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POSITION OF PERMA NO. 1 OF 2013 IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

This study examines the position of Perma No. 1 of 2013 within the Indonesian criminal justice system, focusing on its role in asset forfeiture for crimes where suspects remain at large. The research highlights the conflict between Article 79 Paragraph (1) of Law No. 8 of 2010 (Money Laundering Law), which permits in absentia trials, and the Criminal Procedure Code (KUHAP), which mandates defendant presence. Utilizing a normative juridical approach, the study analyzes legal frameworks, including the Anti-Corruption Law and Perma No. 1 of 2013, to evaluate mechanisms for confiscating assets from fugitive suspects. Findings reveal that while Perma No. 1 of 2013 provides a procedural basis for in rem forfeiture, its implementation faces challenges, particularly regarding assets outside formal accounts. The study concludes that harmonizing legal provisions and enhancing law enforcement awareness are critical to optimizing asset recovery and upholding legal certainty in Indonesia's criminal justice system.

KEYWORDS *Criminalization of property, Perma Number 1 of 2013, Legal Certainty, Asset forfeiture*

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INTRODUCTION

Based on the Constitution in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it states that Indonesia is a state of law. For a state of law, the Constitution is used as a tool to become the foundation of the life of the nation and state. Eric Barendt, a professor of law at the University of London and author of the book, interprets the constitution as the written document or text which outlines the powers of its parliament, government, courts, and other important national institutions. In the Indonesian constitution, there are a number of fundamental principles that are recognized as regulated, including the principle of legal certainty (see Article 28D paragraph (1) of the 1945 Constitution), the principle of due process of law (see Article 3 of the 1945 Constitution), and the

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principle of equality before the law as stipulated in Article 27 paragraph (1) of the 1945 Constitution (Mukti Fajar & Achmad, 2010).

In the investigation process, the suspect often fled or was not found, so the investigation was stopped until the suspect was found. This causes confiscated assets to depreciate in value and the absence of legal certainty for a long period of time. If the suspect is not found until the expiration of the criminal act, it will cause the suspect to be free and the state loss cannot be refunded.

There is a difference in meaning between the provisions in Article 79 Paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU) and the provisions in Law No. 8 of 1981 concerning the Criminal Procedure Law (KUHAP). In Law No. 8 of 2010, the trial of the defendant in the TPPU case is possible to be carried out in absentia, that is, without the defendant's presence at the trial (Bakhri et al., 2021). On the other hand, in the Criminal Code, the presence of the defendant in the trial is an obligation, including for those charged in the TPPU case.

When viewed from a human rights perspective, a defendant has the right to defend the charges against him. He has the right to defend his right to freedom, honor, and property. This provision can be found in Article 1 number 15 of the Criminal Procedure Code which defines a defendant as an individual who is prosecuted, examined, and tried in trial (Dewi, 2022). In addition, Article 189 Paragraph (1) of the Criminal Code states that "the defendant's testimony is what he stated at trial about the acts he did, knew, or experienced himself."

In addition to the right to defend himself, the presence of the defendant in the trial also has another important function, namely to allow him to directly understand the charges directed at him, hear testimony from witnesses and experts, and respond to the evidence submitted, so that he can develop a defense strategy freely and effectively. However, there is a conflict of norms between Article 79 Paragraph (1) of the Money Laundering Law and Article 15 jo. Article 189 Paragraph (1) of the Criminal Code, especially related to the rights of the defendant in the process of examination and court decision-making (Mas Rahmah & MH, 2019).

Based on this background, this issue is important and interesting to study further. Therefore, the author raised it as a topic in a journal entitled "The Position of Perma No. 1 of 2013 in the Criminal Justice System in Indonesia." Furthermore, Law No. 8 of 2010, provides an opportunity for investigators to confiscate property and file with the Court to confiscate the property, if the suspect is not found, without waiting to become a defendant.

Based on the above background, the formulation of the problem that will be studied in this discussion is: 1. What is the position of Perma No. 1 of 2013 in the Indonesian criminal justice system? 2. How to confiscate property in the account of

non-perpetrators and assets outside the account of the perpetrators of criminal acts that are not found by the suspect?

