

LAW ENFORCEMENT OF DIGITAL ASSET CONFISCATION IN MONEY LAUNDERING CRIMES

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ABSTRACT

Money laundering is a serious crime that harms the interests of society, causes economic instability in a country, and is more dangerous than corruption because tracking the flow of money from money laundering will be more difficult. Due to this complexity, asset forfeiture becomes crucial because the approach method used is known as "follow the money." This research reviews asset forfeiture in money laundering from a law enforcement perspective. This research evaluates asset confiscation methods in money laundering cases from a law enforcement perspective, aiming to better protect societal interests and prevent criminals from gaining illicit profits. This research is normative or doctrinal, also known as dogmatic research with a conceptual and legislative approach. The findings indicate that, although asset forfeiture has been regulated through criminal prevention actions based on the Criminal Code and the Criminal Procedure Code, as well as civil and administrative actions based on the Anti-Money Laundering Act, there are still shortcomings in regulations that allow criminals to hide their illegal gains. It has not achieved justice and harms both the country and the victims of money laundering. To ensure crime doesn't benefit perpetrators, it's essential to expand asset seizure regulations by revising the Anti-Money Laundering Act to include civil seizures and cover all crime-related assets. Strengthening protections for innocent third parties is also necessary to uphold justice.

INTRODUCTION

One serious issue faced by law enforcement agencies in Indonesia is the increasing cases of money laundering. Money laundering is a technique used by criminals to erase the origins of their illegal funds, allowing them to use the profits without risk from authorities or competitors. According to data released by the Financial Transaction Reports and Analysis Center (PPATK), money laundering transactions during the year 2022 reached a total of Rp 183.88 trillion (Rahayu et al., 2021). In delineating the severity of money laundering vis-à-vis corruption, the pronouncement by the Coordinating Minister for Political, Legal, and Human Rights Affairs, Mahfud MD, is instructive. He posited that the deleterious ramifications of money laundering surpass those of corruption owing to the inherent challenges in tracing laundered funds, their propensity to undergo multiple transactions, and their surreptitious integration into various commercial entities. Often intertwined with the financial services sector, money laundering engenders not only societal detriment but also harbors the potential to precipitate economic volatility, thereby imperiling the broader national economy (Purwoto,

2020). In cases of money laundering, it is imperative to implement a 'follow the money' approach that involves tracking the flow of illicit funds to uncover their origin and purpose. This strategy recognizes that criminal assets are both essential to criminal activity and vulnerable points in criminal networks. By seizing assets and profits obtained through illegal means, we not only strip wealth from the wrongdoers but also contribute to greater efforts to promote justice and societal welfare (Illahi & Alia, 2017).

Two types of asset expropriation are often used: civil and criminal. Civil asset forfeiture (in rem) requires only an indication that the property may have been involved in a crime, without criminally punishing the owner. On the other hand, criminal asset forfeiture (in personam) involves the government confiscating property as part of a criminal sentence. In the common law legal system, especially in the United States, there are three methods commonly used: criminal forfeiture, administrative forfeiture, and civil forfeiture. In Indonesia, confiscation of assets in money laundering cases is regulated by Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. However, the legal system in Indonesia currently focuses more on prosecuting criminals with prison sentences, fines, and imprisonment, rather than confiscating assets obtained from criminal acts. It causes a lack of deterrent effect on criminals because they can still enjoy the profits from the proceeds of their crime. From the perspective of justice, the law should protect public interests and ensure equality in rights and obligations. The basic principle of justice states that criminals should not profit from their actions (crime should not pay), or should not benefit from the illegal activities they carry out (Ayuningsih & Nelson, 2022).

Salman et al., (2022) found that money laundering transactions in Indonesia continue to increase, with a total reaching IDR 183.88 trillion in 2022. Research by Purwoto (2020) emphasized that the negative impact of money laundering is even greater than corruption due to the difficulty of tracing the origin of the laundered funds, as well as its frequent involvement in the financial services sector which can cause economic instability. Research by Illahi & Alia, (2019) highlighted the importance of the 'follow the money' approach in uncovering illegal fund flows to eliminate profits from criminals. Ayuningsih & Nelson (2022) emphasized that the Indonesian legal system focuses more on criminal penalties than asset confiscation, which results in a less significant deterrent effect for criminals.

