with single entry digital data management so that it could easily be controlled by all stakeholders through public information disclosure (Panggabean, 2020). However, to be able to recover financial or economic losses due to corruption, it is necessary to provide additional penalties in the form of payment of substitute money accompanied by the seizure of the defendant’s assets that are proven to be obtained from the proceeds of corruption.

The criminal act of corruption, defined as the abuse of power for personal gain, is essentially a matter of social injustice. Law enforcement efforts in the field of eradicating corruption are a specific issue, which proves how important every legal step taken to enhance the handling of corruption criminal cases. Corruption is considered an extraordinary crime because it is carried out in a systematic way, and the impact caused might harm the economic life and national development. For this reason, handling cases of corruption requires extensive legal action and extraordinary measures (Pramono, 2016). The seizure of assets resulting from criminal acts, in the legal system in Indonesia is not a new thing. Several criminal provisions have provided for the possibility of confiscation of proceeds and tools used in a criminal offence. These provisions are regarded in the Criminal Code regarding additional crimes.

In the history of the development of laws and regulations to eradicate criminal acts of corruption, there are several provisions for the return of state financial losses, namely, Article 14 of the Military Ruler Regulation No. Prt/PM-08/1957 on Ownership of Property,
dated March 27, 1957; Article 2 of Military Rulers Regulation No. Prt/PM-011/1957, dated July 1, 1957; Article 12 Para (1) and Para (3), Article 33 (1), Article 40 (2) and Para (3), Army War Authority Regulation No. Prt/Peperpu/013/95, dated April 16, 1958 on Prosecution, Prosecution and Investigation of Criminal Corruption and Property Ownership, Article 16 Para (2) and Para (3), Law No. 24 Prp Year 1960 concerning Prosecution, Prosecution and Investigation of Criminal Acts of Corruption; Article 2 Para (1) and Article 2 Para (6), Government Regulation No.11 1947 aligned with Government Regulation No. 43 (1948) on Management of Seized Goodsand Evidence.

In 1971, Law No. 3 (1971) on Corruption was passed which regulates the return of assets resulting from corruption crimes, notably in Article 4, Article 34(a) and (b), Article 35 Para (1). This law was later amended by Law No.31 1999 as amended by Law No.20 (2001) on Eradication of Criminal Acts of Corruption. In legislation, the process of returning assets resulting from corruption two approaches are used. These are the civil route, where civil lawsuits are carried out by the Prosecutor as the State Attorney, and the criminal route, which is implemented through the course of confiscation and seizure.

The criminal path of asset confiscation to recover state financial losses is regulated in Article 18 Para (1), (2), (3) of Law No.31 1999 on Eradication of Criminal Acts of Corruption. Meanwhile, asset seizure through the civil route approach is also regulated in the provisions of Article 32 Para (1), Article 33, Article 34 and Article 38 (C) of Law No.31 (1999) as amended by Law No.20 2001 on Eradication of Criminal Acts of Corruption.

Throughout the world, there are legal developments that show that confiscation and confiscation of proceeds and instruments of criminal acts are an important part of efforts to reduce crime rates (Academic Paper, 2012). Even the seizure of assets is regulated in a separate chapter, namely Chapter V of the International Convention of the United Nations Convention Against Corruption (2003) as an approval of the importance of deprivation of the proceeds of criminal acts in the settlement of cases.

Return of assets is a fundamental principle of the United Nations Conventions Against Corruption (UNCAC) in 2003. The ratification was executed by Law No.7 (2006). The return of assets itself is one of the new penal goals in criminal law, especially corruption and money laundering. Return of assets is a law enforcement system carried out by countries victims of corruption to revoke, seize, eliminate the right to assets resulting from corruption crimes from perpetrators of corruption crimes through a series of processes and mechanisms, both criminal and civil, at home and abroad, traced, frozen, confiscated, handed over, and returned to the state, so that it could restore state finances, and prevent perpetrators of corruption crimes from using assets resulting from corruption as tools or means to commit other crimes, and provide a deterrent effect for perpetrators and/or potential perpetrators of corruption crimes. With the ratification, Indonesia is a party to UNCAC. Indonesia should have equal legal standing in carrying out the necessary actions to seize illegally acquired assets. In addition to UNCAC, other UN conventions, which contain provisions regarding the seizure of assets resulting from criminal acts, were ratified. These conventions include the United Nations Convention Against Illicit Trafic In Narcotic Drugs and Phychotropic Substance (1988), the United Nations Convention on Transnational Organized Crime, 2002 (UNTOC), and various provisions in the United Nations Counter Terrorism Convention.
Law No.31 (1999) with amendments in Law No.20 (2001) on Eradication of Corruption regulates processes of returning assets resulting from corruption. Two approaches are used, notably the civil route, where civil lawsuits are carried out by the prosecutor as a state attorney, and the criminal route, which is accomplished through the process of confiscation and seizure. The Supreme Court even issued Supreme Court Regulation No.1 (2013) on Procedures for Resolving Applications for Handling Wealth and Money Laundering and Other Crimes, but the return of assets in cases of corruption is still considered not optimal because it takes a long time to wait for the next court decision. The rule of law remains. Taking into account the duration of asset seizure in the case of the criminal act of corruption, the idea emerged that asset seizure can be carried out before a court decision is passed.