RESEARCH METHOD

This study employs a normative juridical approach, analyzing legal texts, court decisions, and scholarly literature to address the research questions. The methodology includes: 1. Legal Document Analysis: Examination of laws such as the Criminal Procedure Code (KUHAP), Law No. 8 of 2010 (Money Laundering Law), and Perma No. 1 of 2013, alongside international conventions like the UNCAC. 2. Case Study Review: Evaluation of Indonesian court rulings (e.g., Batam District Court Decision No. 01/P-PHK/2014/PN-Btm) to assess practical challenges in asset forfeiture. 3. Comparative Analysis: Comparison of Indonesia's in rem forfeiture mechanisms with practices in Anglo-Saxon countries (e.g., the U.S. and U.K.) to identify gaps and best practices. 4. Descriptive Qualitative Analysis: Interpretation of legal norms and their implications for law enforcement, supported by secondary data from books, journals, and government reports (Ali, 2012).

The study adheres to academic rigor by triangulating sources and contextualizing findings within Indonesia's legal and socio-political framework. Limitations include reliance on existing legal texts and the dynamic nature of judicial interpretations.

RESULT AND DISCUSSION

Asset Forfeiture of Criminal Proceeds

The confiscation of assets resulting from criminal acts is one of the important instruments in modern law enforcement that aims to break the chain of crime and restore state losses. In the criminal law system in Indonesia, the regulation of asset confiscation is not regulated in a comprehensive legal codification, but is spread across various special laws. Each of these regulations contains its own mechanisms and approaches, including in personam and in rem forfeiture approaches, in an effort to confiscate illegally obtained property.

The concept of asset confiscation is not solely oriented towards the punishment of perpetrators, but also as part of the recovery of state assets and the prevention of broader crimes, especially transnational and organized crimes. Therefore, it is important to understand the normative and theoretical frameworks of the various legal instruments that govern asset forfeiture in order to identify their effectiveness in practice as well as the implementation constraints that arise in the field (Arief, 2011).

In Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, which initially regulated the confiscation of assets resulting from corruption crimes, it has been transferred to Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the TPK Law). This regulation is a logical consequence of the ratification of the United Nations Convention against Corruption (UNCAC, hereinafter referred to as the United Nations Convention against Corruption) on the legal system in Indonesia, namely at the United Nations Convention on Anti-Corruption in 2003, which became the day of the establishment of Law No. 7 of 2006 concerning the ratification of the United Nations Convention Against Corruption.

In Article 31 of the 2003 Anti-Corruption Convention as stated in the Attachment to Law No. 7 of 2006, it is regulated about Freezing, Forfeiture, and Confiscation as follows:

Each country participating to the convention is obliged, to the extent possible within its national legal system, to take the necessary steps to confiscate:

1. The proceeds of crime derived from criminal acts as provided for in this convention, or other property of equivalent value;
2. Assets, tools, or means that are used or planned to be used in the execution of the criminal act.

In Articles 38 B and 38 C of the Law on Corruption Crimes, it regulates the confiscation of assets resulting from criminal acts (Suranta, 2010). The essence of the article is that the defendant is obliged to prove that other assets other than the property that has been charged are his property and not the result of a criminal act.

The arrangement is supported by Article 77 of Law No. 8 of 2010. The article also regulates the confiscation of assets resulting from a criminal act which states that the defendant is obliged to prove at trial that his assets are not the proceeds of a criminal act. So it can be concluded that the two laws mean that the defendant has the obligation to prove to the court that the property is not property resulting from a criminal act. In addition, the articles in the law also regulate people and the relationship of their property to a criminal act. If the property is entrusted to someone else and there is no evidence to point to the relationship, then the state will have difficulty in recovering the loss.

Indonesian Criminal Justice System

In the framework of law enforcement in Indonesia, the criminal justice system plays a very crucial role as the main instrument in maintaining social order and upholding justice. This system is a reflection of the state's response to every form of lawlessness, especially criminal acts, which not only impacts victims and perpetrators, but also social stability in general (Hasbullah, 2020). With the implementation of this system, the state seeks to ensure that the process of

investigation, prosecution, court, and correctional is carried out in a structured, measurable, and fair manner.

