

Application of the Balanced Probability Theory to the Enforcement of Justice Using the Non-Conviction-Based Asset Forfeiture (Ncbaf) Mechanism from the Proceeds of Economic Crime in Indonesia

Mohamad Bondan Yogaswara

Universitas Indonesia

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Abstract

Economic crimes according to Emergency Law no. 7 of 1955 is a criminal act that has an economic pattern or motive or which can have a negative influence on the healthy economic and financial activities of the State. Different from criminal acts in general, economic crimes in particular have their own characteristics that make them unique compared to ordinary criminal acts. The approach method used in this scientific work is Analysis and Evaluation of draft legal regulations regarding asset confiscation and the UNCAC international convention as well as other related legal regulations, namely juridical-normative by emphasizing the descriptive side as a method that seeks to provide an overview of the return of assets and recovery of the country's economy without having to completely deprive perpetrators of economic crimes of their human rights. Apart from that, the data collection method was carried out using library research, namely the study of documents from secondary data in the form of written legal materials, both primary legal materials in the form of related laws and regulations and secondary legal materials in the form of scientific books, articles in magazines, the internet, newspapers, journals, and so on. Confiscation of assets without punishment or non-conviction-based asset forfeiture (NCB) can be the best solution to recover state financial losses from criminal acts of corruption. This is because the confiscation of NCB assets is the best application of the "Balanced Probability" theory. Through the confiscation of assets without punishment, the state obtains benefits in the economic sector by maximizing the return of state finances and justice in the legal sector by creating a form of punishment that provides a deterrent effect by making corruption no longer profitable and preventing the same criminal act from recurring by directly killing blood from The crime of corruption is money resulting from corruption

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Corresponding Author:

Mohamad Bondan Yogaswara

Universitas Indonesia

email : mohamad.bondan@ui.ac.id

1. INTRODUCTION

Economic crimes according to Emergency Law no. 7 of 1955 is a criminal act that has an economic pattern or motive or which can have a negative influence on the healthy economic and financial activities of the State. Different from criminal acts in general, economic crimes in particular have their own characteristics that make them unique compared to ordinary criminal acts. Starting from the regulations which are flexible because they are always changing, the expansion of legal subjects that can criminalize legal entities, trials and assistance in economic offenses which are divided into crimes and violations, resolution outside the event (schikking), expansion of the application of criminal law, even criminal justice absentia was carrying out justice against people who are unknown and have died.

Economic crimes emerged from the era of economic growth and development which

gave birth to types of crime such as smuggling, customs fraud, banking, commercial, financial services authority and capital market crimes, brand counterfeiting, narcotics trafficking, corruption and money laundering crimes. The offenses involved in these crimes are very broad criminal offenses in the economic sector as stated in Law Number 7 (drt) of 1995 concerning economic crimes. This provision regulates criminal and administrative matters relating to economic life so that law enforcers can more easily deal with violations in the economic sector.

These economically motivated crimes are criminal acts with quite complex modus operandi. We can see that narcotics crimes and money laundering are visible as a symbiosis, where narcotics crimes act as predicate crimes in giving birth to money laundering crimes. Likewise, the crime of corruption and the crime of money laundering, complement each other, making it difficult for law enforcement officials to detect traces of the crime they have created. Narcotics, corruption, money laundering are high-class economic crimes because they can only be carried out in an organized manner (organized criminal crime). A crime like this cannot be committed alone, it requires coordination from a group of people with the same goal, namely financial gain by using/justifying any means (any means necessary) in its implementation.

There is growing concern among the world community regarding the fact that any means is justified, such as one of the famous international figures, Pablo Escobar. Pablo Escobar was once crowned one of the richest people in the world due to his organized narcotics trafficking, and as a result of his actions he justified all means and took hundreds of lives in both the United States and Colombia. Likewise, criminal acts of corruption have the potential to make people miserable by attacking the country's economy and causing losses to state finances. This impact makes corruption categorized as a heinous crime. The crime of corruption was achieved because it was carried out well through various modus operandi which were integrated with the government system in an organized manner.

Due to this threatening danger, law enforcement officials have voiced that crime should not pay or crime should not benefit the perpetrator. As stated by Alldridge, it is fundamental that crime must not provide profits for the perpetrator, meaning that if someone makes a profit, especially financially, from the illegal activity they carry out, it is appropriate and immediately to take action against it. This action is a priority because of the rapid development of economics and technology in the world which supports and makes it easier for criminals to hide and launder the proceeds of their crimes as if they were the result of legitimate economic activities.

Criminal crimes using this new mode are carried out on an international/transnational scale, making them international crimes. We can observe that criminal acts of corruption are no longer a national problem, but have become a transnational phenomenon. Based on this, international cooperation is essential in preventing and eradicating criminal acts of corruption, especially in the efforts of corruptors to hide the proceeds of their corruption through money laundering using effective international transfers. Not a few public assets that have been successfully corrupted have been rushed and stored in financial centers in developed countries which are protected by the legal system in force in that country and by the services of professionals hired by the corruptors.