The Law on Asset Forfeiture has gone through a long process since it was initiated in early 2010 and has been included in the 2015-2019 National Legislation Program (Prolegnas), but the bill is not on the list of priority bills of Prolegnas. The current government has proposed and the House of Representatives agreed to include the Asset Forfeiture Bill in the 2023 National Legislative Process.

RESEARCH METHOD

This research is to review and develop legal knowledge in the field of criminal law, especially those related to cases of criminal acts of corruption. The research on "Asset Recovery Policy in the Draft of the Asset Forfeiture Bill in the Case of Corruption Crime" focuses on the analysis of philosophical aspects, theories and legal norms resulting from Law No.31 (1999) with amendments in Law No.20 (2001) and in Law No.31 (1999) on Eradication of Corruption which has not been reinforced in expropriating assets against perpetrators of corruption crimes in order to restore state financial losses, so based on data compiled by the UGM Economics Laboratory Research Team, there is a total state financial loss of Rp.203.9 trillion (Pradiptyo, 2015). However, the total penalty with financial sanctions is only Rp.21.26 trillion (10.42%). This means that there is still a total of Rp.182.64 trillion (89.58%) of state losses that have no chance to be recovered.

Based on such empirical facts, it is known that the system of punishment for actions that harm state finances in Indonesia has not been enhanced to restore state financial losses. This study uses several approaches to tackle legal issues. The first one is the statutory approach, which is a research approach that uses laws and regulations consisting of legislation and regulations both in Indonesia and in other countries. The second one is the case approach, which envisages the implementation of legal norms and rules of the laws referred to in court decisions or jurisprudence in real practice. The third one is the comparative law or comparative approach used to apply comparative legal research in the elements of the legal system.

RESULTS AND DISCUSSION

The seizure of assets resulting from criminal acts that apply in Indonesia today tends to take a long time because it can only be carried out if the perpetrator of the crime has been declared legally and conclusively guilty of committing a criminal act by the court. This mechanism is often difficult to implement due to various obstacles that result in the fact
that the perpetrators of crimes cannot undergo court hearings due to the lack of evidence to file charges in court. The seizure of assets resulting from criminal acts is not effective, since much time is needed to go through the judicial process. Thus, there is enough time for perpetrators to do so, that assets obtained from criminal acts could not be controlled by the state to be returned to victims or returned to the state treasury.

Based on this, a new concept emerged, which is considered to be more effective to seize assets resulting from criminal acts through the Draft Law on Criminal Asset Forfeiture. It denotes asset seizure without criminal charges which intends to accelerate the process of asset seizure from criminal offenders. The bill has even been included in the list of the national legislation program (Prolegnas) of the House of Representatives of the Republic of Indonesia in 2019-2024. The emergence of the Asset Forfeiture Bill has not succeeded in bringing the Asset Forfeiture Bill under discussion to be passed immediately.

Currently, efforts to eradicate corruption are focused on three aspects, namely, prevention, eradication and return of assets resulting from corruption (asset recovery) with the aim of recovering state financial losses. The return of the state financial losses through seizure of assets resulting from corruption crimes has the following objectives: returning state assets that have been stolen by corruptors, prevent corruptors from using the stolen assets to commit other crimes, such as money laundry, and provide punishment to those who want to commit corruption.

Provisions regarding the return of proceeds of crime (criminal acts) in Indonesia are scattered in various regulations. The first one is that the general regulation on which the material basis for the return of proceeds of crime is the Criminal Code, which procedural law (formal) is regulated in the Code of Criminal Procedure (CCP). The provisions stipulated in the Criminal Code and the Criminal Procedure Code are used to cover the seizure of property resulting from crime in general crimes. The second one is that the law governing the legal act of confiscation of assets is obtained from special ones such as Law No.31 (1999) on Eradication of Corruption with amendments and supplemented by Law No.20 2001 on Amendments to Law No.31 (1999).