The study of the criminal justice system is important because this system does not stand static, but continues to develop along with the dynamics of society, politics, and the development of the law itself. Various literature and academic views highlight that the effectiveness of this system depends heavily on harmonization between regulations and system actors, as well as legal awareness from the public. In the global context, the approach to the criminal justice system has also shifted, from a retributive approach to a more restorative and humanistic approach (Hiariej, 2013). Therefore, a deep understanding of Indonesia's criminal justice system is key to evaluating and strengthening its role in responding to contemporary legal challenges.

The criminal justice system is a legal order consisting of a number of elements that work in an integrated manner in an effort to overcome crime. These elements include laws and regulations, judicial practices, and law enforcement officials who carry out their functional roles synergisically. In this context, the criminal justice system is seen as a dynamic and adaptive work mechanism to social change (Siswanto, 2015). This view is in line with the ideas of Romington and Ohlin in The Contemporary Criminal Justice System, which states that the criminal justice system is a form of interaction that takes place optimally and efficiently to achieve a certain goal, although it often faces various challenges and obstacles in its implementation.

The criminal justice system from one country to another has differences both fundamental and small differences depending on the socio-political situation of a country. For this, the criminal justice system is not a rigid and standard system. The criminal justice system will continue to undergo changes either due to internal pressures or changes in a country or due to non-binding recommendations from international institutions. It is natural that the dynamics in society and various aspects of human life also influence the movement of this system, which aims to achieve targets in various time frames: short-term in the form of resocialization processes, medium-term in the form of crime prevention, and long-term in the form of social welfare creation.

According to Mardjono Reksodiputro, the criminal justice system is a mechanism that functions as a tool for controlling crime, consisting of elements such as the Police, the Prosecutor's Office, the Judiciary, and Correctional Institutions for prisoners. Meanwhile, Romli Atmasasmita interpreted this system as a living order in society, which has the main orientation on the eradication of crime. In the Indonesian criminal justice system, there are 5 implementing pillars of the criminal justice system. The five pillars are Investigators, Prosecutors, Judges, Lawyers and Correctional Institutions.

Investigation of Crimes Where the Suspect Was Not Found

Article 52 of the Criminal Code regulates the rights of suspects or defendants. In this article, it is stated that the suspect or defendant has the right to provide information freely to the judge or investigator. This can be interpreted as the suspect or defendant is entitled to legal assistance from one/more legal advisors and can choose his own legal advisor, as well as get an interpreter. However, it is undeniable that in some cases of criminal investigations, the suspect was not found. So that this makes it difficult to provide sanctions or punishments that have an impact on the absence of accountability (asset confiscation) in the criminal act.

It is explained in the Anti-Corruption Law and its derivatives that there are several forms of asset confiscation, namely criminal forfeiture, administrative forfeiture, and civil forfeiture. The word forfeiture itself means a condition in which there is a loss of a property as a result of the punishment of a negative act. The three types of forfeiture themselves have specificity in their respective implementations. The first is criminal forfeiture which is applied as an additional penalty, where to use this instrument must be preceded by the belief from the judge that the perpetrator has been verified to be correctly guilty. Then, administrative forfeiture is used as an instrument of asset confiscation because of violations of administrative provisions in an effort to bring cash across borders. The latter, and the instrument used in criminal acts that if the suspect or his affiliation cannot be found is civil forfeiture.

In cases where the suspect or his or her affiliate cannot be found and/or flee, civil forfeiture may be an alternative. In this instrument, the party who is held accountable does not need to be proven to be a suspect of a criminal act. If the property owned by the party is proven to come from the proceeds of crime, then the state can seize these assets by filing a lawsuit against the property assets or a lawsuit in rem to the court (the legal mechanism in the bill is related to asset confiscation, where the ownership of assets can be revoked without a criminal process). A civil forfeiture instrument becomes important when the investigator finds the following two things:

1. The assets of the perpetrator who is still a fugitive/still on the Person Search List (DPO), the deceased defendant; or
2. Assets that have been legally proven assets related to criminal acts, but not/cannot be proven who the perpetrator is.