Recovery of state financial losses by efforts to recover state financial losses in criminal acts of corruption in reality still faces obstacles both at the procedural and technical levels. At the procedural level, it requires certain legal instruments that are appropriate to the modus operandi of the criminal act and the object of the legal problem. In cases of criminal acts of corruption, the proceeds of criminal acts in the form of state finances are in reality not only

received or enjoyed by the defendant, but also received or enjoyed by third parties who are not the defendant.

The return of assets resulting from criminal acts of corruption is still limited to the return of assets within the country and there are no provisions governing the mechanism for returning assets resulting from criminal acts of corruption placed abroad, so it is necessary to have legal regulations regarding the return of assets resulting from criminal acts of corruption as a legal basis, as well as the authority to carry out international cooperation in returning assets resulting from criminal acts of corruption.

In eradicating corruption universally, the concept and legal provisions continue to develop, in line with the development of the criminal act of corruption itself. As is known, criminal acts of corruption with an international dimension are even categorized as international organized crimes. Corruption is also a universal problem faced by all countries and a complicated problem that is difficult to eradicate, this is none other than because the problem of corruption is not only related to economic problems, but is also related to political problems, power and law enforcement.

In this regard, the United Nations Convention Against Corruption (UNCAC) has provided enforcement (coercion) for contracting states (state parties) to carry out the obligations contained therein, including sanctions for state parties that do not carry out the obligations contained therein. One of the important materials in the Convention is about asset recovery which is specifically contained in Chapter V Asset Recovery UNCAC. In this chapter, it is expressly stated that the return of assets is a fundamental principle where member countries of the convention are expected to work together to assist each other in the return of assets referred to in the convention.

One of the unique fundamental concepts introduced in this Chapter is the matter of Non-Conviction-Based Asset Forfeiture ('NCB') as in Article 54 paragraph (1) c of UNCAC which requires all States Parties to consider taking actions deemed necessary so that Confiscation of assets resulting from corruption is possible without criminal proceedings in cases where the offender cannot be prosecuted by reason of death, escape or not being found or in other cases. With this NCB concept, the proceeds of crime can be confiscated without punishing the person first. In this way, it is hoped that the NCB will be an effective way to eradicate criminal acts of corruption.

The purpose of this writing is to identify and inventory the problem of returning State assets in Indonesia using the adoption of the Non-Conviction Based Asset Forfeiture concept based on UNCAC in the draft law on asset confiscation, its effectiveness in enforcing law in Indonesia without violating the provisions of the Constitution 1945. Next, analyze and evaluate all these problems by paying attention to legal developments in the current needs of society. The purpose of this activity is to provide recommendations or input for improving and updating laws and regulations relating to state assets.

The scope of activities is Analysis and Evaluation of draft legal regulations for confiscation of state assets in synergy with UNCAC and other related laws and regulations, both horizontally and vertically. The discussion is limited to the NCBAF mechanism for returning state assets and restoring the state's economy by paying attention to and maintaining reasonable lines of human rights. Problems that arise in the confiscation of state assets and alternative solutions and recommendations that can be made to resolve these problems.

2. RESEARCH METHOD

The approach method used in this scientific work is Analysis and Evaluation of draft

legal regulations regarding asset confiscation and the UNCAC international convention as well as other related legal regulations, namely juridical-normative by emphasizing the descriptive side as a method that seeks to provide an overview of the return of assets and recovery of the country's economy without having to completely deprive perpetrators of economic crimes of their human rights. Apart from that, the data collection method was carried out using library research, namely the study of documents from secondary data in the form of written legal materials, both primary legal materials in the form of related laws and regulations and secondary legal materials in the form of scientific books, articles in magazines, the internet, newspapers, journals, and so on.

3. DISCUSSION

I. Concept of Confiscation of Assets Without Criminal Prosecution (Non-Conviction Based Asset Forfeiture/NCB Asset Forfeiture) Results of Economic Crimes In United Nations Conventions Against Corruption

Confiscation and return are two different things, where confiscation is part of the law enforcement process of coercive efforts carried out by the state to take over control of someone's property that is directly related to a criminal act. Meanwhile, what is meant by confiscation is the return of someone's property rights which have received a court decision that has permanent legal force. The legal concept of confiscation according to Indonesian criminal law is the taking over of objects belonging to someone who has committed a crime as an additional punishment imposed by the judge together with the main crime as regulated in Article 10 letter b number 2 of the Criminal Code (KUHP). This is in line with the mandate of Article 39 paragraph (3) of the Criminal Code, to be able to confiscate property that will be returned to the state, investigators must first confiscate property that is suspected to be the result of a criminal act. That is why the judge who decided on the criminal case mandated that the property that had been confiscated previously during the investigation stage be confiscated as property of the state. The return of these assets does not always focus on assets resulting from criminal acts of corruption, where in the Criminal Code itself, confiscation of assets is legalized by Article 39 paragraph (1) of the Criminal Code which states that items belonging to convicts that were obtained from crimes or that were intentionally used to commit crimes can be confiscated. Thus, it can be concluded that the return of assets by confiscation of assets can be applied to all criminal acts in the Criminal Code, especially crimes against objects.