This study offers novelty by providing a more in-depth evaluation of the asset confiscation method in money laundering cases in Indonesia from a law enforcement perspective. Although regulations regarding asset confiscation have been in place, their implementation has not provided adequate justice for the state and the community as victims. This study identifies legal gaps that have not been regulated in current regulations, such as when the perpetrators escape or no heirs are found, which can cause great losses to the state. Thus, this study contributes to the development of more comprehensive policies to strengthen community protection and prevent criminals from enjoying the proceeds of their crimes.

This research starts from the view that although asset confiscation for money laundering cases has been regulated in Indonesia, its implementation has not provided adequate justice for the state and society as victims of money laundering. As a result, this causes losses that hinder national progress and reduce people's welfare. The incompleteness of the current regulations still does not address several situations that may occur, such as if the perpetrator of the crime

disappears, runs away, experiences mental disorders, or if an heir is not found, which will cause the state to suffer significant financial losses. In addition, if the assets are not confiscated in a criminal context, this can complicate the law enforcement process (Siburian & Wijaya, 2022). This research aims to evaluate methods of confiscating assets in money laundering cases from a law enforcement perspective, with the hope of increasing the protection of the interests of society in general and preventing criminals from obtaining improper profits.

RESEARCH METHODS

This study constitutes normative or doctrinal research, also known as dogmatic research, employing a conceptual and regulatory approach (Marzuki, 2014). Legal materials are classified into two categories: first, primary legal materials comprising various regulations or legislative provisions and international conventions related to the study topic. Second, secondary legal materials consist of expert opinions or doctrines obtained from legal literature or articles from legal journals or proceedings, as well as books and research findings related to the issues under investigation (Achmad & Mukti Fajar, 2015). In normative research, data are collected through the scrutiny or literature review of primary and secondary legal materials, which are subsequently selected, classified, and analyzed descriptively intending to support the research findings. Subsequently, these arguments are utilized to formulate recommendations or assessments that can be employed to evaluate the legal implications of the researched issues.

RESULTS AND DISCUSSION

Asset Forfeiture Review

Assets are anything with exchange value such as capital and wealth (Culture, 2023). They encompass all forms of property, whether tangible or intangible, including intellectual property rights, owned by individuals, legal entities, or forming part of the estate of a deceased individual. All wealth, whether presently applicable or obligated for future payment, falls within the scope of assets. In the criminal legal process in Indonesia, the term "property" is used as a substitute for the concept of assets, as regulated in Article 39 concerning seizure. Seizure refers to a series of steps taken by investigators to take over or retain property, both tangible and intangible, for investigation, prosecution, and trial.

The definition of property includes all types of property, movable or immovable, possessing economic value, as elucidated in Article 159 of the Revised Criminal Code. Forfeiture, also known as confiscation, refers to the permanent takeover of property based on an order from the court or other authorized body. This can occur in both criminal and civil contexts. In criminal proceedings, the steps involve:

- a. Investigation of assets to determine ownership and the location of property related to the crime.
- b. Freezing or detention of assets, prohibiting the transfer, conversion, disposal, or temporary movement of property, and responsibility for preserving, caring for, and overseeing the property by the decision of the court or other authorized body.
- c. Asset forfeiture, where the court or other authorized body decides to permanently revoke ownership of the property.
- d. Return of assets to the state or victims as the final stage of the process (Nugraha, 2020).

