

DOI: <https://doi.org/10.38035/jlph.v4i5>

Received: 5 June 2024, Revised: 1 July 2024, Publish: 3 July 2024

<https://creativecommons.org/licenses/by/4.0/>

## Configuration of Assets of Criminal Offenders Taxation From A Perspective Criminal Procedure Law

Defry Romandhany<sup>1</sup>, Sahuri Lasmadi<sup>2</sup>, Herry Liyus<sup>3</sup>

<sup>1</sup> Masters of Law Study Program, Jambi University, Indonesia, [defryromandhany05@gmail.com](mailto:defryromandhany05@gmail.com)

<sup>2</sup> Masters of Law Study Program, Jambi University, Indonesia, [slasmadi@gmail.com](mailto:slasmadi@gmail.com)

<sup>3</sup> Masters of Law Study Program, Jambi University, Indonesia, [herry\\_liyus@unja.ac.id](mailto:herry_liyus@unja.ac.id)

Corresponding Author: [defryromandhany05@gmail.com](mailto:defryromandhany05@gmail.com)

**Abstract:** The aim of this research is first, to determine and analyze the confiscation of assets of perpetrators of tax crimes from the perspective of criminal procedural law. Second, to find out and analyze future criminal law policies regarding the regulation of confiscation of assets of perpetrators of tax crimes from the perspective of criminal procedural law. The legal issues discussed in this normative research are: First, what are the legal regulations for confiscating assets of perpetrators of tax crimes? Second, what will be the future criminal law policy regarding the regulation of confiscation of assets of perpetrators of tax crimes from the perspective of criminal procedural law? The research method used is normative juridical with approaches (Statue Approach, (Conceptual Approach), (case approach), and (comparative approach). The legal material in this research was collected through literature studies, laws, government regulations, as well as regulations under law, journals, and legal cases used by this author. As well as other supporting materials. The results of this research show that the Asset Confiscation Bill is an opportunity to recover state losses in Indonesia. With the existence of an asset confiscation mechanism, eradication law enforcement uses two mechanisms, namely penal and non-penal. This is because, confiscation of assets without criminal prosecution does not eliminate the mechanism for criminal prosecution of the perpetrator's crimes in court. The scheme used by developed countries in connection with the confiscation of assets resulting from criminal acts is unexplained wealth. In the context of the Indonesian legal system, there is a need for reform both in terms of juridical, concept and paradigm which must be carried out synergistically and sustainably. Therefore, to enforce unexplained wealth, there must be a comprehensive and accommodating regulatory framework as shown in the Criminal Asset Confiscation Bill.

**Keyword:** Confiscation of Assets, Tax Crimes, Criminal Procedural Law.

### INTRODUCTION

Asset confiscation is returning all assets resulting from the perpetrator of a criminal act to the victim of the criminal act by confiscating the assets from the proceeds of the criminal act. An asset is a movable or immovable object or item. Law enforcement officers can confiscate assets according to the current laws and regulations, and law enforcement

agencies have the authority to confiscate these assets in accordance with statutory regulations.

Confiscation of assets in the laws currently in force in Indonesia are those listed in the Criminal Procedure Code (KUHAP), the Money Laundering Crime Law (UU TPPU), the Attorney Regulations Law (UU PERJA), The Supreme Court Regulation Law (UU PERMA), the Corruption Crime Law (UU TPK), and the Financial Transaction Reporting and Analysis Center Law (UU PPATK).

In the existing laws in Indonesia that regulate asset confiscation, there is currently no law book that specifically regulates asset confiscation, and the current laws in Indonesia are still not effective enough to confiscate assets or return all assets from the proceeds of the criminal act, due to the ambiguity of legal norms and the overlap between these laws which result in a lack of legal certainty.

Factors involved in criminal acts of corruption in the field of taxation are in terms of tax collection and depositing tax money into the state treasury. In the problem of corruption in the tax sector, there are many aspects that must be taken into account in preventing and eradicating corruption in the tax sector. The opportunity for corruption to occur in the tax sector is very important so that potential points of vulnerability to corruption in the tax sector can be mapped as part of a prevention strategy and eradicating criminal acts of corruption in the field of taxation.

Regarding the concept of confiscation of assets of perpetrators of tax crimes, to apply confiscation of assets to perpetrators of tax crimes is stipulated in the applicable Laws and Regulations, the application of general criminal acts and special criminal acts related to tax crimes with their resolution carried out using the basis tax law Articles 36,38,39,41A-C, 43, and 42 and Law No. 7 of 2021.

The provisions of the General Taxation Law (UUKUP), Article 36A paragraph 4, criminal acts committed by tax officials have the same elements in the article (UUTPK) as stated in article 2 paragraph 1, namely that they both contain elements that can harm the State's finances. entered into a criminal corruption case (TIPIKOR).