In practice, it is possible to confiscate certain objects as compensation for state losses or additional punishment in addition to the confiscation of the confiscated objects, so the status of these objects becomes state confiscated objects. The return of assets resulting from economic crimes, especially corruption, has an important position in the return of criminal acts of corruption. Thus, the success of eradicating criminal acts of corruption is not only measured based on the success of convicting perpetrators of criminal acts of corruption, but is also determined by the level of success in returning state assets that have been corrupted.

Indonesia's efforts to combat criminal acts of corruption and restore the losses caused by them are not only through national instruments, but also international instruments. One of these international instruments is the 2003 United Nations Convention Against Corruption (UNCAC) and ratified by Indonesia with Law no. 7 of 2006. UNCAC is a major step forward in the global war against corruption, which is also the culmination of the international community's efforts to put in place various normative instruments to

fight corruption globally. UNCAC is needed as a comprehensive approach to prevent and eradicate corruption effectively.

Through this act of ratification, it shows that politically, Indonesia has positioned itself as one of the countries that is committed to the global movement to prevent and eradicate corruption through international cooperation. This is important considering that the practice of corruption in Indonesia occurs statistically as a very detrimental act and can damage the foundations of a country's economic life. This also makes Indonesia one of the hopes of being able to serve as an example for other countries in Asia, especially for countries that are less cooperative in returning assets resulting from criminal acts of corruption in Indonesia, as well as Indonesia's steps to prevent and return assets resulting from corruption. From the country will be part of the international cooperation agenda in efforts to eradicate criminal acts globally.

UNCAC together with other international anti-corruption instruments is a manifestation of an international consensus that emerged in the early 1990s to identify corruption as a crucial problem that needs to be addressed immediately, and specifically requires a solution that is mutually agreed upon by the international community. Some provisions contained in UNCAC are mandatory, while others are optional or left to the discretion of the government (State Party), whether to implement them or not.

Based on these mandatory provisions, States Parties are required to take effective action and at the same time offer various implementation options that are deemed more appropriate for fighting corruption. UNCAC regulates several important provisions relating to international cooperation between law enforcement authorities, asset recovery, technical assistance and exchange of information, as well as mechanisms for their implementation. One important aspect is the definition of "public official" with a fairly broad meaning. In this regard, UNCAC stipulates the government's obligation to take action to prevent corrupt practices, including in the areas of:

1. Procedures and ethics in the public sector;
2. Public sector procurement;
3. Public sector finance;
4. Public reporting, access to information, protection against whistleblowers;
5. Community education; And
6. Private sector standards, including accounting and auditing.

Each government (State Party) is encouraged to consider a number of certain activities as criminal offenses, including: the practice of bribery of national public officials; bribery of foreign public officials and international organizations; embezzlement; misuse or misappropriation of assets by public officials; bribery practices by decision makers in the public sector and embezzlement by people working in the private sector. There is a brief overview of aspects that are considered relevant in relation to the scope and content of UNCAC, namely preventive measures, criminalization and law enforcement, international cooperation, technical assistance and exchange of information as well as asset recovery which has been recognized by many parties as a major breakthrough and at the same time is a basic principle of UNCAC in efforts to prevent and eradicate criminal acts of corruption.

Non-Conviction Based Asset Forfeiture/NCB Asset Forfeiture is an important tool in asset recovery, especially in uncovering improper wealth in developing countries with high levels of corruption. In some jurisdictions, NCB Asset Forfeiture, also called "civil forfeiture", "in rem forfeiture" or "objective forfeiture", is an action against the asset

itself and is not an action separate from the criminal process and requires proof that a property is “tainted.” ” by criminal acts. With confiscation aimed at the asset itself, the absence of a criminal subject as seen in this case makes the position of the parties related to the asset or even the owner of the asset as a third party. Therefore, in this case, the first party is the state through its apparatus, the second party is the asset and the third party is the owner of the asset or is related to the asset.

In some cases, it is possible to carry out NCB Asset Forfeiture because it is an NCB Asset Forfeiture action against property, not people, and criminal proof is not required, or both. NCB Asset Forfeiture can also be useful in situations such as the following: a) The offender has been acquitted of the underlying criminal charges as a result of a lack of evidence presented or failure to meet the burden of proof. This applies in jurisdictions where forfeiture of assets in rem is applied to a lower standard of proof than the standard of proof specified in the criminal offense. Even though there may be sufficient evidence for criminal charges beyond doubt, the offender has sufficient evidence to show that the assets did not originate from illegal activities based on the reverse principle of proof; b) Deprivation that cannot be denied.