Anglo-Saxon countries, namely the United States, the United Kingdom, Ireland, and Australia, have exemplified the practice of civil forfeiture with an "in rem forfeiture" approach which also applies legal instruments where the state can sue for property allegedly as a result of/related to a criminal act. From a positive legal point of view in Indonesia, in addition to the in rem approach, it is also known

as the asset forfeiture model through the in persona approach, which is by filing a civil lawsuit directly against individuals who are suspected of controlling legally illegal wealth.

In the context of the regulation in the Money Laundering Law (TPPU Law), only the in rem approach is regulated as a form of civil asset forfeiture, as stated in Article 67 of the Anti-Money Laundering Law. On the other hand, the in persona asset forfeiture mechanism has not received regulatory space in the Law, and it has only been found in the Law on the Eradication of Corruption, namely in Articles 32, 33, and 34 of Law No. 31 of 1999 jo. Law No. 20 of 2001.

Regarding the implementation of civil forfeiture through an in rem approach, as contained in Article 67 of the Law on Anti-Corruption and Drug Trafficking in 2013, two main ideas have developed regarding the types of assets that can be confiscated by the state in the mechanism. The first is to see that what can be done to confiscate assets is the balance of money in the account and the second is to include assets that should be suspected of being owned by the suspect of a criminal act.

In the corridor of Law No. 8 of 2010, that when PPATK has temporarily stopped transactions, and the results have been submitted to investigators, then the investigator does not find the existence of the perpetrator, but only his assets are found, asset confiscation can be carried out without criminal prosecution by the court or in rem asset forfeiture. Because of this, the act of temporary suspension of transactions is mandatory as a form of embodiment of Article 67 of the TPPU Law, and its derivative regulation, namely PERMA 1 of 2013, emphasizes that the minutes of temporary suspension of transactions are mandatory in the case file.

Problems related to the inability to confiscate assets that were not recorded in an official account or account had occurred in a case involving a fugitive suspect named Salahuddin. In the case, the East Java Provincial National Narcotics Agency (BNNP) confiscated a fast ferry worth Rp15 billion allegedly belonging to Salahuddin, a large dealer from Aceh who is known to supply methamphetamine to the Java island area. The 34-meter-long, 7-meter-wide ship was secured while it was docked at the Batam Island pier, and the investigation results showed that the ship was likely purchased from the proceeds of illegal narcotics activities.

The seizure of the ship was carried out after the East Java BNNP traced the flow of funds from three drug case inmates who had been sentenced at the Surabaya District Court, namely Jarnawi, Johanes Andrean, and Yusuf. The three are known to have flowed funds from drug sales into an account in Salahuddin's name. In the follow-up process, BNNP found Rp1 billion in the account which was then confiscated as evidence. Further investigation showed that the funds were transferred to the account of PT Marina Tama Gema Nusa located in Batam, a shipbuilding company that received payment for the purchase of the ship from

Salahuddin. Of the total ship price of IDR 15 billion, only IDR 8 billion was paid, while the rest was paid in installments.

Further identification revealed that the ship was named Gunung Kapal Buol and had been operating to transport passengers on the route from Tanjung Balai Usaha, Medan to Portlang, Malaysia. Because Salahuddin has not been found, the East Java BNNP has submitted a settlement of assets for money laundering crimes (TPPU) based on Law No. 35 of 2009 concerning Narcotics, the Anti-Corruption Law, and Perma No. 1 of 2013 to the Batam District Court.

However, based on the Batam District Court's Determination Number 01/P-PHK/2014/PN-Btm, only funds worth Rp1 billion sent by Salahuddin to PT Marinatama Gemanusa were confiscated by the state. Meanwhile, assets in the form of the Gunung Kapal Buol Motor Ship that have been confiscated must be returned to the party who is considered entitled to it. This decision shows that assets that are not directly recorded in the account or account cannot be used as an object of forfeiture under the in rem asset forfeiture mechanism in Indonesia at this time.