In Islamic law it is permissible to confiscate assets resulting from criminal acts which in Islamic law is called taz'ri law. ta'zir penalties related to property, such as fines, confiscation/confiscation of property, and destruction of goods.

The current legal concept for confiscating assets is by conducting an investigation (PER-027/A/JA/10/2014), blocking (article 29 paragraph 4 UUTPK), confiscating (Article 38 paragraph 1 KUHAP) and confiscating assets from the proceeds of the crime when there has been a court decision (inkrath).

Furthermore, when the asset is an item that must be destroyed, then the person responsible for destroying it is the law enforcement officer and if the item is a movable or immovable asset, then the asset will be auctioned, and the auction results will be returned. to the victim, the current obstacle is if the confiscation of assets is carried out after a court decision (inkrath), in the sense that there must be a perpetrator of the criminal act, and a prosecution is made against the perpetrator of the criminal act, after that confiscation of assets is carried out against the perpetrator of the criminal act. , and the second obstacle is when the assets are moved abroad because in articles 34-36 of the TPPU Law there are problems related to legal gaps (loopholes) which can be exploited due to the existence of minimum limits on assets that are the object of administrative confiscation.

According to the existing laws and regulations in Indonesia, confiscation of assets can only be carried out after a court decision, meaning that in the court decision the perpetrator of the criminal act must be found, rather than carrying out a decision or investigation and inquiry into assets that are suspected of being suspicious. is the result of a criminal act.

Here it will be easy for the perpetrator to move his assets because he is waiting for the court decision. And before the court decision in the concept of asset confiscation there was a concept, namely confiscation. In a confiscation, it is not certain that law enforcement officers will be able to confiscate all of the perpetrators' assets because if the assets are moved abroad, and some criminal perpetrators take advantage of the time during the confiscation to hide their assets because they are waiting after receiving a verdict against them. from court.

Another factor is that perpetrators of criminal acts are unable to pay replacement money in accordance with article 18 paragraph 1 letter b of the Corruption Crimes Law, there are some perpetrators of criminal acts who cannot pay replacement money or money from the proceeds of the crime, in this case many criminal perpetrators choose imprisonment in the sense of the perpetrator cannot pay replacement money in accordance with Kep-518/JA/11/2001 dated November 1 2001, which will be replaced by imprisonment.

With the existence of these regulatory laws, it is not yet possible to fully recover state losses from criminal acts, which in this case means that state losses cannot be fully recovered or all assets from the proceeds of criminal acts are not confiscated. In this case, it will cause more and more losses to the state (Indonesian people), and will not have a deterrent effect on the perpetrators of these criminal acts.

From the problems above, the author wants to raise a discussion regarding confiscation of assets of perpetrators of tax crimes from the perspective of criminal procedural law.

## **METHOD**

This research is Normative Juridical Research on issues involving confiscation of assets as a result of tax crimes. The data analysis method is carried out by collecting data through reviewing library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to the confiscation of assets of perpetrators of tax crimes.

To analyze the legal material that has been collected, this research uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing a policy related to normative juridical content regarding confiscation of assets of perpetrators of tax crimes. which is connected to improving the performance of the legal system in Indonesia and then assessing whether its application is in accordance with its normative provisions.

In this research the author used 3 types of approaches, namely the first the Statute Approach, the Conceptual Approach, the second the Case Approach. The case approach in normative research has the aim of studying the application of legal norms or rules carried out in legal practice. Lastly, the comparative approach in normative research is to compare one legal institution from one legal system with a legal institution (which is more or less the same from another legal system). Collection of legal materials such as primary, even secondary, and tertiary legal materials using a card system and supported by a computer system via the internet. This is done to simplify the analysis process.

Furthermore, Analysis of Legal Materials. The legal materials obtained in the literature study research, laws, government regulations, as well as regulations under the law, journals, opinions of scholars, and legal cases used by this author. The author describes and connects them in such a way, so that they can be presented in systematic writing with the hope of providing an answer to general problems to the concrete problems faced.

## **RESULTS AND DISCUSSION**

### **Concept of Asset Confidentiality**

In the criminal procedural law currently in force in Indonesia, confiscation of the proceeds of crime has been implemented. In Article 39 Paragraph (1) Letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) states that what can be confiscated is: " Objects or bills of suspects or defendants which in whole or in part are suspected to have been obtained from criminal acts or as proceeds from criminal acts."

Confiscation of assets originating from criminal acts of corruption through criminal law is carried out in 2 (two) ways , namely: Article 18 Paragraph (1) letters a, b, c and d, as well as Article 38 paragraph (5) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which of course means that confiscation is preceded by confiscation during investigation or pre-prosecution or during a trial in court. Article 18 paragraph (2), which is carried out if the convict does not pay compensation no later than 1 (one) month after the court decision has permanent legal force.

