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The Effectiveness of Asset Confiscation in Combating Narcotics Crimes and in Addressing Drug Addicts and Abusers

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ABSTRACT

Narcotics crimes constitute offenses that generate enormous economic benefits for perpetrators and their networks. In this context, asset confiscation becomes a fundamental and indispensable instrument for disrupting the financial chain of narcotics-related crimes. This study analyzes the legal basis, implementation, obstacles, and optimization strategies for the confiscation of assets derived from narcotics crimes in Indonesia. The research employs a normative juridical method with statutory, theoretical, and case approaches. The findings indicate that asset confiscation in Indonesia is supported by an adequate legal framework; however, its implementation still faces challenges, including difficulties in proving the origin of assets, limited inter-agency coordination, and the weak technical capacity of law enforcement officers. This study recommends strengthening regulations, applying the reversal of the burden of proof, enhancing investigators' capacity, and optimizing national and international cooperation in asset recovery.

Keywords: asset confiscation, narcotics crime, asset recovery, reversal of the burden of proof, money laundering.

INTRODUCTION

1.1 Background of the Problem

Asset confiscation can be applied starting from the existence of the crime of money laundering. Money laundering is an act of concealing or disguising the origin of money, funds, or assets derived from criminal activities through various financial transactions, so that such money or assets appear to originate from lawful or legitimate activities. The crime of money laundering, commonly referred to as Money Laundering (ML), is regulated under Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

With regard to narcotics offenses, pursuant to Article 2 paragraph (1) letter c of Law Number 8 of 2010, assets derived from narcotics crimes may be subject to confiscation and forfeited to the state treasury.

The essential elements of money laundering offenses are set forth in Articles 3, 4, and 5 of Law Number 8 of 2010 on Money Laundering. Article 3 contains elements of active transactional conduct, knowledge of the origin of the assets, and the intent to conceal or disguise assets derived from criminal activities. Article 4 regulates active conduct in concealing or disguising assets, accompanied by prior knowledge of the criminal origin of such assets. Furthermore, Article 5 addresses passive transactional conduct along with knowledge of the origin of assets derived from criminal activities.

Narcotics crimes constitute one form of offense classified as an extraordinary crime due to their extensive impact on social life, the economy, public health, and national security. These crimes are not committed solely by individuals but involve organized networks operating in a systematic and transnational manner. The economic profits generated from illicit narcotics trafficking are enormous, making it highly attractive for criminal networks to continue their operations.

In recent years, law enforcement efforts against narcotics offenders in Indonesia have indeed shown improvement; however, enforcement has often focused primarily on the arrest of perpetrators and the seizure of narcotics as physical evidence, while the confiscation of assets derived from such crimes remains difficult to implement. As a result, offenders or narcotics networks often retain the financial capacity to continue their criminal activities.

Therefore, the law enforcement paradigm needs to shift from a merely offender-based approach to an asset-based approach, in which the confiscation of criminal proceeds becomes a crucial element in disrupting the economic chain of narcotics networks. Through this approach, the state not only punishes offenders but also eliminates the economic motives underlying narcotics crimes.

1.2 Research Questions

This study seeks to address the following questions:

1. What is the legal framework governing the confiscation of assets derived from narcotics crimes in Indonesia?
2. How is asset confiscation implemented in law enforcement practice?

1.3 Research Objectives

This study aims to:

1. Analyze the legal basis for the confiscation of assets derived from narcotics crimes.
2. Examine the implementation and practice of asset confiscation in Indonesia.
3. Identify various obstacles in the implementation of asset confiscation.
4. Provide recommendations to enhance the effectiveness of asset recovery.

METHOD

The research method employed by the author is a normative legal research method based on Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 2010 concerning the Crime of Money Laundering, which are in force in Indonesia. In the Indonesian context, the enforcement of money laundering offenses can be interpreted as the confiscation of assets belonging to narcotics offenders from the time the criminal acts were committed.