**Asset Forfeiture through criminal channels.** Corruption in Indonesia constitutes a threat to the nation in implementing national goals as stated in the Preamble to the 1945 Constitution. Corruption has harmed state finances and the country’s economy directly and hampered the growth and continuity of national development (Natasurya, 2019). Efforts to recover assets obtained from criminal acts, in general, can be effective if the perpetrator of the crime is either a suspect or a defendant who by the court has been declared legally and conclusively guilty of committing a criminal act.

Asset seizure originating from corruption through criminal channels (in personal forfeiture (conviction based asset forfeiture) as outlined in the provisions of Article 18 Para (1) and Para (2) in Law No.31 (1999) on Eradication of Corruption with amendments and supplemented by Law No.20 (2001) on Amendments to Law No.31 (1999). The seizure of assets must be based on the judgment of the court contained in the judgment with an additional criminal determination of payment of substitute money and confiscation of property belonging to the defendant if the defendant does not pay the substitute money.

Asset seizure in corruption cases is addressed in Law No.31 (1999) on Eradication of
Corruption as amended and supplemented by Law No.20 (2001) on Amendments to Law No.31 (1999) on Eradication of Corruption Crimes. The seizure of assets obtained or derived from corruption is an additional crime and part of efforts to recover state financial losses which is expressly stated in Article 18 Para (1-3) of Law No.31 (1999) on Eradication of Corruption which reads:

1) In the Criminal Code, additional crimes are defined as:
   - The seizure of tangible or intangible movable or immovable goods, which are used and obtained from the proceeds of corruption, including the company owned by the convicted person in which the corruption offence was committed, as well as the price of the goods that replace the goods;
   - Payment of substitute money equal to property obtained from the acts of corruption;
   - Closure of business or part of the company for a maximum of 1 (one) year;
   - Deprivation of all or part of certain rights or removal or partial benefit, which have been or may be granted by the government to the convict.

2) If the convict is not able to reimburse the money, in line with Para (1) point (b), within a maximum of 1 (one) month, then against a court decision that has received permanent legal force, his property can be confiscated by the prosecutor and auctioned to cover the replacement money.

3) In case the convict does not own property sufficient to reimburse the money as referred to in Para (1) point (b), then this person is imprisoned and the duration thereof should not exceed the duration of maximum punishment for the substantive offence, in line with the provisions of the law and imprisonment for the offence determined in the court decision.

Although the Corruption Law has regulated the seizure of assets to recover state financial losses through criminal channels, in 2001-2015, based on data compiled by the UGM Economics Laboratory Research Team, there were total state financial losses of Rp. 203.9 trillion. However, the total penalty with financial sanctions is only Rp.21.26 (10.42%) Trillion Rupiah. This means that there are still a total of Rp.182.64 (89.58%) trillion of state losses that have no potential to be recovered. Based on such empirical facts, it is known that the system of punishment for actions that harm state finances in Indonesia has not been reinforced to restore state financial losses.

**Forfeiture of assets through civil channels.** There are two approaches in the Civil Code that regulate losses and compensation in relation to unlawful acts, first through general compensation and second through special compensation. General compensation is an indemnity that applies to all cases, both for cases of contract default, as well as cases related to other engagements, including due to unlawful acts. This general provision on compensation is regulated in the Civil Code in the fourth part of the third book, from Article 1234 to Article 1252 of the Civil Code (Fuady, 2010). While special compensation according to the Civil Code is a loss arising from certain engagements. In the Civil Code, the provision of compensation Compensation for acts committed by others (Article 1366 and Article 1367 of the Civil Code) is mentioned, the Judge has the freedom to apply such compensation in accordance with the principle of propriety, to the extent that it is requested by the plaintiff.

Cases of corruption that cause state financial losses related to this special compensation, are regulated in Law No.31 (1999) on Eradication of Corruption with amendments and
specified in Law No.20 (2001) on Amendments to Law No.31 (1999), which also regulates the way of returning assets with a civil lawsuit mechanism. The mechanism for returning assets by filing a civil lawsuit against the perpetrator and the heirs is carried out when investigators find and argue that in the case of corruption there is sufficient evidence of real state financial losses. Thus, the investigator can submit the file of the case with the result of investigation to the state attorney, or the aggrieved agency in order to file a civil lawsuit. The decision of the court to confiscate the assets against the deceased defendant cannot be appealed.