Meanwhile, the implementation of Perma No.1 of 2013 which confiscated other assets outside the account was the Bireun District Court Decision No. 1/P-TPPU/2021/PN Bir. In this case, BNN took the Perma No. 1 mechanism of 2013 because the suspect a.n. Lukmanul Hakim DPO. The property that was decided to be confiscated for the state was, a piece of land and 3 vehicles belonged to him. The decision was filed in a civil lawsuit by Amin, through his Legal Attorney, M. Ramli Tarigan et al, against the Head of BNN RI (Opponent I) and the Bireun District Prosecutor's Office (Opponent II). However, what is being sued is not the Perma 1 mechanism of 2013, but the ownership status of the property which according to the plaintiff does not belong to Lukmanul Hakim.

Perma No. 1 of 2013

Perma No. 1 of 2013 concerning Procedures for Settlement of Applications for Handling of Assets in Money Laundering or Other Criminal Acts is a derivative regulation of Article 67 of Law No. 8 of 2010 concerning TPPU. The perma is more procedural in the confiscation of assets that the suspect did not find. In considering the issuance of the Perma, it was stated that there was a procedural law vacuum for the implementation of Article 67 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which prompted the creation of a Supreme Court Regulation that regulates the procedural law of handling wealth.

To implement the Perma, the Investigator must submit to the Court an Application for the handling of assets that contains:

1. identity and type of asset in question;
2. the amount of the assets;
3. location, day, and date of confiscation, and;

4. A brief explanation describing the reason for the request for handling the asset.

In addition, the application must be accompanied by supporting documents, namely;

1. Minutes regarding the temporary suspension, either in part or in all, related to assets suspected or known to be derived from criminal acts, at the request of PPATK;
2. case files resulting from the investigation process; and
3. Minutes regarding efforts to search for suspects.

Based on the requirements for an application for confiscation of assets suspected of criminal acts and the completeness of the data that must be submitted, there is no one rule that states that only an account that has been terminated by PPATK can be applied for. According to Law No. 8 of 2010, wealth includes all forms of objects, both physical and non-physical, that can be owned according to the law and have recognized economic value.

Based on the description of Perma No.1 of 2013 and the definition of property, the author argues that the property that is suspected of a criminal act that is not found by the suspect that can be seized by assets is all property owned by the suspect, whether it is in the form of money in the account or other tangible assets such as land, buildings, motor vehicles, etc.

The capabilities required in this context include returning the law enforcement process to its basic principles. For example, in the context of criminal forfeiture, every asset to be confiscated must have a direct relationship, either in whole or in part, with the criminal act that occurred. Furthermore, the defendant must be given the opportunity to prove the legality of the origin of the property through the mechanism of reversal of the burden of proof.

Meanwhile, the implementation of civil forfeiture or in rem asset forfeiture as stipulated in the Anti-Corruption Law, requires an open mindset and perspective, not trapped in a narrow understanding that only assets in the accounts of financial institutions can be confiscated. If such an understanding is maintained, there will be an opportunity for suspects or parties allegedly involved—especially those with fugitive status—to divert or require other parties to convert their assets into non-monetary forms outside the banking system.

This situation can certainly weaken the effectiveness of the law enforcement process. Therefore, a more progressive approach and oriented towards the fundamental values of law enforcement is needed so that the asset confiscation mechanism in the Anti-Corruption Law can run optimally.

CONCLUSION

The criminal justice system in Indonesia currently focuses on the perpetrator

or person with the means of punishment both for people and for the confiscation of property resulting from criminal acts. Punishment for property with reverse proof is carried out in two criminal acts, namely corruption and money laundering. The process of asset confiscation through the "in rem forfeiture" approach is an effective method to recover state losses due to a criminal act. However, differences in views on the type of assets that can be confiscated can hinder or minimize the assets suspected of criminal acts, but cannot be confiscated by taking the mechanism of Perma No. 1 of 2013.

In addition, it is necessary to socialize all law enforcers to dare to take the Perma No. 1 mechanism of 2013, if the suspect is not found. It is important for all law enforcement officials and relevant stakeholders to have a thorough understanding of the concepts, provisions, and context of the application of the legal instrument in question. After gaining this understanding, the next step is to ensure that they continue to keep up with the latest legal issues, including legal loopholes and discourses that arise in their implementation practices.

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