For example, a person who committed narcotics crimes starting in 2019 owns two houses. After further investigation, it is found that the first house was acquired in 2015 from lawful business activities unrelated to narcotics, while the second house was acquired in 2021 after the individual became a drug trafficker. This means that the second house constitutes an asset derived from narcotics crimes and may be confiscated, as it is the proceeds of money laundering originating from the predicate offense, namely narcotics crimes.

This research applies a normative juridical method using a statutory approach, a conceptual approach, and data analysis techniques.

2.1 Statutory Approach

This study examines the following legislation:

- Law Number 35 of 2009 concerning Narcotics
- Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering
- The Indonesian Criminal Code (KUHP)
- The Indonesian Criminal Procedure Code (KUHAP)

This approach aims to understand the legal regulations governing the seizure and confiscation of assets.

2.2 Conceptual Approach

This approach employs several theories, including:

- Asset Recovery Theory.
- Deterrence Theory.
- Follow the Money Theory.
- Criminological theories related to narcotics crimes.

2.3 Data Analysis Techniques

The data are analyzed using a descriptive-qualitative method, namely by systematically presenting and interpreting legal provisions and practical findings. This research is also based on technical guidelines issued by the National Narcotics Agency (BNN), in which narcotics crimes serve as the predicate offenses for money laundering, thereby enabling the application of asset confiscation.

RESULT & DISCUSSION

Asset confiscation continues to develop, and currently there are two types of asset confiscation. First, confiscation with punishment (in personam forfeiture), and second, confiscation without punishment (in rem forfeiture). At present, the form accepted by Indonesian law enforcement authorities is still limited to asset seizure based on a criminal court decision imposed personally on the offender with permanent legal force. Based on Regulation of the Head of the National Narcotics Agency (BNN) Number 7 of 2016, law enforcement authorities must wait for a final and binding court decision before carrying out asset confiscation. However, if the perpetrator absconds or dies, the assets may still be confiscated, provided that it can be proven that the assets to be confiscated are proceeds of a criminal offense, in this case, narcotics crimes.

In addition to being categorized as an extraordinary crime, illegal drug trafficking and drug addiction also constitute international and organized crimes. Transnational crimes involve cross-border networks that may operate in one country while producing impacts in other countries. In terms of scope, illicit drug trafficking is a widespread cross-border crime that can penetrate all socio-economic layers of society worldwide. Drug trafficking is a highly structured form of organized crime, encompassing drug production, export and import activities, as well as marketing. Crimes related to drug trafficking and addiction are classified as global issues because narcotics crimes fulfill four indicators.

First, this issue attracts the attention of elite policymakers and numerous governments dealing with major issues, and governments actively participate in

public debates on the matter. Second, the topic is continuously discussed in the mass media, including newspapers, magazines, radio, and television programs. Third, the issue has become the subject of serious and ongoing research, studies, and discussions conducted by professional scientists, researchers, and technical experts throughout the international community. Fourth, the issue appears on the agendas and discussions of international organizations. The United Nations, the largest international organization, has even established a specialized body to control drug trafficking, namely the United Nations Office on Drugs and Crime (UNODC).

The implementation of asset confiscation in Indonesia has been carried out by the National Narcotics Agency (BNN). Within the BNN Headquarters, there is a directorate that is responsible for and authorized to conduct investigations and prosecutions of money laundering crimes, namely the Directorate of Money Laundering Crimes.

From the perspective of the prevention and eradication of narcotics abuse and illicit trafficking of narcotics and narcotics precursors (P4GN), impoverishing narcotics kingpins or traffickers is also an appropriate and effective measure. By confiscating the assets of narcotics dealers or traffickers, the circulation of money generated from the narcotics business can be effectively disrupted.

Asset confiscation can be implemented through Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which is considered one of the most effective measures to suppress narcotics crimes, thereby enabling efforts to combat narcotics offenses through the application of the anti-money laundering regime. If such assets are not confiscated by the state, the chain of illicit narcotics trafficking will not be broken, and both movable and immovable assets may be reused by offenders to carry out activities related to narcotics crimes. This condition contributes to the escalation of narcotics abuse and illicit trafficking, which poses a serious threat to the life of the nation and the state.