The primary aim of criminals is to acquire as much wealth as possible. For them, wealth

is a vital source for their criminal activities, akin to blood that sustains criminal deeds. Therefore, the only effective way to halt and prevent economic crimes is by cutting off the lifeline of criminals by seizing their ill-gotten gains and tools of crime. Their wealth is the lifeblood that sustains them, much like blood sustains the body. Combating money laundering is not merely about punishing individuals caught with money after committing a crime, but also about penalizing the larger structures that support local and global criminal networks to acquire and finance criminal activities. Asset forfeiture is a fundamental strategy in combating crimes that harm the economy and financial integrity of a nation by reducing the assets of suspected perpetrators obtained from such crimes (Fauzia & Hamdani, 2021).

Seizure and forfeiture are two distinct concepts. A seizure occurs when the state forcibly takes possession of an individual's property directly related to criminal acts. On the other hand, forfeiture occurs when an individual's ownership rights are taken over by the state following a court decision that has attained legal force. The forfeiture of criminal proceeds is based on the principle that crime should not pay, meaning individuals should not profit from their illegal activities. There are two common types of forfeiture used worldwide to address the proceeds of crime: criminal forfeiture and civil forfeiture. Both aim to ensure that criminals do not benefit from their criminal proceeds. The proceeds of crime should be seized and used to compensate victims, whether they are the state or individuals. Additionally, these forfeiture efforts aim to prevent further misuse of assets for criminal activities and reduce incentives for criminal behavior (Hafid, 2021).

Criminal forfeiture is a component of the punishment imposed on offenders by the court after they have been found guilty and the court's decision has become legally binding. In criminal forfeiture, the judge orders the convicted individual to pay restitution or confiscate their assets as compensation for the criminal actions committed. This type of forfeiture is personal in nature as it is directed at the individual who committed the crime and is executed by the court's decision in the criminal process. To carry out criminal forfeiture, prosecutors must prove that the assets to be seized are the proceeds of the criminal activities committed by the convicted individual. Therefore, the prosecutor must file a request for asset forfeiture concurrently with their legal charges (Susetyo & Supanto, 2023).

Civil forfeiture, also known as non-conviction-based forfeiture, signifies a shift in legal approach from pursuing suspects to pursuing assets, where assets can be seized even if the perpetrator is still undergoing criminal trial proceedings. Essentially, the focus is on the assets that are the subject of contention, rather than on individuals. This action differs from criminal adjudication as it does not punish individuals but rather establishes that the assets are associated with criminal activities. Although the goals of criminal and civil forfeiture are the same in seizing the proceeds of crime, the processes differ. In civil forfeiture, the state acts as the plaintiff, and the assets become the subject of the lawsuit, with involved parties acting as intervenors in the process (Tantimin, 2023).

There are three different types of asset forfeiture models currently in use based on their development. First, there is *in personam* forfeiture, which occurs after someone has been convicted, and this is often referred to as criminal forfeiture. The second model is *in rem* forfeiture, where assets are confiscated without conviction, and this is known as civil forfeiture. Finally, there is administrative asset forfeiture, where certain institutions can seize assets

without involving the courts. Administrative forfeiture is a procedure that allows the state to seize assets without the need for judicial intervention (Kanin, 2018).

Law Enforcement of Confiscation of Digital Assets in Money Laundering Crimes

Law enforcement refers to a series of actions aimed at ensuring that the rule of law is implemented properly and effectively in society and the state. It involves the application of legal norms as a guide to behavior and legal relationships (Barda Nawawi Arief, 2018). Common interpretations of law enforcement tend to focus on law enforcement's response to crime, which involves repressive actions in response to violations of the law. However, this view is very limited because it places law enforcement authority only on legal officials. Law enforcement in a broader context includes actions or behavior that are by applicable legal norms. Nevertheless, the government plays an important role in maintaining and restoring order in society as a security actor (Soekanto, 2004).