In jurisdictions where in rem asset forfeiture is carried out as a civil (legal) procedure, standard assessment procedures are used for asset confiscation, thereby saving time and costs. Conceptually, in its application, NCB Asset Forfeiture is an effort made to cover the weaknesses and even shortcomings that occur in criminal confiscation actions in efforts to eradicate criminal acts. In some cases, criminal forfeiture cannot be carried out and in these cases NCB Asset Forfeiture can be carried out, namely in cases where: a) The perpetrator of the crime is on the run (fugitive). A criminal trial cannot be held if the suspect is a fugitive or at large; b) The perpetrator of the crime has died or died before being found guilty. Death stops ongoing criminal justice system processes; c) Criminals have legal immunity (Immune); d) The perpetrator of the crime has power and authority so that the criminal court cannot carry out a trial against him; e) The perpetrator of the crime is unknown but the assets resulting from the crime are known/found; f) Crime assets are controlled by a third party whose legal position is that the third party is innocent and is not the perpetrator or related to the main crime; g) There is insufficient evidence to be presented in a criminal trial

Confiscation of assets in rem is very effective in recovering losses incurred and returning funds resulting from crimes either to the State or to the rightful parties. While the NCB Asset Forfeiture should never be a substitute for criminal prosecution, in many cases (especially in the context of corruption), the NCB Asset Forfeiture may be the only tool available to recover the proceeds of crimes and ensure justice. The influence of corrupt officials and other practical realities can prevent a criminal investigation completely, or until after the official has been declared dead or absconding. It is not uncommon for officials who commit corruption or who confiscate state property to also seek immunity from prosecution. Because an in-rem asset forfeiture concept does not depend on criminal prosecution, it can proceed without death, or the immunity that officials who commit criminal acts of corruption might otherwise have.

In establishing a forfeiture system, as stated in the StAR guidelines, jurisdictions need to consider whether the NCB Asset Forfeiture can be included in the applicable law (*Lex Generalis*) or a separate law can be created (*Lex Specialis*). In addition, jurisdictions also need to consider the extent to which existing procedures can be referenced and incorporated and the extent to which they should create new procedures. Conceptually, the StAR guidelines provide basic conceptual keys in terms of countries making efforts

to eradicate criminal acts of corruption in particular and other criminal acts that can harm state wealth and the country's economy in general. The keys to this concept are:

1. Forfeiture In Rem (based on no criminal conviction) should not be a substitute for criminal prosecution (non-conviction-based asset forfeiture should never be a substitute for criminal prosecution);
2. The relationship between asset forfeiture cases in rem and any criminal forfeiture, including pending investigations, must be explained. (The relationship between an NCB asset forfeiture case and any criminal proceedings, including a pending investigation, should be determined);
3. Forfeiture of assets in rem must be available when criminal prosecution is unavailable or unsuccessful (NCB asset forfeiture should be available when criminal prosecution is unavailable or unsuccessful);
4. Applicable evidentiary and procedural rules should be as specific as possible);
5. Assets derived from the widest range of criminal offenses should be subject to NCB asset forfeiture;
6. Asset categories must be broad and subject to forfeiture (The broadest categories of assets should be subject to forfeiture);
7. The definition of assets subject to forfeiture should be broad enough to encompass new or future forms of value;
8. Tainted assets acquired prior to the enactment of an NCB asset forfeiture law should be subject to forfeiture);
9. The government must have the authority to set limits in determining policies in accordance with guidelines for forfeiture actions (The government should have the discretion to set appropriate thresholds and policy guidelines for forfeiture);
10. The government may employ to investigate and preserve assets pending forfeiture should be designated);
11. Preservation and investigative measures taken without notice to the asset holder should be authorized when notice could prejudice the ability of the jurisdiction to prosecute the forfeiture case);
12. There should be a mechanism to modify orders for supervision, monitoring, and search for evidence and to obtain any authority that remains bad with the government or requests for pending review of any order that could place acts of seizing property beyond the reach of the courts (There should be a mechanism to modify orders for preservation, monitoring, and production of evidence and to obtain a stay of any ruling adverse to the government pending reconsideration or appeal of any order that could place forfeitable property beyond the reach of the court);
13. The procedural and content requirements for both the government's application and the claimant's response should be specified);
14. Basic concepts such as the standard (burden) of evidence and use of rebuttable presumptions should be delineated by statute;
15. Where affirmative defenses are used, defenses to forfeiture should be specified, along with the elements of those defenses and the burden of proof);
16. The government should be authorized to offer evidence by circumstantial evidence and hear say);
17. Enact laws regarding restrictions (recommendations) which must be designed to enable maximum confiscation of NCB assets. (Applicable statutes of limitations (prescription) should be drafted to permit maximum enforceability of NCB asset forfeiture);