Confiscation of assets or assets of perpetrators of criminal acts of corruption through civil law is carried out based on the provisions of Articles 32, 33, 34 of Law Number 31 of 1999 and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 .

### **Concept of Assets Configuration Without Punishment**

The tendency that has developed in the enforcement of Indonesian criminal law is to provide a deterrent effect through prison sentences. If there is a fine in the form of payment of replacement money, sometimes it can still be substituted with physical imprisonment (if the perpetrator of the crime does not pay it). Unfortunately, the existence of this substitution can create opportunities for perpetrators to choose to extend the period of corporal punishment rather than having to pay replacement money, because the duration of substitution for corporal confinement is certainly lighter because it does not exceed the threat of the maximum sentence of the main sentence.

First, in personam confiscation is an action directed at someone personally for their wrongdoing. This action must be carried out based on a criminal court decision. Second, confiscation in rem is a lawsuit brought against assets, not against people.

A concept that has not been specifically regulated separately in statutory regulations, but is only part of the Criminal Procedure Code, TPPU Law, PERJA Law, PERMA Law, Corruption Law, AND PATK Law. Considering the complexity of the concept of confiscation of assets, it is necessary to form separate regulations that can regulate in detail the concept of confiscation of assets originating from criminal acts.

### **Asset Configuration Model**

#### **1. Administrative Forfeiture,**

It is an action by a state administrative official or party authorized to take over assets that are suspected to be illegal assets, which based on the provisions of statutory regulations can be confiscated without criminal prosecution or civil lawsuits (non-judicial).

#### **2. Criminal Forfeiture**

It is part of the punishment for criminal acts, confiscating the assets of people who commit crimes through the evidentiary system in criminal law, and can only be done if the person has been proven to have committed a criminal act.

#### **3. Civil Forfeiture**

This is a model of asset confiscation carried out in cases that are not criminal cases. by filing a civil lawsuit (legal action) or against assets or an in rem lawsuit in court, both of which do not require proof that someone has committed a criminal act.

## **Procedures For Return of Assets**

The conviction based mechanism is carried out based on the principle of material evidence and carried out within the framework of criminal law. In contrast to the conviction based mechanism, the non-conviction based mechanism in confiscating criminal assets is carried out without first proving the guilt of the perpetrator of the criminal act.

## **Types of Legal Events In Return of Assets**

There are 3 (three) paths that can be taken, namely Criminal, Civil and State Administration.

### **1. Quasi Criminal**

The asset return process can be carried out in 4 (four) stages:

- a. Tracking all assets belonging to the perpetrator.
- b. Prevention to stop the movement of assets.
- c. Confiscation of assets.
- d. Handing over assets from the perpetrator to the State.

### **2. quasi civil**

Articles 1365 and 1366 of the Civil Code quite clearly state that every unlawful act, which causes loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss (1365 of the Civil Code). the reason is *nebis in idem* or the suspect/defendant has died or because the prosecution for a criminal offense has expired, except if the object was obtained as a result of a criminal act or was used to commit a criminal act (provisions of Article 46 paragraph (1) of the Criminal Procedure Code).

### **3. quasi state administrative law**

Accountability Through State Administrative Law. One of the elements of a criminal act committed by an individual or legal entity is that the act committed could harm the State's finances or the State's economy (Article 2 paragraph (1) Jo. and Article 3 of Law No. 20 of 2001), relating to responsibility from state finances, Law no. 1 of 2004 concerning the State Treasury quite clearly states in Article 53 paragraphs 1 to 4 and Article 54 paragraphs 1 and 2.

Claims for state compensation after finding out that the agency has been harmed, namely through Compensation Claims (TGR) and Treasury Claims (TP), can be subject to administrative sanctions if they are proven to have committed an administrative violation (employee discipline) (Article 64 of Law No. 1 of 2004).

## **Arrangements for Confidential Assets of Tax Criminal Offenders and Their Regulation**

Regulations for confiscation of assets in Indonesia have not been specifically regulated in Indonesian laws and regulations. In recent developments in the international world, confiscation and confiscation of assets from criminal acts has become important to confiscate assets or return all assets from the proceeds of the crime . The following are the regulations for confiscation of assets in the Indonesian law book :

### **1. Arrangements for confiscation of assets in the Corruption Crime Law (UU TPK)**

The rules regarding the confiscation of confiscated goods are regulated in Article 18 and Article 19, as well as Article 38 B and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Anti-Corruption Law). The Anti-Corruption Law states that additional penalties that can be imposed on defendants in criminal cases are additional penalties as specified in Article 18 paragraph (1) of the Anti-Corruption Law.