The confiscation of assets obtained from narcotics crimes can also help prevent the Indonesian population from accessing narcotics. It can be argued that when the flow of money is disrupted, narcotics become more difficult to obtain. When narcotics are difficult to obtain, from an economic perspective, they become scarce and expensive. These efforts are continuously and consistently carried out by the National Narcotics Agency (BNN) in addressing the illicit trafficking of narcotics and narcotics precursors.

By implementing asset confiscation, the State also gains benefits, as the confiscated assets that are returned to the State can be utilized to carry out narcotics control and prevention activities. The State has the authority to confiscate all assets, both movable and immovable, belonging to money laundering offenders. These offenders are also given the opportunity to apply the reversal of the burden of proof by demonstrating that the assets they acquired are not proceeds of criminal

offenses, as referred to in Article 98 of Law Number 35 of 2009 concerning Narcotics and Article 77 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

Meanwhile, the confiscated money and assets can be returned to the State, with the expectation that such funds and assets will be used to protect drug addicts and drug abusers by enabling their rehabilitation until recovery, so that they may be reintegrated into society and resume normal social activities.

If the implementation of asset confiscation is carried out effectively for the purpose of combating narcotics, particularly for addicts and victims of drug abuse, it also requires legal awareness on the part of law enforcement officers. This means that law enforcement personnel must not only enforce the law in accordance with statutory regulations but also ensure that enforcement is appropriately targeted. For example, placing a drug abuser in a Rehabilitation Center and applying the measures properly will certainly provide positive benefits for the individual concerned.

This illustrates one aspect of the cycle in law enforcement and the handling of addicts and victims of drug abuse, especially when viewed from the perspective of the benefits derived from asset confiscation.

3.1 Legal Framework of Asset Confiscation in Narcotics Crimes

3.1.1 Law on Narcotics

Law Number 35 of 2009 concerning Narcotics grants investigators the authority to:

Seize assets suspected of being derived from narcotics crimes;

Submit requests for asset confiscation to the court.

This law serves as one of the legal bases for applying the Law on the Crime of Money Laundering in the context of narcotics offenses. However, in implementing asset confiscation, it is still required to wait for a final and binding court decision before executing the confiscation of assets obtained from narcotics crimes.

The regulation on combating narcotics crimes in relation to money laundering is set forth in Article 137 of Law Number 35 of 2009 concerning Narcotics. This article stipulates criminal sanctions for anyone who places, pays, spends, deposits, exchanges, conceals, disguises, invests, stores, donates, bequeaths, or transfers money, assets, and property derived from narcotics crimes and/or narcotics precursors. The sanctions that may be imposed on offenders include imprisonment of a minimum of 5 (five) years and a maximum of 15 (fifteen) years, as well as fines ranging from IDR 1,000,000,000.00 (one billion rupiahs) to IDR 10,000,000,000.00 (ten billion rupiahs).

Under this law, an asset eligible for execution is one that has been proven to originate from narcotics or narcotics precursor crimes. Such narcotics offenses serve as the predicate crimes to proceed with money laundering offenses. Money laundering, in this context, becomes the legal basis for asset confiscation once the assets have received a final legal determination, allowing them to be transferred to the State in the form of money or property.

3.1.2 Law on the Prevention and Eradication of Money Laundering Crimes

Law No. 8 of 2010 concerning the Crime of Money Laundering strengthens asset forfeiture efforts through regulations regarding:

Tracking and blocking of accounts;

Seizure and confiscation of assets;

The principle of reversed burden of proof concerning unjustified wealth.

This law is highly relevant because drug trafficking networks almost always engage in money laundering to conceal the origin of their wealth, particularly from narcotics and narcotics precursors. This law serves as the legal basis for determining assets derived from narcotics crimes, so that they can be confiscated and transferred to the State.

Articles 2-4 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes (PPTPPU) stipulate that narcotics are included as one of the predicate crimes that can be laundered. These articles regulate money laundering activities, including placement, transfer, conversion, expenditure, payment, donation, deposit, exchange, concealment, or disguise of assets originating from predicate crimes. In addition, Article 5 of Law Number 8 of 2010 also regulates passive money laundering perpetrators, namely anyone who receives or controls assets that are known or reasonably suspected to originate from predicate crimes.

