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Criminal Policy on Forfeiture of Assets Resulting from Gratification in Cases Stopped by Law

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ABSTRACT: The Indonesian government has made various efforts to suppress the massive corruptive behavior in Indonesia, both through means of law enforcement and prevention, but this has not had a significant impact in reducing the crime rate of corruption and providing a deterrent effect to the corruptors, because every year data on handling cases of corruption crimes in Indonesia tends to increase. The pattern of combating corruption has changed, law enforcement officials no longer only pursue criminal offenders and imprison them (follow the suspect), but also carry out efforts to trace, confiscate and for feit all assets that are the proceeds and instruments of criminal acts (follow the money). Various obstacles arise in efforts to seize assets that are the proceeds or instruments of criminal acts, one of which is the absence of legal rules governing the mechanism for the seizure of assets resulting from gratification crimes in cases that are stopped by law. The method used in this research is normative legal research, using a statutory approach (statue approach) and Court Decisions. This reserach aims to examine and formulate an ideal criminal law policy in the seizure of confiscated objects in the form of assets of gratification suspects whose cases are stopped for the sake of law in the future. The results in this research show that asset seizure in the eradication of corruption currently still places asset seizure as an additional crime so that asset seizure is still based on the defendant's guilt (conviction based asset forfeiture), in addition to through the criminal mechanism of asset forfeiture can also be done through civil mechanisms with the concept of non-conviction based asset forfeiture, but there is no rule governing the asset forfeiture mechanism proceeds of gratification in cases that are stopped by law. The criminal policy of asset seizure in the future based on the Asset Forfeiture Bill related to Criminal Acts with the concept (non-conviction-based asset forfeiture) has clearly regulated the mechanism for the seizure of assets belonging to Suspects or Defendants who died, escaped, became permanently ill, or whose whereabouts are unknown, so as to overcome the legal vacuum in terms of seizure of assets resulting from gratification crimes in cases that are stopped by law.

KEYWORDS: criminal policy; corruption; asset seizure; case stopped by law.

I. INTRODUCTION

One of the mandates of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) is the creation of a just and prosperous Indonesian society. Therefore, development in all fields is a necessity to achieve this goal. To realize the continuity and success of development, it is an absolute requirement (condition sine qua non) for law enforcement, including in the form of preventing and eradicating criminal acts of corruption.

According to Andrea Fockema, the word Corruption comes from the Latin corruptio or corruptus (Webster Student Dictionary: 1960). Furthermore, it is stated that corruption also comes from the original word corrumpere, an older Latin word. From Latin it descended to many European languages such as English, namely corruption, corruption; France, namely corruption; and the Netherlands, namely corruptive (korruptie) (Andi Hamzah, 2005: 4).

The literal meaning of the word corrumpere is rottenness, ugliness, depravity, dishonesty, corruptibility, immorality, deviation from holiness, insulting or slanderous words or utterances as can be read in The Lexacon Webster Dictionary:

"corruption {L.corruptio (n-)} The act of corrupting, or the state of being corrupt; putrefactive decomposition, putrid matter; moral perception; depravity, perception of integrity; corrupt or dishonest proceedings, bribery; perception from a state of purity; debasement, as of a language; a debased form of a word". (Andi Hamzah, 2005: 4)

(The Lexicon 1978).

The Indonesian government, through the law enforcement apparatus, which has the task and function of eradicating criminal acts of corruption, namely: the Prosecutor's Office, the Corruption Eradication Committee and the National Police, have made various efforts to suppress the massive amount of corrupt behavior in Indonesia, both through repressive and preventive means,

however, This has not had a significant impact in reducing the crime rate of corruption, and has had a deterrent effect on corruptors, because every year data on the handling of corruption cases in Indonesia tends to increase.

Based on a report from Transparency International Indonesia (TII), Indonesia's Corruption Perception Index for 2022 shows that Indonesia's score has dropped four points, namely from 38 to 34, causing Indonesia's ranking to fall from 96 to 110. Apart from handling corruption crimes which have not been optimal, recovery of state losses has also not been possible. maximum. Based on ICW's monitoring of corruption trials, state losses in 2020 reached IDR 56.7 trillion, the compensation penalty was only IDR 19.6 trillion. In the process of executing replacement money there are often many obstacles, the replacement money cannot be confiscated and causes the actual value of recovering state losses to become smaller. Based on these figures, efforts to eradicate corruption have not yet fully restored state financial losses. Even though President Joko Widodo in his state address on 16 August 2019 stated that the measure of eradicating corruption must be changed, the success of law enforcement is not only measured by the number of cases, but must also be measured by how much potential state losses can be saved. Therefore, the policy of optimizing the eradication of corruption must be followed up with a comprehensive strategy so that it can actually achieve the expected results (Bambang Waluyo, 2016: 101).

The policy for confiscation of assets for Corruption Crimes in the legal system in Indonesia is regulated in Law Number 1 of 1946 concerning the Criminal Code (KUHP), and Law Number 31 of 1999 concerning Corruption Crimes as amended by Law-Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Confiscation of assets or assets resulting from criminal acts of corruption is an effort to recover state financial losses and "impoverish" perpetrators of criminal acts of corruption.