Law No. 31 of 1999 TPTPK has been amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 which adheres to 2 systems or methods of asset confiscation, namely: confiscation of assets through criminal law (in

personam forfeiture) and confiscation of assets through criminal law. civil law or civil lawsuit (in rem forfeiture/civil forfeiture).

Confiscation of assets originating from criminal acts of corruption through criminal law is carried out in 2 (two) ways, namely: the first method is based on the provisions of Article 18 Paragraph (1) letters a, b, c and d, and Article 38 paragraph (5) Law No. 31 of 1999 TTPPK, which of course means that confiscation is preceded by confiscation during an investigation or pre-prosecution or during a trial in court.

The second method is confiscation of the perpetrator's assets which were not obtained or derived from criminal acts of corruption. This is done based on the provisions of Article 18 paragraph (2), which is carried out if the convicted person does not pay compensation within 1 (one) month after the court decision. legally binding. In Article 18 paragraph (1) and paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999. Confiscation assets must be based on the court's decision as stated in the verdict with the additional criminal stipulation of payment of compensation money and confiscation of the defendant's property if the defendant does not pay replacement money.

Confiscation of assets belonging to the perpetrator that were not obtained or derived from criminal acts of corruption can also be carried out if the perpetrator (convict) does not voluntarily pay the compensation money that has been determined for him based on article 32.

Confiscation of assets or assets of perpetrators of criminal acts of corruption through civil law is carried out based on the provisions of Articles 32, 33, 34 of Law Number 31 of 1999 and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 .

## 2. Regulations on confiscation of assets in the Criminal Procedure Code (KUHAP)

The provisions in the criminal procedural law state that before legal action is taken in the form of confiscation, the object or goods to be confiscated must first be confiscated by an investigator. Legal action in the form of confiscation relating to assets resulting from criminal acts in the Criminal Procedure Code is regulated in Articles 38, 39, 42, 44 and 45. Meanwhile, asset confiscation is regulated in Article 46 paragraph (2).

Court decisions regarding evidence can be found in Article 46 paragraph (2). The provisions of Article 46 of the Criminal Procedure Code which basically states that the return of confiscated goods must pay attention to humanity by prioritizing sources of life. So it means that if there are confiscated assets that are to be returned, then the victim should be given priority.

Regarding evidence : corruption law, taxation law, money laundering law and other laws. Always comply with the Criminal Procedure Code.

According to Law No. 1 of 1981 concerning Criminal Procedure Law, Article 184, items as evidence according to Article 39 of the Criminal Procedure Code, the article that regulates the confiscation of articles 38 to 46 of the Criminal Procedure Code.

Article 194 of the Criminal Procedure Code: The return of confiscated goods is basically determined to be returned to the place where the goods were confiscated because they have been used to support evidence and the goods can be returned to those most entitled in certain circumstances, they can be confiscated for the State or the goods confiscated for annihilated. (at the end of the judge's decision) because the evidence was confiscated by the investigator, of course its status is in the judge's decision.

Legal action in the form of confiscation relating to assets resulting from criminal acts in the Criminal Procedure Code is regulated in Articles 38, 39, 42, 44 and 45. Meanwhile, confiscation of assets is regulated in Article 46 paragraph (2). Court decisions regarding evidence can be found in Article 46 paragraph (2).

In Article 270 of the Criminal Procedure Code) if it turns out that the convict has not or has not paid compensation in the amount as stated in the court decision within the specified time limit.

In Article 273, the evidence states that if the goods are confiscated for the state, then the goods must be auctioned. Within 3 months the prosecutor submitted it to the auction office to hand over the evidence. The Minister of Finance's decision regarding evidence in criminal acts can be given or donated to certain institutions.

3. Arrangements for confiscation of assets in the Money Laundering Crime Law (UU TPPU)

Article 67 (1) In the event that no person and/or third party submits an objection within 20 (twenty) days from the date of temporary suspension of the Transaction, PPATK hands over the handling of the Assets which are known or reasonably suspected to be the result of the criminal act to the investigator for investigation. .

(2) In the event that the alleged perpetrator of a criminal act is not found within 30 (thirty) days, the investigator can submit a request to the district court to decide that the assets are state assets or returned to the rightful person.

(3) The court as intended in paragraph (2) must make a decision within a maximum of 7 (seven) days.

Article 77 For the purposes of examination at a court hearing, the defendant is obliged to prove that his assets are not the proceeds of a criminal act.

Article 78 (1) During the examination at the court hearing as intended in Article 77, the judge orders the defendant to prove that the assets related to the case do not originate from or are related to the criminal act as intended in Article 2 paragraph (1). (2) The defendant proves that the assets related to the case do not originate from or are related to the criminal act as intended in Article 2 paragraph (1) by presenting sufficient evidence.