3.2 Implementation of Asset Forfeiture in Indonesia

In practice, law enforcement authorities have undertaken various efforts, such as seizing cash, vehicles, houses, land and/or property assets, blocking bank accounts, and tracking transactions in coordination with the Financial Transaction Reports and Analysis Center (PPATK). However, the intensity of law enforcement is still far from optimal. Many major narcotics cases have not been accompanied by significant asset forfeiture. Nevertheless, the National Narcotics Agency (BNN) continues to make efforts in implementing asset forfeiture from the proceeds of narcotics crimes.

In carrying out and implementing asset forfeiture from narcotics and narcotics precursor crimes, the State also faces several obstacles. Since narcotics crimes are considered extraordinary crimes, their mitigation must also be extraordinary.

The legislation regulating Money Laundering Crimes has not yet provided a strong legal basis for the forfeiture of assets derived from criminal activity. Moreover, the difficulty in accessing and tracing manually conducted money flows is one of the biggest challenges in uncovering these crimes. Based on BNN's experience, it has been shown that investigating a crime, identifying the perpetrators, and imprisoning them is not sufficiently effective in reducing crime rates if it is not accompanied by efforts to seize and confiscate the proceeds and instruments of crime. Allowing perpetrators to retain control over the proceeds and instruments of crime gives them—or others connected to them—the opportunity to enjoy the criminal gains, reuse the instruments of crime, or even expand the criminal activities previously committed. In addition, the forms of crime have evolved because narcotics crimes are organized crimes.

Indonesia does not yet have a law on Asset Forfeiture and is still in the stage of drafting the Asset Forfeiture Law. Through the Draft Law (RUU) on Asset Forfeiture currently being prepared by the Government of the Republic of Indonesia, it is hoped that efforts to recover assets derived from criminal activities can be made more effective, as they can also serve as a source of state revenue.

Article 1, number 8 of the Draft Law on Asset Forfeiture defines asset forfeiture, which refers to a civil legal effort to confiscate assets or property suspected to be the proceeds of a crime (such as corruption or money laundering) directly from the asset itself (the thing itself), rather than from the person (in personam). This can be carried out without having to wait for a criminal conviction against the perpetrator, even if the perpetrator is a fugitive, deceased, or not criminally proven, with the aim of impoverishing the perpetrator and restoring losses to the State. The term “in rem” comes from Latin, meaning “against a thing.”

This means that there is a connection between criminal and civil law here, allowing the enforcement of penalties without necessarily detaining an individual. Instead, the focus is on investigating the crime and seizing the assets generated from it to return them to the State. This is not easy, as law enforcement officials must be thorough in investigation, inquiry, prosecution, and in issuing court decisions. However, there is a state effort embodied in legislation, so that law enforcement authorities can enforce and effectively implement asset forfeiture, ensuring it is optimally applied in upholding justice.

In carrying out the mandate of asset forfeiture for perpetrators of crimes, the focus should not be solely on the predicate crime. Indeed, the predicate crime needs to be proven in order to determine which assets were obtained from criminal activity. However, it is not necessary to apprehend the perpetrator. This means that even if the perpetrator is still at large, has escaped, or is deceased, assets that have obtained

permanent legal status proving they were derived from criminal activity can be executed by the State and returned to the State.

For example, in relation to narcotics crimes: if a suspect possesses unexplained wealth and an investigation shows that certain assets were indeed obtained from narcotics crimes, law enforcement authorities can focus on both the suspect and the assets. At the National Narcotics Agency (BNN), for instance, the Directorate of Money Laundering Crimes specifically focuses on executing assets belonging to narcotics crime perpetrators. The key point is the existence of a suspect in a narcotics crime. This approach is already quite effective, but it becomes even more effective if, based on thorough tracking of transactions proven to be linked to narcotics crimes, the assets can be executed and returned to the State

In enforcing the law, there must be an awareness of the importance of the order being achieved. It is for this reason that the law can distinguish between a criminal act and a deed that is inherently wrongful, but where the perpetrator is only a small part of a larger, organized crime. Being used by a greater criminal enterprise does not only make someone a criminal, but also a victim of that crime. This is the nature of narcotics crime: a phenomenon in which there are no direct victims. Individuals involved are not only perpetrators of narcotics crimes but also victims of the same criminal activity.