The holistic principle of law enforcement emphasizes the need to uphold the consistency of values underlying legal norms without exception. Law enforcement agencies, including the police, play a crucial role in the prevention and prosecution of money laundering crimes. The police are responsible for protecting whistleblowers and witnesses from threats related to money laundering crimes, which are integral to prevention and prosecution efforts. Cooperation and coordination among law enforcement agencies are key to ensuring effectiveness and efficiency in law enforcement. The Indonesian National Police (Polri), in conducting investigations and prosecutions related to money laundering crimes, adhere to principles, principles, and regulations governing the comprehensive investigation and prosecution processes, including those stipulated in legislation such as the Criminal Procedure Code and the Anti-Money Laundering Act. There are two common methods for initiating investigations and prosecutions of money laundering crimes: first, through the submission of analysis results reports from the Financial Transaction Reports and Analysis Center (PPATK) to the police in the form of Analysis Result Reports (LHA), and second, members of the public who become aware of money laundering cases can directly report them to the police, who will then initiate investigation and prosecution processes based on such reports.

In addition to the police, another institution that plays a role in the prevention and prosecution of money laundering crimes is the Public Prosecutor's Office. The Public Prosecutor's Office has a role comparable to other law enforcement agencies in supporting development and directing legal practices in line with its main tasks. This is regulated in Law Number 16 of 2004 concerning the Public Prosecutor's Office of the Republic of Indonesia. The Public Prosecutor's Office has specific tasks within the judicial system that are not possessed by other law enforcement agencies. Therefore, the Public Prosecutor's Office needs to ensure that its tasks are carried out well, both in technical aspects and implementation, as the reputation of the Public Prosecutor's Office is closely related to this. However, we must avoid assuming that the entire process carried out by prosecutors is not done correctly, as the reality shows that there are still some parts of the law enforcement system that are not implemented by existing provisions.

The Anti-Money Laundering Law No. 8 of 2010 regulates money laundering, with some of its provisions amended by the Indonesian Revised Criminal Code. Crimes such as corruption, drug abuse, illegal trading, bribery, and embezzlement are at the core of money laundering. It involves actions such as transferring, diverting, spending, and using money

derived from criminal acts. This practice aims to conceal the origin of wealth, harming national or international interests (Pakpahan & Firdaus, 2019). Through Law Number 7 of 2006, Indonesia has ratified the United Nations Convention against Corruption and enacted the United Nations Convention against Transnational Organized Crime with Law Number 5 of 2009. One key aspect of these international legal instruments is the regulation related to tracing, seizure, and forfeiture of proceeds and instrumentalities of crime, including cooperation to repatriate proceeds and instrumentalities of crime between countries. The ratification of these international instruments binds the Indonesian government with certain rights and obligations, requiring adjustments to national laws by the provisions contained in these international instruments.

Regulations regarding asset forfeiture in Indonesia encompass criminal forfeiture, civil forfeiture, and administrative forfeiture. Criminal forfeiture is carried out through the criminal justice process, where asset forfeiture is implemented in line with the proof of whether the defendant committed the crime. Forfeiture can only be done after the court has found the defendant guilty through a legally binding verdict. In Indonesian criminal regulation, asset forfeiture is considered as one form of additional punishment. Based on these rules, forfeiture is carried out against goods or money based on a court decision or judge's order. The forfeiture action is limited to the wealth of the convicted person who has been proven guilty, obtained from the crime, or deliberately used to commit the crime. If the confiscated goods or money are later returned to the convict, the forfeiture can be replaced with imprisonment, which can last for a minimum of one day and a maximum of six months (Kanin, 2018).

According to the Revised Criminal Code, additional penalties include specific asset forfeiture and/or fines. If the main punishment alone is not sufficient to achieve the sentencing objectives, additional penalties may be imposed. This enforcement applies to every criminal offense in Indonesia aimed at punishing convicts who have been proven guilty through a binding court decision, so they cannot benefit from their crimes. Specific asset forfeiture can only be carried out through a legally binding judge's decision under Indonesian criminal law provisions. In practice, this process takes a long time according to the mechanisms in the Criminal Procedure Code. Cases can last for months, even years, before reaching a final decision. The length of this process allows criminals to hide and divert the wealth they have obtained and used in crimes. Therefore, the original goal of asset forfeiture, which includes seizing goods obtained from crimes, is often not achieved because criminals have the opportunity to hide these assets.