Based on the provisions of article 72 of the TPPU Law, there is an obligation for banks as Reporting Parties to provide information regarding assets belonging to suspects, parties who have been reported by PPATK through LHA/LHP to investigators or defendants, even though the customer information is an object that must be kept confidential by the bank based on law. banking.

Article 72 of the TPPU Law. This provision is a crucial effort for investigators to make it easier to obtain financial transaction information from parties as stated in Article 72 paragraph (1) above.

Postponement of transactions on the perpetrator's account (Article 70 of the TPPU Law); Blocking of assets in the perpetrator's account (Article 71 of the TPPU Law) Confiscation of the perpetrator's movable or immovable assets (Article 39 of the Criminal Procedure Code).

However, the aim of implementing the articles of the TPPU Law is to maximize the tracing of assets that are suspected to be the proceeds of crime and then based on the judge's decision, these assets are confiscated for the state or confiscated to be given to parties as determined by the judge.

Article 69 of the 2010 TPPU Law states: "In order to carry out investigations, prosecutions and examinations in court regarding money laundering crimes, it is not necessary to first prove the original crime."

The issue of potential violations of the *tempus delicti* principle, another potential legal problem resulting from the existence of Article 69 of the 2010 TPPU Law is a deviation from the principle of due process of law. In the principle of due process of law between Corruption and TPPU, of course these two criminal acts cannot be positioned separately from each other . This is firmly regulated in UN General Assembly Resolution Number: 58/4, dated 31 October, namely Article 23 223 which states that in essence the crime of money laundering is in the form of exchanging or transferring assets, hiding or disguising the true situation, all of which is known to originate from crime. It is becoming

increasingly clear that universally, the principle of money laundering is always attached to the predicate crime. Article 69 of the TPPU Law is a norm that does not provide an opportunity for perpetrators of criminal acts, in this case criminal acts of corruption (which is a predicate crime) to be able to explain the origins of the acquisition of their assets.

Article 81 If sufficient evidence is obtained that there are still assets that have not been confiscated, the judge orders the public prosecutor to confiscate the assets.

4. Regulations on asset confiscation in the Financial Transaction Reports and Analysis Center Law (UU PPATK)

The PPATK Law explains that PPATK has the right to postpone financial transactions in article 26 and carry out investigations into suspicious financial transactions . explained here in the PPATK Law there is no authority to confiscate assets for suspicious financial transactions. Therefore, there is a problem with these financial transactions, because when these financial transactions are moved abroad. It will be a problem to confiscate assets because the laws abroad are different from the laws in Indonesia.

5. Arrangements for confiscation of assets in prosecutor's regulations (Perja)

Confiscation of Assets, Attorney General Regulation no. PER-013/A/JA/06/2014 concerning Asset Recovery also contains the definition of asset confiscation. Article 1 number 18 of the regulation states that "asset confiscation is a forced action taken by the state to separate rights to assets based on a court decision."

Republic of Indonesia Prosecutor's Regulation Number 7 of 2020 concerning the Second Amendment to Attorney General's Regulation Number Per-027/A/Ja/ 10/2014 concerning Guidelines for Asset Recovery with the Grace of God Almighty Attorney General of the Republic of Indonesia, asset recovery with the ability to "follow the asset :", is the coordinator of the Prosecutor's work unit related to asset recovery, and has the authority/capacity to liaise directly with various ministries/institutions, formal and informal institutions and networks/agencies, within and outside the country.

6. Regulation of asset confiscation in Supreme Court regulations (Perma)

Regulation of the Supreme Court of the Republic of Indonesia Number 01 of 2013 on Procedures for Resolving Applications for Handling Assets in Money Laundering or Other Crimes.

Article 10

(1) Based on the application for handling assets and the evidence or evidence submitted by the Investigator as the applicant for handling assets, the Judge decides that the assets are considered state assets or returned to those entitled to them.

(2) The judge must decide on the application for handling assets as intended in paragraph (1) within a maximum of 7 (seven) working days from the day of the first hearing.

other media to provide an opportunity for parties who feel entitled to assets to submit objections.

(4) Excerpts of the decision are delivered to the investigator who submitted the application for handling assets immediately after the decision is pronounced.

(5) A copy of the decision is submitted to the Prosecutor at the District Prosecutor's Office which is in the jurisdiction of the District Court which decides on the application for handling assets or the District Attorney whose jurisdiction covers the location of assets through the Head of the District Court concerned within a maximum period of 7 (seven) days. work from the moment the decision is pronounced for the purposes of execution.

Article 18

(1) The judge considers all the arguments and evidence that have been examined at the trial, and then decides whether to declare the assets as state assets or return them to those entitled to them. (2) The decision as intended in paragraph (1) is final and binding.