18. Those with a potential legal interest in the property subject to forfeiture are entitled to notice of the proceedings;
19. A prosecutor or government agency should be authorized to recognize secured creditors without requiring them to file a formal claim;
20. A fugitive who refuses to return to the jurisdiction to face outstanding criminal charges should not be permitted to contest NCB asset forfeiture proceedings);
21. The government should be authorized to void transfers if property has been transferred to insiders or to anyone with knowledge of the underlying illegal conduct);
22. The extent to which the claimant can claim assets to be confiscated so that these assets can be used for the purpose of the suspect receiving confiscation or for living expenses must be determined. (The extent to which a claimant to forfeitable assets may use those assets for purposes of contesting the forfeiture action or for living expenses should be specified);
23. Watch for erroneous appraisal authorizations when a true statement has been provided and the asset remains unclaimed. (Consider authorizing default judgment proceedings when proper notice has been given and the assets remain unclaimed);
24. Consider the possibility of the parties agreeing to an action of forfeiture without trial and the court's authority to enter forfeiture is determined from the judgment when the parties agree to undergo such a procedure. (Consider permitting the parties to agree to forfeiture without a trial and authorizing the court to enter a determined judgment of forfeiture when the parties agree to such procedure);
25. Determine all remedies available to the prosecution if the government fails to implement a forfeiture judgment. (Specify any remedies that are available to the claimant in the event the government fails to secure a judgment of forfeiture);
26. The final decision for confiscation of in rem assets must be stated in writing. (The final judgment of NCB asset forfeiture should be in writing);
27. Establish an institution that has jurisdiction to investigate and prosecute cases of confiscation. (Specify which agencies have jurisdiction to investigate and prosecute forfeiture matters);
28. Consider the task of judges and prosecutors with special expertise or training in forfeiture to address in rem asset forfeiture failures. (Consider the assignment of judges and prosecutors with special expertise or training in forfeiture to handle NCB asset forfeitures);
29. There must be a system for pre-seizure planning, managing and acquiring assets quickly and efficiently. (There should be a system for pre-seizure planning, maintaining, and disposing of assets in a prompt and efficient manner);
30. Establish mechanisms to ensure adequate forecasting, continuity and funding for effective operations of the confiscation program and limits to political interference in asset confiscation activities. (Establish mechanisms to ensure predictable, continued, and adequate financing for the operation of an effective forfeiture program and limit political interference in asset forfeiture activities);
31. Correct terminology must be used, especially if international cooperation is involved. (Correct terminology should be used, particularly when international cooperation is involved);
32. Extraterritorial jurisdiction must be vested in the courts. (Extraterritorial jurisdiction should be granted to the courts);
33. States must have the authority to enforce external parties' requests. (Countries should

- have the authority to enforce foreign provisional orders);
- 34. States must have the authority to enforce expropriation requests from foreign parties and must enact laws that maximize the implementation of their decisions abroad. (Countries should have the authority to enforce foreign forfeiture orders and should enact legislation that maximizes the enforceability of their judgments in foreign jurisdictions);
- 35. Forfeiture of assets in rem must be used to return property to the victim. (NCB asset forfeiture should be used to restore property to victims);
- 36. Governments should be empowered to share assets or by returning assets to cooperate within the jurisdiction. (The government should be authorized to share assets with or return assets to cooperating jurisdictions).

As is known, NCB Asset Forfeiture is a lawsuit against assets (in rem), while criminal forfeiture is a lawsuit against people (in personam). This of course creates differences in evidence in court. In criminal forfeiture, the public prosecutor must prove that the elements of a criminal offense are met, such as personal culpability and the mens rea of a defendant before they can confiscate the assets of the defendant. Because it is criminal in nature, criminal forfeiture also requires the prosecutor to prove this to a standard beyond reasonable doubt. On the other hand, because of its civil nature, NCB Asset Forfeiture does not require the prosecutor to prove the elements and faults of the person who committed the criminal act (personal culpability). The prosecution only needs to prove that there is probable cause or an allegation that the assets being sued are related to a criminal act. Here, the prosecution simply needs to prove using the standard of preponderance of evidence (formal proof) that a criminal act has occurred and an asset has been produced, used or involved with the criminal act. The owner of the asset must then prove to the same standard that the asset in question was not the proceeds of, used or related to the criminal offense charged. Thus, the difference between criminal forfeiture and NCB Asset Forfeiture is as follows:

	<i>Criminal Forfeiture</i>	<i>NCB Asset Forfeiture</i>
Action	Against the person (in personam): part of a criminal complaint against a person.	Against the goods (in rem): judicial action filed by the government against the goods.
Time of Event	Imposed as part of the punishment in a criminal case.	Filed before, during or after a criminal conviction, or even in the absence of criminal charges against a person.
Proof	Unlawful acts require criminal penalties. It is mandatory to establish criminal activity “beyond reasonable doubt” or with “genuine belief.”	It is mandatory to apply unlawful acts according to the “balance of probabilities” standard of evidence (standards may vary).
The relationship between results and unlawful acts	Object or value based	Object based.