In facing such circumstances, the role of law becomes increasingly important in realizing its objectives. The function of law is not sufficient merely as a form of social control—it goes beyond that. To act or behave in accordance with legal provisions, legal awareness within society is necessary, as it serves as a bridge connecting legal regulations with the behavior of members of society. Legal awareness includes categories of values, viewpoints, and attitudes that influence how the law functions. It can be said that the study of law should not be limited only to the logical analysis of legal regulations and their application, but also to the consequences they produce within society.

In applying the law, particularly laws concerning narcotics crimes and money laundering, it can be understood that written law in legislation does not rigidly regulate narcotics crimes. Narcotics crimes involve actions in which each participant plays a role. The traffickers and dealers must be held accountable for the exposure of addicts and victims of narcotics abuse, who need to be rehabilitated and restored to their social function and moral well-being. There is a cycle here that becomes a central focus. By confiscating the assets of traffickers and dealers, one form of their accountability is realized, as they contribute to addressing narcotics crimes and assisting addicts and substance abusers. This occurs even though coercive measures are carried out by law enforcement authorities to combat the illegal narcotics trade.

Enforcement of asset forfeiture also requires strong synergy among law enforcement agencies, including the National Narcotics Agency (BNN), the Indonesian National Police (Polri), the Financial Transaction Reports and Analysis

Center (PPATK), the Embassy of the Republic of Indonesia abroad if assets are located overseas, the Prosecutor's Office, the Courts, and even Correctional Institutions. Handling money laundering cases demands very high levels of synergy and integrity. It is not only about overseeing the legal process but also about supervising the return of assets or funds seized from criminal activities to the State.

Thus, handling money laundering cases derived from narcotics crimes requires careful legal discretion. From the moment a suspect is apprehended by investigators, through analysis and investigation, tracing of assets obtained from criminal activities, referral to the Prosecutor's Office, prosecution, the issuance of a final and binding court decision, asset execution, and even the involvement of correctional officers overseeing rehabilitation within prisons, the process demands thorough coordination and legal prudence.

CONCLUSION & RECOMMENDATIONS

4.1 Conclusion

Asset forfeiture from narcotics-related crimes is an important step in breaking the chain of narcotics crime. The legal basis in Indonesia clearly regulates the seizure and forfeiture of assets; however, its implementation still faces various challenges, including legal, technical, institutional, and social aspects. To improve its effectiveness, it is necessary to strengthen regulations, enhance the technical capacity of law enforcement, and foster more intensive national and international cooperation.

Asset forfeiture can also serve as a solution to address narcotics problems. Besides serving as a deterrent to offenders, assets that have obtained permanent legal status as proceeds of money laundering linked to narcotics crimes can be returned to the State. These assets can, among other things, be used to rehabilitate addicts and victims of narcotics abuse, helping them recover and regain their social function in society.

4.2 Recommendations

1. The government should enact a law on Asset Forfeiture using the legal basis provided by the Narcotics Law and the Money Laundering Crime Law.
2. The capacity of law enforcement officers should be enhanced through training in financial investigation and asset tracing.
3. Strong synergy is needed among the National Narcotics Agency (BNN), the Financial Transaction Reports and Analysis Center (PPATK), the Indonesian National Police (Polri), the Prosecutor's Office, and the Courts.

4. Management of seized assets must be conducted in an accountable and transparent manner.
5. International cooperation on asset recovery should be strengthened to trace cross-border assets.
6. The distribution of assets forfeited from narcotics crimes should be used for the prevention and eradication of narcotics and precursor narcotics abuse and illicit trafficking (P4GN).

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