Based on Article 79 of Law no. 14 of 1985 concerning the Supreme Court, actually the function of rule making power of the Supreme Court originates, where the Supreme Court can make regulations regarding the resolution of cases that are not regulated by law. Of course, this authority is actually based on the provisions of Article 10 of Law no. 48 of 2009 concerning Judicial Power which contains the principle that judges may not reject a case because the law does not yet exist or is not clear.

#### 7. Arrangements for Confiscation of Assets of Tax Crime Perpetrators in the Perspective of Criminal Procedure Law

Article 39 and Article 41 paragraph (2) of the KUP Law. In the formulation of Article 39 of the KUP Law there is the phrase "can cause losses to state revenue". The phrase "could harm state revenues" as stated in the article above clearly falls into the category "could harm state finances". Because, based on Law Number 17 of 2003 concerning State Finance, state income (which comes from tax, non-tax and grant revenues) is part of state finances. The phrase "can harm state finances" is contained in the formulation of Article 2 paragraph (1) of the Corruption Crimes Law. The elements that can be said to be a criminal act of corruption based on Article 2 paragraph (1) of the Corruption Crimes Law are every person enriching themselves, another person or a corporation, in a way that violates the law, and can harm state finances or the state economy. Paying attention to the link between tax criminal elements and corruption criminal elements, there is the possibility of applying corruption criminal articles to criminal acts in the tax sector. Criminal acts that can be committed by tax officials are regulated in Article 36A of the KUP Law. However, the elements in Article 36A are similar to the elements in Article 3 of the Corruption Eradication Law, which can cause legal uncertainty in imposing sanctions on a tax official who commits a violation.

Judging from the analysis of Article 36A paragraph (1) to paragraph (4), it can be concluded that a tax official who commits a tax violation in accordance with Article 36A paragraph (1), 36A paragraph (2), 36A paragraph (4) may be punished under Article 3 Corruption Law. However, because the formulation of articles 36A paragraph (1) and 36A paragraph (2) allows other laws and regulations besides the Corruption Law, it is necessary to review the elements that are fulfilled before using the Anti-Corruption Law, because there are still other regulations that are appropriate to the violations committed. by tax officials, such as employment sanctions as regulated in the Civil Service Law.

### **Mechanisms and Future Regulations For Assets Confistion In The Asset Confistion Bill**

The mechanism currently in effect according to the statutory regulations for Confiscation of Assets Obtained from Criminal Acts, the mechanism used to confiscate the assets of perpetrators of criminal acts is as follows:

#### 1. Investigation

Asset Tracing The meaning of asset tracing as stated in the Regulation of the Attorney General of the Republic of Indonesia Number PER-027/A/JA/10/2014 dated 1 October 2014

#### 2. Blocking

prosecutor or judge can ask the bank to block savings accounts belonging to suspects or defendants who are suspected to be the proceeds of corruption as regulated in Article 29 paragraph (4) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

#### 3. Foreclosure

Article 38 paragraph (1) KUHAP. However, if it is an urgent situation and only for movable objects, the confiscation can be carried out first before obtaining permission from the Chairman of the local District Court, and for this reason it is mandatory to immediately report it to the Chairman of the Local District Court to obtain approval. Such confiscation

procedures are also regulated in Article 47 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission.

### **Stages of Asset Recovery**

In general, there are 6 stages that must be carried out in carrying out asset recovery:

1. Evidence collection and asset tracing.
2. Detention of assets during the investigation process.
3. Carrying out international cooperation if assets are located in other jurisdictions.
4. Court proceedings. Court proceedings may include foreclosure or other civil actions.
5. Implementation of court decisions.
6. Return on assets.

### **Enforcement of Criminal Law In The Field of Taxation is Based On Recovery of Losses.**

In accordance with Kep-518/JA/11/2001 dated 1 November 2001 concerning the mechanism for paying replacement money, if the fine is not paid, it will be replaced with imprisonment. This provision is often taken into consideration by judges in criminal cases in the field of taxation when imposing criminal decisions on fines subsidiary to imprisonment.

As a result, the state actually increases expenditure to finance convicts and does not receive revenue from recovery of losses in state income. If the convict does not pay the fine based on the judge's decision which has permanent legal force, the prosecutor will confiscate the execution of the convict's assets to pay the fine. It is hoped that this provision will encourage perpetrators of criminal acts to pay off losses to state revenue early on and carry out administrative sanctions in the form of fines. In Law Enforcement, there are 3 (three) elements that must be considered, namely legal certainty (*rechtszicherheit*), justice (*gerechtigkei*t), and legal benefits (*zweckmassigkeit*).