Plunder	Confiscate the defendant's interest in property.	Confiscate the object itself, in case the owner is not at fault.
Jurisdiction	Different (criminal or civil)	Different (criminal or civil)

Even though the process used is civil, NCB Asset Forfeiture uses a slightly different regime where the owner of the asset being sued is not a party to the lawsuit and is only a third party to the trial process. So, it is not surprising that the name of the NCB Asset Forfeiture case is a little unusual, such as United States v. \$160,000 in US Currency or United States v. Account Number 12345 at XYZ Bank Held in the Name of Jones. In addition, civil forfeiture (NCB) uses a reverse proof system where the owner of the assets being sued must prove that he is innocent or did not know that the assets being sued were the proceeds, used or related to a criminal act. This is of course slightly different from general civil lawsuits which require the plaintiff to prove the existence of an unlawful act and the losses they experienced. However, it needs to be emphasized that the proof of the asset owner in the NCB Asset Forfeiture only relates to the relationship between a criminal act and the asset being sued, or in other words the owner only needs to prove that "the asset is innocent". If the owner cannot prove that "the asset is innocent" then the asset is confiscated to the state. So, in NCB Asset Forfeiture the asset owner does not have to prove that he is innocent or not involved in a criminal act.

The relationship between the alleged criminal offense and the owner's involvement in the crime is not relevant in the trial and only the relationship between the owner and the assets claimed is the focus of the trial. To make it easier to understand how NCB Asset Forfeiture works, you can see the following case illustration: "For example, a criminal perpetrator rents a car from a car rental company and commits a robbery at a bank. The government then carried out an NCB Asset Forfeiture on the car to confiscate it and take over ownership for the state. "At trial, the government was sufficient to prove the alleged connection between the robbery and the car in accordance with civil standards of proof." If the government succeeds in proving this, then the government will generally make an announcement in the mass media within a certain period of time.

Furthermore, if within that time period no third-party objects to the confiscation and takeover of the car, then the car is automatically confiscated to the state. However, if the car company objects to the NCB Asset Forfeiture carried out by the government, then the car company then defends itself as a third party. So, at trial, the car company must prove that he is the innocent owner by showing evidence that he did not know or did not suspect that the car he owned would be used to rob a bank. Here the car company does not need to prove that it was not involved or had no connection with the robbery. If the car company can prove that he is the innocent owner, the car will be returned to him.

Based on the explanation above, it can be seen that NCB Asset Forfeiture can be a very useful tool for confiscating and expropriating assets from corruptors in Indonesia. There are at least several uses for NCB Asset Forfeiture to assist legal officials in the process of returning the assets of corruptors, including: 1) NCB Asset Forfeiture is not related to a criminal act so that confiscation can be requested more quickly from the court than Criminal Forfeiture. In contrast to confiscation in criminal proceedings which requires the presence of a suspect or a guilty verdict, confiscation of NCB Asset Forfeiture can be carried out as quickly as possible once the government suspects that there is a connection between an asset and a criminal act. In the Indonesian context, speed of confiscation is essential in the stolen asset recovery process. Because corruptors

often move their assets abroad to make it difficult for Indonesian legal authorities to confiscate and return them as soon as there are indications that they will be investigated for involvement in a criminal act. 2) NCB Asset Forfeiture uses civil evidentiary standards. This can facilitate stolen asset recovery efforts in Indonesia because civil evidentiary standards are relatively easier to fulfill than criminal evidentiary standards. Apart from that, NCB Asset Forfeiture has also adopted a reverse verification system, thereby easing the burden on the government to prove the lawsuit submitted. 3) NCB Asset Forfeiture is a lawsuit process against assets (in rem). This means that NCB Asset Forfeiture only deals with assets that are suspected of originating, being used or having a connection with a criminal act. The perpetrator of the criminal act itself is not relevant here so the escape, disappearance, death of a corruptor or even the acquittal of the corruptor is not a problem in the NCB Asset Forfeiture.

The trial can continue without being disturbed by the condition or status of the corruptor. Seeing that corruptors often run away or get sick during the criminal corruption trial process in Indonesia, NCB Asset Forfeiture is an alternative that is very profitable in the process of returning the assets of corruptors. 4) NCB Asset Forfeiture is very useful for cases where criminal prosecution is hampered or not possible.

II. Enforcement Justice Using a Non-Conviction Based Asset Forfeiture (NCBAF) Mechanism from the Proceeds of Economic Crime in Indonesia Based on the Theory of Balanced Probability

In efforts to eradicate corruption, the government often faces politically well-connected corruptors so that law enforcement officials face difficulties in prosecuting them. Here the NCB Asset Forfeiture is very useful because law enforcement officers face the assets of the corruptor so that the political and social costs of a criminal prosecution can be minimized. Apart from that, there are times when an asset related to a crime is not known to the owner or perpetrator.

NCB Asset Forfeiture is very useful in this situation, because it is the asset that is being sued, not the owner. If you use the criminal regime, these unclaimed assets will be difficult to recover, because generally confiscation in criminal law is related to the perpetrator of the criminal act. So, if within a certain period of time after the confiscation is carried out there are no other parties who object, the state can immediately confiscate the unclaimed assets.