Asset seizure in the eradication of corruption is very important. The experience of Indonesia and other countries shows that uncovering criminal acts, finding the perpetrators and placing criminal offenders in prison is not effective enough to reduce the crime rate if it is not accompanied by efforts to confiscate and seize the proceeds and instruments of criminal acts. Asset seizure through a civil route approach is outlined in Provisions of Article 32 Para (1) of Law No.31 (1999) with amendments in Law No.20 (2001) on Eradication of Corruption Criminal Acts. It is specified that in case investigators find and argue that there is insufficient evidence of one or more elements of corruption, but a real loss of the finance of the state occurred, then the investigating officer instantly submits the file of the case resulting from the investigation to the State Attorney for a civil lawsuit, or to the aggrieved agency to file a lawsuit. Meanwhile, Article 38 Para (2) stipulates that acquittal in corruption cases does not remove the right to claim losses to state finances.

Moreover, Article 38(c) specifies that in case the decision of the court has come in force, and the court becomes aware of the property owned by the convicted person who is suspected or reasonably suspected of a criminal act of corruption, and the property is not subject to seizure according to Article 38B Para (2), then the state can initiate civil lawsuits against the convicted person and or the heirs.

Asset Forfeiture through the Money Laundering Act (MLA). What is meant by money laundering is all acts that meet the elements of a criminal act in accordance with the provisions in the MLA, including corruption. In consideration of Law of the Republic of Indonesia No.8 (2010) on Prevention and Eradication of Money Laundering, it should be stated that money laundering can not only put economic stability and financial system integrity under risk, but also endanger the components of life in society, nation, and state based on Pancasila and the Constitution of the Republic of Indonesia, Year 1945.

The MLA does not require that investigations, prosecutions, and court hearings on money laundering crimes should not necessarily be proven before the original crime as stipulated in Article 69. In a judicial review, which considers Provisions of Article 69 of the MLA, the Constitutional Court through Decision No.77/PUU-XII/2004, stated that Article 69 of the MLA did not contradict the constitution. According to Yunus Husein, the existence of asset seizure in the anti-money laundering regime is important because the law enforcement paradigm uses a “follow the money” approach (tracing the flow of funds related to crimes or other unlawful acts). In this paradigm, it is understood that money/assets are a life blood of the crime, as well as the weak point of the chain of crime (Hussein, 2007).

To seize assets, according to Provisions of Article 67 Para (2) of the MLA, investigators can apply to the court of the respective district to determine if the assets belong to the
state or should be returned to the lawful possessor. Meanwhile, the seizure of assets using administrative instruments (administrative forfeiture) is contained in the provisions of Articles 34 – 36 of the MLA and PP No.99 (2016) concerning the carriage of cash and/or other payment instruments into or out of the Indonesian customs area. After the implementation of asset seizure, the Supreme Court issued Supreme Court Regulation No.1 (2013) on Procedures for settling applications for handling assets and money laundering and other crimes.

To substantiate money laundering cases related to corruption is the authority of the corruption court. According to the provisions comprising Article 6 of Law of the Republic of Indonesia No.46 (2009) on Corruption Courts, it is stated that the Corruption Court has the authority to examine, prosecute, and decide cases of corruption, money laundering whose original crime is corruption and/or criminal acts expressly determined in other laws as criminal acts of corruption.

In the case of MLA, the burden of proof is placed on the defendant. For the purpose of examination at the court hearing, the defendant must prove that the assets could not be deemed as a consequence of criminal acts, so the judge orders the defendant to prove that the assets related to the case do not originate or are related to the criminal act of corruption. The defendant proves that the assets, which are the subject of the case do not originate or are related to the criminal act of corruption by submitting sufficient evidence. Even if the defendant dies earlier that the verdict is handed down, and the sufficient evidence is available, which proves the defendant committed a money laundering crime, than the judge decides on the seizure of the confiscated property and in the event that sufficient evidence is obtained that there is still property that has not been confiscated, the judge orders the public prosecutor to confiscate the property.

**Asset Forfeiture through the Asset Forfeiture Bill.** The provisions governing the confiscation of criminal proceeds and/or instruments used to commit criminal acts currently in force undergo criminal law enforcement procedures. Often the process of confiscation and seizure of assets through this criminal process causes problems, even cannot be continued, when the suspect/defendant dies, runs away, and is permanently ill or his/her whereabouts are unknown. Therefore, a new mechanism is needed in which the confiscation or seizure of assets resulting from criminal acts and/or instruments used to commit these crimes can be confiscated without having to be linked to the conviction of the suspect or defendant. The mechanism in question is known and has even been applied in several countries or known as the asset seizure system through civil lawsuit procedures against their objects or in rem forfeiture. The application of this system has proven to be quite effective in suppressing criminal acts that are economically motivated or involve large amounts of funds.