### **Future Criminal Legal Policies In The Asset Configuration Law**

The content of the Asset Confiscation Bill is considered very revolutionary in the process of law enforcement regarding the acquisition of proceeds of crime. This can be seen from at least 3 (three) paradigm changes in criminal law enforcement. Namely first, the party accused of a criminal act is not only the legal subject as the perpetrator of the crime, but also the assets obtained from the crime. Second, the justice mechanism used for criminal acts is the civil justice mechanism. Third, court decisions are not subject to criminal sanctions like those imposed on perpetrators of other crimes.

Draft Asset Confiscation Law (RUU PA) Article 1 number 1 assets are "all movable or immovable objects, both tangible and intangible, and which have economic value.

Article 1 number 2 means that criminal assets are defined as "every asset obtained or suspected of being a criminal act, or improper wealth that is equated with criminal assets."

In Article 1 number 3 of the Bill, you can find what is meant by confiscation of criminal assets. For example, asset confiscation is defined as "a coercive effort carried out by the state to confiscate the assets of a criminal offense based on a court decision without being based on the punishment of the perpetrator.

In particular Article 2 and Article 3, which regulate that confiscation of assets is carried out if the suspect or defendant dies, runs away, is permanently ill, or his whereabouts are unknown, the defendant is dismissed from all charges, the criminal case has not been or cannot be tried. A criminal case that has been decided by the court and has permanent legal force, and at a later date it is discovered that there are assets from the criminal act that have not been declared confiscated; or Items found that are suspected of originating from a criminal act . Article 2 of the Asset Confiscation Bill regulates that assets can be confiscated based on this Law. The provisions in Article 54 paragraph (1) letter c UNCAC are one of the references in the Draft Law on Confiscation of Criminal Assets (RUU Asset Confiscation).

Referring to the sound of Article 1 which is linked to Article 4 of the Asset Confiscation Bill, the drafters of this bill want there to be no legal loopholes in the future which will result in the state being unable to return state assets through criminal asset confiscation.

Article 14 of the Asset Confiscation Bill stipulates that asset confiscation is carried out if the suspect or defendant dies, runs away, is permanently ill, or his whereabouts are unknown; or the defendant is acquitted of all legal charges.

Based on Article 1 point (3) of the Asset Confiscation Draft Law, what is meant by asset confiscation is a coercive effort carried out by the state to confiscate the assets of a criminal offense based on a court ruling or decision without being based on punishment of the perpetrator.

Based on the description in articles 14 and 15 of the Draft Law on Confiscation of Criminal Assets above, it can be concluded that confiscation of assets uses an in Rem confiscation system, namely Non-Conviction Based (NCB) Asset Forfeiture.

That the existing systems and mechanisms regarding the confiscation of assets resulting from criminal acts as well as the instruments used to commit criminal acts, are currently unable to support efforts to enforce laws that are just and improve the welfare of the people as mandated by the 1945 Constitution of the Republic of Indonesia. Second, that clear and comprehensive regulations regarding the management of confiscated assets will encourage the realization of professional, transparent and accountable law enforcement. Third, based on the first and second considerations, there is a legal need to regulate provisions regarding asset confiscation in the form of a law; bearing in mind Article 5 paragraph (1) and Article 20 of the 1945 Constitution of the Republic of Indonesia

### **Challenges Before The Asset Configuration Bill is Legal**

The Draft Law on Confiscation of Criminal Assets has been included in the National Legislation Program (PROLEGNAS) 3 (three) times, specifically in the 2010-2014 Prolegnas, 2015-2019 Prolegnas, and 2020-2024 Prolegnas. However, until now the Draft Law is still in the discussion stage. Although there are still problems that have the potential to hinder the implementation of the Asset Confiscation Bill, such as potential violations of human rights (property rights), including the effectiveness of its implementation, there are several solutions that the government can implement to overcome these obstacles.

The theory of reversing the burden of proof on the balance of possibilities (balanced probability principle) developed by Oliver Stolpe can be used to address obstacles to implementing the Asset Confiscation Bill against human rights violations. Apart from that, along with the formation of the Asset Confiscation Bill policy, a shift in the law enforcement paradigm is needed in eradicating narcotics crimes and money laundering, including increasing coordination between law enforcement agencies and the financial sector.

#### **1. Politics of law**

Based on Article 20 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the power to form this law is the authority of the People's Representative Council (DPR). Furthermore, Article 20 paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that each Draft Law (RUU) is then discussed further by the DPR and the president to obtain joint approval. UU no. 33 of 2014 concerning halal product guarantees has been approved and ratified by the President and the DPR into law.

According to Daniel S. Lev, what is most determining in the legal process is the conception and structure of political power. Namely that law is always more or less a political tool, and that the place of law in the state depends on political balance, definition of power, evolution of political, economic, social ideology, and so on (Daniel S. Lev, 1990: xii).