So that the application of the NCB Asset Forfeiture does not conflict with fundamental principles in criminal law, namely the presumption of innocence as stated in the general explanation of the KUHAP point c, then demands for confiscation of assets resulting from criminal acts based on the NCB Asset Forfeiture will only be carried out if the KUHAP procedure cannot be carried out. Unfortunately, even though the NCB Asset Forfeiture concept has been adopted by Indonesia through the ratification of UNCAC, the law regulating asset forfeiture itself has not yet been ratified by the Indonesian Government and is still only in the form of a draft law.

In confiscations that are in rem, which use reverse evidence, where all that is required is limited to proof using the "balance of probabilities" or "balanced probability" standard. The balanced probability principal theory or proof of the balance of possibilities, separates asset ownership from criminal acts. This theory places protection for the defendant to be considered innocent (presumption of innocence) as an explanation of the principle of non-self discrimination which must be balanced with the defendant's obligation to prove the origin of the assets he owns.

If in criminal cases, the standard of proof requires a very high degree of probability, with the diction 'legally and convincingly' or in the Anglo-Saxon legal system based on 'beyond reasonable doubt', then in 'balanced probability', which means 'something is more likely to happen than No'. This model of civil evidence is based on the principle of preponderance of evidence, where a truth is solely based on which evidence is more convincing or can be measured by who has more evidence and the party who must prove it is the party who claims or demands that right. So, in this civil forfeiture, the judge's belief is not needed to determine whether an asset is the result of a criminal act, because the standard of proof has been lowered from the criminal to civil standard of proof. As confirmation, it can be seen from Judge WJ Kitchen's consideration in the case of *R. v Nayanchandra Shah* in Canada, which stated his stance on the case of mixing the proceeds of crime with legal proceeds by the defendant, with the following view: "the aim of using a lower standard of proof is to resolve the difficulty of proving things that only the defendant may know. The prosecutor must be able to convincingly prove the fact that the crime occurred and the amount of the proceeds from the crime.

These hidden actions can become very easy to carry out with the increasing sophistication of commercial transactions and the ability to make orders to transfer rights to goods via computer or electronically on a national or international scale. The defendant has the correlative burden to prove on a balance of probabilities that the items examined were not purchased with the proceeds of crime. Meanwhile, to prevent violations in this mechanism, the public prosecutor must first have a strong suspicion (probable cause) that the suspect/defendant's assets were obtained unlawfully. Here, it is emphasized that the public prosecutor must first have evidence that a person has wealth in financial transactions that are beyond normal. Thus, it can be concluded that using this 'balanced probability' theory in asset confiscation (state versus assets), is not aimed at declaring guilt and punishing a suspect.

The recovery of state financial losses is still seen as not being optimal. An unequal comparison can be seen between the assets/treasures of corruptors that can be confiscated and the total state losses as a whole. Based on the problems that have been explained, it seems appropriate that a solution to the problem of asset confiscation is sought. So in the end we can say that corruption in Indonesia is an act that is not profitable (in Indonesia corruption doesn't pay). As a manifestation of the public's desire to support efforts to confiscate assets, discussions are currently emerging to confiscate assets without punishment or Non-Conviction Based Asset Forfeiture. Confiscation of assets through civil means like this has actually been recognized as one of the legal institutions relied upon in the 2003 United Nations Convention Against Corruption (UNCAC) which has been ratified by Indonesia in Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC) in 2003.

However, the application of the concept of confiscation of assets without punishment or Non-Conviction Based Asset Forfeiture requires the determination of assets suspected to be assets resulting from criminal acts of corruption to be tainted assets first and then confiscation of assets without punishment or Non-Conviction Based Asset Forfeiture can be carried out. Theodore S. Greenberg stated that the Non-Conviction-Based Asset Forfeiture process requires the basis that the assets suspected to be the proceeds of criminal acts are tainted assets. Therefore, a clear mechanism is needed regarding the determination of these contaminated assets.

On the other hand, it is also necessary to look at the possibility of implementing the concept of confiscation of assets without punishment or Non-Conviction Based Asset

Forfeiture in the legal system in Indonesia because what we know so far in Indonesian law is that the parties are humans or legal entities, whereas in the concept confiscation of assets without punishment or Non-Conviction Based Asset Forfeiture which is being sued is an object or lawsuit in rem. Furthermore, it is also known that confiscation in rem is an asset confiscation mechanism that uses civil mechanisms even though this is actually criminal law enforcement, so in this mechanism what is sought is formal truth. Therefore, the Academic Text of the Criminal Asset Confiscation Bill stipulates that the General Court is the institution authorized to carry out this asset confiscation process.