Asset forfeiture through civil proceedings does not require proof of criminal activity. For example, if someone's money is suspected to originate from criminal activities, the government can take forfeiture action by filing a lawsuit against that wealth, known as an *in rem* lawsuit. Fletcher N. Baldwin, Jr. highlights the importance of this approach because it allows for forfeiture immediately upon suspicion of a connection to criminal activity (Sudirdja, 2019). In civil forfeiture, the focus is on the property or money itself, not on the criminal perpetrator. It allows state assets to be seized even if the criminals have died or have not been prosecuted. The procedure is known as "non-conviction-based asset forfeiture" or "asset forfeiture without conviction". The Prevention and Eradication of Money Laundering Criminal Acts Law (PPTPPU Law) regulates this procedure, with limitations only on funds in bank accounts. This

poses challenges because other assets, such as real estate or movable property, are difficult to seize, especially if the suspect is on the wanted list (DPO) (Husein, 2019).

In addition to existing regulations, there is currently no clear provision for confiscating goods or money from criminal offenders or money launderers. The limitations within this regulatory scope create loopholes that allow for the evasion of asset forfeiture suspected to be the proceeds of criminal activities. Legally, based on the Anti-Money Laundering Law (AML Law), non-conviction-based asset forfeiture will be implemented as a follow-up to the temporary transaction suspension by the Financial Transaction Reports and Analysis Center (PPATK), which is then handed over to investigators. However, if investigators cannot locate the perpetrator, but their assets are found, non-conviction-based forfeiture can be applied. This reflects the requirements of Article 67 of the AML Law regarding mandatory temporary transaction suspensions, and its regulations state that the temporary transaction suspension report must be included in the case file for cases using this legal instrument.

To broaden the scope of asset forfeiture, reformulation is needed both in the AML Law and in specific regulations. New mechanisms are required to allow goods or money derived from crime, as well as instruments used in crimes, to be seized without being linked to punishment for criminals or offenders. Some countries have employed civil lawsuit procedures against these goods, which have proven effective in combating economic crimes involving large sums of money. This expansion of scope is also a consequence of Indonesia's adherence to international instruments, which entails certain rights and obligations, necessitating legislative changes to comply with the rules set out in these international instruments.

The expansion of the scope of in rem forfeiture, in addition to what is currently regulated in the AML Law regarding assets seized outside of user accounts at financial institutions, should also include the following: 1. assets from crimes or directly or indirectly generated from crimes, including the conversion or transfer of such assets to oneself, others, or legal entities, whether in the form of income, capital, or other financial gains derived from these assets; 2. assets known or estimated to be used to commit crimes or legal violations; 3. additional assets owned by criminals or offenders as substitutes for goods or money seized by the government; or 4. found goods or money known or estimated to be derived from crime.

Administrative forfeiture is a measure that allows the state to take over assets without involving the judicial process. It is regulated in Articles 34-36 of the Anti-Money Laundering Law (AML Law). According to these provisions, the Directorate General of Customs and Excise is required to report any cash transactions entering or leaving the territory of Indonesia's customs area, including in the form of local currency, foreign currency, and other instruments such as checks, traveler's checks, promissory notes, or bills of exchange, without notification to customs. Due to transaction value limitations, individuals carrying cash may attempt to evade customs inspection. The AML Law has not provided technical guidelines on what steps should be taken to prevent the cross-border transportation of cash (Denniagi, 2021).

Although Indonesian positive law has regulated asset forfeiture in the contexts of criminal, civil, and administrative cases of money laundering, there are still legal loopholes in the regulations and their implementation that can be exploited by criminals. This results in the sentencing objective, which aims not only to punish offenders explicitly through the threat of maximum penalties but also to prevent crimes through the tracing and recovery of assets obtained from criminal activities, not being fully achieved. Because the sentencing objective

for money laundering has not been fully realized, legal justice for the state and society, who are victims of money laundering by criminals, remains unfulfilled.