Political parties play a real role in the prevailing political system in making legal and other policies, so the political configuration is a democratic political configuration. Meanwhile, if the opposite applies then the political configuration is an authoritarian political configuration. Political power is also visible in interest organizations, influential figures and so on.

## 2. The influence of society in the formation of law

NRI Act no. 10 of 2004 concerning the Formation of Legislative Regulations, in Ch. X emphasized the existence of community participation, namely what is regulated in Article 53:

"The public has the right to provide input verbally or in writing in the context of preparing or discussing Draft Laws and Draft Regional Regulations." The facts above show that the influence of society in influencing the formation of law has received a very wide place and appreciation.

This is the role of the people's representatives who are elected through democratic mechanisms existing in the political structure and infrastructure to safeguard the interests of the majority of the people, and truly understand the norms, rules, interests and needs of the people so that these values become positive law.

## 3. Institutional Morale of Law Enforcers

Bung Karno, Bung Hatta, Bung Syahrir, along with other figures who since they fought during the colonial era to create an independent Indonesia, were moved by the condition of their nation which was riddled with poverty, backwardness and ignorance which was very touching. The colonialists paid little attention to the misery that resulted in millions of people dying from hunger, malnutrition, malaria, dysentery, cholera, floods, droughts, volcanic eruptions, and so on.

## CONCLUSION

Regulations regarding asset confiscation are regulated in law: a) Chapter I letter f number 11 Republic of Indonesia Attorney General Regulation Number PER-027/A/JA/10/2014 b) Articles 34 – 36 of the TPPU Law in conjunction with PP No. 99 of 2016 , Article 67 and Article 69 of the TPPU Law jo c) Article 10 of the Criminal Code , Article 39 of the Criminal Procedure Code, Article 46 paragraph (1) of the Criminal Procedure Code). Article 10 (b) of the Criminal Code d) Article 18 Paragraphs (1), (2) and (3), Articles 32, 33, 34 of Law Number 31 of 1999 and Article 38 C of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 PTPK Law . According to the criminal law in Indonesia that regulates confiscation of assets, it is Article 31 of 1999 and Article 67 of the TPPU Law. Confiscation of assets resulting from criminal acts can only be carried out after receiving an inkraht decision from the court.

With the existence of an asset confiscation mechanism, eradication law enforcement uses two mechanisms, namely penal and non-penal. This is because, confiscation of assets without criminal prosecution does not eliminate the mechanism for criminal prosecution of the perpetrator's crimes in court. Then, there needs to be a paradigm shift among law enforcement agencies which initially used an in personam approach which must be changed to an in rem approach as a logical consequence of implementing the *unexplained wealth scheme* . The scheme used by developed countries in relation to confiscation of assets resulting from criminal acts is *unexplained wealth* .

## REFERENCE

Atmasasmita, Romli, *Confiscation of Assets through Reverse Evidence: Comparative Study of Criminal Law, paper at the Focus Group Discussion held by the Indonesian National Police Headquarters , Hotel Borobudur, Jakarta, 10 March 2011.*

- Center for Financial Transaction Reporting & Analysis, *Memorie van Toelechting: Discussion of the Draft Law Concerning the Prevention and Eradication of the Crime of Money Laundering*, Book One, Jakarta: PPATK, 2011, p. 726.
- Center for Financial Transaction Reports & Analysis , *Loc.Cit.*
- John Locke "The policy of a person who makes the law does not consist only of the basis of justice, but also of its application considering in what way the law obtains certainty.
- Prasetyo, DR (2016). *Confiscation and confiscation of assets resulting from corruption as an effort to impoverish corruptors. DiH: Journal of Legal Studies* , 12 (24), pp. 149-163.
- Reda Manthovani & R. Narendra Jatna, *Anti-Money Laundering Regime and Proceeds of Crime in Indonesia*, Jakarta: UAI Press, 2011, p. 74.
- Typhoon Faithful Prawira. "Use of the PPATK Analysis Result Report (LHA) in Investigating Money Laundering Crimes by National Police Investigators." *Literate Syntax; Indonesian Scientific Journal* 7. no . 5, 2022, 626
- Yanuar, Muh. *Ritually pure. Crime of Money Laundering and Asset Confiscation*, Malang: Setara Press, 2021.
- Yunus Husein, *Legal Explanation regarding Confiscation of Assets Without Punishment in Corruption Crime Cases*, Center for Legal and Policy Studies & Center for Legal and Judicial Research and Development of the Supreme Court of the Republic of Indonesia, Jakarta, 2019, p. 6
- Yunus Husein, *Anti-Money Laundering Potions* , Bandung: *Books Terrace and Library* , 2007 .