The General Court referred to in the bill is a court containing judges who usually decide civil and criminal cases, more precisely, a court of first instance at the district/city level. However, in the bill, the criteria for judges who can decide on requests for asset confiscation have not been formulated. This is because the civil mechanism is the procedure used in this confiscation in rem, but uses a proof process that is not known in civil cases, namely by using reverse proof. On the other hand, there is the existence of a Corruption Court with judges who have been specially prepared to handle cases of criminal acts of corruption, which is a form of seriousness in the spirit of eradicating criminal acts of corruption. However, in the Academic Paper of the 2012 Criminal Asset Confiscation Bill, the Corruption Court is not referred to as a court that can have the authority to adjudicate matters regarding asset confiscation without punishment or Non-Conviction Based Asset Forfeiture.

Confiscation of assets without punishment or non-conviction-based asset forfeiture (NCB) can be the best solution to recover state financial losses from criminal acts of corruption. This is because the confiscation of NCB assets is the best application of the "Balanced Probability" theory. Through the confiscation of assets without punishment, the state obtains benefits in the economic sector by maximizing the return of state finances and justice in the legal sector by creating a form of punishment that provides a deterrent effect by making corruption no longer profitable and preventing the same criminal act from recurring by directly killing blood from the crime of corruption is money resulting from corruption. Through the "Balanced Possibilities" theoretical approach, it is known that confiscation of NCB assets is a policy that contains the principles of rationality and efficiency which will ultimately create justice. Apart from that, asset confiscation is a very appropriate form of punishment in relation to cost benefit analysis (CBA), especially in relation to criminal acts of corruption, which basically result in criminal acts in the form of assets/money. In the end, by referring to general welfare as the state's goal, action against criminal acts of corruption that occur must prioritize the benefits of sentences imposed through a just approach for society.

Therefore, confiscation of NCB assets is the best legal instrument to tackle criminal acts of corruption with punishments that prioritize benefits. As a complement to the asset confiscation mechanism that has been regulated in the Corruption Eradication Law, NCB's asset confiscation has reduced the possibility for corruptors to enjoy the proceeds of their corruption. Apart from that, confiscation of NCB assets is also a tool that is able to assist the state in realizing its goal of prospering the people by helping to eradicate corruption by maximizing the recovery of state financial losses so that state money that has been corrupted can flow back to its original goal of improving the welfare of the Indonesian people through infrastructure and superstructure development.

In line with the philosophy and strategy for eradicating corruption in the 2003 KAK, law enforcement in Indonesia in eradicating criminal acts of corruption in the future will be characterized by a dimension that places more emphasis on the objectives of

retaliation, deterrence and benefit to the wider community than on the dimensions of the civil law regime. The law enforcement dimension oriented towards the conventional criminal law regime focuses more on the Kantian philosophy of eradicating corruption by prioritizing a retributive approach and placing the interests of the State as greater when compared to third parties who are harmed by criminal acts of corruption. The logical consequence is that the 2003 KAK dimensions embrace a shift in the civil law regime so that the philosophy of eradicating corruption has shifted as well. In essence, the philosophy of eradicating corruption in the 2003 KAK emphasizes the utilitarian philosophical flow dimension, a combination of retributive and utilitarian. In the balanced probability theory, here it uses a distributive framework as part of the neo-retributive theory and positions punishment as having a preventive aim in principle. HLA Hartz states that like cases be treated alike. So certain cases must be treated in a certain way and not all cases should be treated the same. Must refer to generally accepted morality. So that punishment must be given to achieve recognized social goals.

4. CONCLUSION

A number of provisions in Chapter V of UNCAC specifically explain how cooperation and assistance will be carried out in efforts to recover state assets. On the other hand, in cases of embezzlement of state finances, the confiscated assets will be returned to the requesting country directly. In terms of the results of the action other crimes covered by this convention, assets will be returned to the state by providing proof of ownership or acknowledgment of the impact caused. This means that the return or provision of compensation for the property is given priority to the legal owner. The effectiveness of a decision regarding the return of assets will be supported by the state's efforts to make efforts to recover losses based on the worst effects of corruption rather than handing over assets resulting from criminal acts at the same time. Efforts to recover assets are basically a message to officials who commit corruption that there is no safe place to hide assets resulting from criminal acts.

Confiscation of assets without punishment or non-conviction-based asset forfeiture (NCB) can be the best solution to recover state financial losses from criminal acts of corruption. This is because the confiscation of NCB assets is the best application of the "Balanced Probability" theory. Through the confiscation of assets without punishment, the state obtains benefits in the economic sector by maximizing the return of state finances and justice in the legal sector by creating a form of punishment that provides a deterrent effect by making corruption no longer profitable and preventing the same criminal act from recurring by directly killing blood from the crime of corruption is money resulting from corruption. Through the "Balanced Possibilities" theoretical approach, it is known that confiscation of NCB assets is a policy that contains the principles of rationality and efficiency which will ultimately create justice. Apart from that, asset confiscation is a very appropriate form of punishment in relation to cost benefit analysis (CBA), especially in relation to criminal acts of corruption, which basically result in criminal acts in the form of assets/money. In the end, by referring to general welfare as the state's goal, action against criminal acts of corruption that occur must prioritize the benefits of sentences imposed through a just approach for society.

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