The assets in question must have a minimum value of Rp 100,000,000.00 and be related to criminal acts or offenses with a minimum imprisonment threat of 4 (four) years or more. The value may be amended based on regulations set forth by the Government Regulation. With the expansion of this regulation, forfeiture can be carried out on other assets, including movable or immovable assets, including digital currencies. The extension of the scope of forfeiture through in-rem forfeiture needs to establish conditions under which assets can be forfeited. It is a result of the application of civil asset forfeiture aimed at the assets themselves, rather than the suspects or defendants. The criteria for such conditions include if the offender suffers from prolonged illness, death, absconding, or disappearance; the offender is released from prosecution because they cannot be held criminally accountable by the court; criminal cases fail to be prosecuted in court; or if the court decision finding the suspect guilty has become final and binding, but it is later discovered that the wealth owned by the offender has not been forfeited. In addition to the assets mentioned, it also includes assets disproportionate to income or items purchased with unaccountable origins of funds and suspected of being related to crimes or criminal activities. Assets subject to forfeiture also include seized items generated or used to commit crimes (Nasional et al., n.d.).

Regarding evidence originating from criminal acts, third parties who own such assets will incur losses if the assets are seized by investigators and remain under seizure during the trial, even until the trial concludes. The losses for third parties will escalate if the assets are subsequently forfeited to compensate for the state's losses. However, the Vienna Convention and Money Laundering Convention prohibit the seizure of assets belonging to third parties not involved in the crime, especially for third parties who often become victims of seizure processes conducted during criminal investigations. Therefore, the AML Law regulates that both in the investigation stage (such as examination and temporary transaction suspension) and after the issuance of a valid court decision, parties not involved in the crime can take legal action by filing a letter of objection (Wibowo, 2019).

The mentioned regulations need to be strengthened to provide stronger protection for third parties not involved in the crime. The objection process, which is an effort to challenge asset blocking and/or seizure actions, is a right held by any individual who feels that their rights are infringed upon by such actions. This objection process allows individuals to argue that the blocked and/or seized assets are legitimately theirs or not the proceeds of crime. In addition to filing an objection, individuals can also request compensation for incurred losses, with an amount not exceeding the value of the blocked or seized criminal assets, as determined by the assessment of the criminal assets. Clarifying the criteria for the conditions of assets that can be forfeited can also help explain the provisions in the current AML Law.

CONCLUSION

Based on the discourse elucidated, it can be deduced that despite the regulatory framework governing the confiscation of assets through money laundering in Indonesian legislation, inherent weaknesses persist in both the statutes and their enforcement, susceptible to exploitation by perpetrators. Consequently, the objective of punishment intended not solely

for punitive measures against offenders but also for deterrent purposes through the restitution of illicitly obtained assets remains incompletely realized. This shortfall engenders a perception of injustice among nations and individuals victimized by money laundering activities. From the standpoint of law enforcement, there exists a pressing imperative to broaden the scope of asset confiscation by revising extant provisions within both the PPTPPU Law and ancillary legislation governing asset forfeiture. This augmentation is necessitated by Indonesia's adherence to international conventions, which confer specific rights and obligations, thereby underscoring the exigency for legislative recalibration. The expanded regulatory ambit ought not to be confined solely to assets domiciled in financial institutions but should encompass all assets linked to designated criminal acts, encompassing both tangible and intangible holdings. Additionally, there is a pressing need to fortify regulations about recourse mechanisms, safeguarding bona fide third-party interests, wherein applications for redress can be pursued in instances where confiscated assets do not pertain to the accused or are not implicated in illicit activities. Such indemnification must be commensurate with the value of assets seized, as appraised about the criminal activity. This inquiry confines itself to an evaluative analysis of asset confiscation within the purview of money laundering crimes from a justice-oriented standpoint. Its scholarly contribution augments the discourse surrounding asset confiscation within the Indonesian context. Moving forward, further research is warranted to evaluate the efficacy of enforcing asset confiscation mandates in the broader context of reforming Indonesian criminal legislation.

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