In rem forfeiture, the arrangements allow recovery or return of assets resulting from criminal acts without a court decision in a criminal case or non-conviction based asset forfeiture. With this mechanism, there is wide opportunity to seize all assets that are suspected to be proceeds of crimes, other assets that are reasonably suspected to be used or have been used as instrumentalities to commit criminal acts, as well as other assets obtained directly or indirectly from criminal acts including those that have been converted into other assets. This mechanism allows asset seizure without having to wait for a criminal verdict
containing a statement of guilt and punishment for criminal offenders.

It is expected that the enactment of the Asset Forfeiture Law will later improve asset management, so that it could be professional, transparent, and reliable. It is also expected to maintain the economic value through establishing an asset management institution responsible to the Minister of financial affairs in the government. This will guarantee the expedient usage for the benefit of the state and facilitate the government to request assistance in cooperation in returning assets from other countries.

National policies in the field of criminal asset seizure must have a holistic vision based on real needs and meet international standards, determined by the United Nations, FATF (Financial Action Task Force on Money Laundering), and other relevant international institutions or organizations in the field of prevention and eradication of unlawful acts. The Government of Indonesia has ratified several UN conventions, including the International Convention against Corruption, the Convention against Transnational Organized Crime, and the Conversion to Eradicate Terrorism Financing. The Convention regulates, among others, provisions relating to identifying and detecting as well as seizing of proceeds and instruments of criminal acts.

The Urgency of the Asset Expropriation Bill. The lack of asset seizure of state officials who have abundant wealth is not in accordance with their income and is suspected to be related to corruption crimes, in fact, asset compensation related to corruption crimes. According to Provisions comprising Article 67 Para (2) of the MLA, investigators can apply to the court of the district to determine if the assets belong to the state or they should be reimbursed to the entitled persons. Even the Supreme Court issued Regulation No.1 (2013) on Procedures for Settling Applications for Handling Property and Money Laundering and other Crimes. The Corruption Law has actually regulated the seizure of assets without having to be without proven cases of criminal acts of corruption, namely through civil lawsuits. Asset seizure through a civil route approach can be seen in Provisions of Article 32 Para (1) comprising Law No.31 (1999) with amendments specified in Law No.20 (2001) on Eradication of Corruption Criminal Acts. It is said that in case investigators find and argue that there is not enough evidence of one or more elements of corruption, and there is a real loss of the finance, then the investigating officer submits the case of the investigation to the State Attorney for a civil lawsuit or submitted to the aggrieved agency to file a lawsuit. Meanwhile, Article 38 Para (2) stipulates that acquittals in corruption cases do not deprive of the right to claim losses to state finances.

Even for a person who is determined as a suspect or defendant died, then according to the provisions of Article 33 and Article 34, the investigating officer or public prosecutor submits the file of the case with the results of the investigation to the State Attorney, or to the aggrieved agency. Moreover, Article 38(c) specifies that in case the decision of the court has come in force, and the court becomes aware of the property owned by the convicted person who is suspected or reasonably suspected of a criminal act of corruption, and the property is not subject to seizure according to Article 38B Para (2), then the state can initiate civil lawsuits against the convicted person and or the heirs. However, there is a question if the civil lawsuit has the mechanism to seize assets in corruption cases been carried out effectively by law enforcement officials to recover state financial losses in corruption cases? This new mechanism in the Asset Forfeiture Bill will amend and perfect the eradication of corruption.
CONCLUSION

According to data compiled by the UGM Economics Laboratory Research Team, in 2001 – 2015, asset seizure to recover state financial losses through criminal channels amounted to Rp.203.9 trillion. However, the total penalty with financial sanctions is only Rp.21.26 Trillion (10.42%). This means that there is still a total of Rp.182.64 trillion (89.58%) of state losses can not possibly be recovered. Considering these empirical facts, it could be argued that the system of punishment for actions that cause damage to state finances in Indonesia is not effective in the aspect of restoring state financial losses.

The seizure of assets without proof of a criminal case of corruption in a civil lawsuit as stipulated by Provisions comprising Article 32 Para (1) of Law No.31 (1999) with amendments in Law No.20 (2001) on Eradication of Criminal Acts of Corruption, is also not effective to seize assets of perpetrators of criminal acts of corruption. According to Provisions of Article 67 Para (2) of the MLA, investigators can apply to the court of the district to define if the assets belong to the state or should be returned to the entitled persons, but the seizure of assets against state officials who have abundant assets is not in consistent with their income and is also not effective. Consequently, a new investigation is to be commenced in the Asset Forfeiture Bill. Assets resulting from criminal acts and/or instruments used to commit such criminal acts should be confiscated without having to be connected with the punishment of suspects or defendants. This will amend and perfect the eradication of corruption to restore state financial losses.

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