The asset confiscation policy based on the Criminal Code is stated in the provisions of Article 10. The provisions of Article 10 of the Criminal Code regulate the types of punishment that can be imposed on perpetrators of criminal acts, consisting of basic penalties and additional penalties. One type of additional crime is confiscation of certain items.

If you look closely at the provisions of Article 10 of the Criminal Code, Article 18 Paragraph (1) letter a and Article 38 C of the Corruption Eradication Law mentioned above requires a condition where confiscation of assets resulting from crime can only be carried out "if the main case has been examined in court and the defendant has been declared legally and convincingly proven to have committed a criminal act" or what is known as "Conviction Based Asset Forfeiture". Meanwhile, confiscation of assets through the civil lawsuit mechanism as regulated in article 32 Paragraph (1), article 33, article 34 of the Corruption Law can only be carried out if "there has been a real loss to state finances".

The handling of criminal acts of corruption that is interesting to review and discuss is the case of alleged criminal acts of corruption and money laundering which was handled by the Bali High Prosecutor's Office with the suspect named Tri Nugraha, SH as the former Head of the Badung Regency National Land Agency for the period 2007 to 2013 with suspicion violates Article One: Article 12B paragraph (1) letter a of the Corruption Crime Law, OR second: Article 11 of the Corruption Crime Law and Second: Article 3 paragraph (1) Law Number 15 of 2002 concerning Laundering Crimes Money as amended by Law No. 25 of 2003 concerning amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering and Article 3 of Law No. 8 of 2010 concerning the eradication of the Crime of Money Laundering.

In this case, investigators have confiscated property in the form of movable and immovable property belonging to the suspect and his family which is suspected to be the proceeds of crime, but before the investigation process was completed, the suspect, Tri Nugraha, was declared dead based on a medical death certificate from the Sanglah Central General Hospital, Denpasar. Number: UM.01.05/XIV.4.4.7/2788/2020 dated 01 September 2020.

Based on the provisions of article 77 of the Criminal Code, the investigation of the suspect Tri Nugraha, SH was declared to be stopped by law with the issuance of an Order to Stop Investigation (SP3) Number: Print-02/N.1/Fd.1/11/2020 dated 02 November 2020 and Number: Print-03/N.1/Fd.1/11/2020 dated 02 November 2020 concerning the termination of the investigation into the alleged Crime of Gratification Corruption and the Crime of Money Laundering on behalf of the suspect Tri Nugraha, SH.

That there is a problem with the status of evidence in the form of all assets belonging to the suspect and his family, whether in the form of movable goods or fixed objects which have been confiscated and are suspected to be the proceeds of a criminal act, where investigators wish to confiscate all confiscated assets or objects belonging to the suspect and his family, will However, it is hampered by the absence of legal regulations that regulate the mechanism or procedure for confiscating confiscated objects in the form of assets belonging to suspects of criminal acts of corruption who are accused of the Gratification Article or other than Article 2 or Article 3 of the Law on the Eradication of Corruption Crimes where the case is stopped by law because the suspect has died. , both in the Criminal Code, the Corruption Eradication Law and other related regulations.

Therefore, the author is interested in discussing the case of the crime of gratification and the crime of money laundering in the name of the suspect Tri Nugraha, SH, in connection with the criminal law policy in terms of the confiscation of confiscated objects in the form of assets belonging to the suspect in the crime of corruption who are not suspected of violating provisions other than article 2 or article 3 of the Corruption Law but with the gratification article where the case is stopped by law. With the above background, the author formulates the problem, namely how to carry out the confiscation of confiscated objects in the form of assets of Corruption Crime Suspects who are suspected of violating the Gratifications article, whose cases are stopped by law

based on applicable laws and regulations and what is the ideal criminal law policy in confiscating confiscated objects in the form of Suspect assets The crime of corruption is suspected of violating the Gratifications article, the case of which is stopped by law in the future.

II. MATERIALS AND METHODS

The type of research used is normative juridical research which does not require a population and sample. Normative juridical research is research that refers to legal norms contained in legislation and court decisions as well as norms that live and develop in society. The legal research approach in this research is the case approach, the case approach in this research uses cases of suspected criminal acts of corruption (Gratification) and money laundering handled by the Bali High Prosecutor's Office, a statutory approach or a juridical approach namely research on legal products (Bahder Johan Nasution, 2008: 92). This legislative approach is carried out to examine all laws and regulations relating to the research to be studied. This legislative approach will open up opportunities for researchers to study whether there is consistency and suitability between one law and another (Peter Mahmud Marzuki, 2010: 93), and the conceptual approach, this approach is taken because there are no legal rules for the problem at hand, this conceptual approach departs from the views and doctrines that have developed in legal science, thus giving birth to legal understanding and principles. laws relevant to the problem at hand (Johnny Ibrahim, 2007: 306).

III.RESULT AND DISCUSSION

A. Criminal Policy for Confiscating Assets Proceeding from Crimes of Gratification in Cases which are Stopped by Law.

1. Criminal Policy for Confiscation of Assets based on Law Number 1 of 1946 concerning Criminal Law Regulations or Criminal Law (KUHP).

The Criminal Law that is currently used and enforced in Indonesia is a legal product left over from the centuries-old Dutch colonial period, namely the Criminal Code (KUHP) which was passed by the Government of the Kingdom of the Dutch East Indies in 1886, namely WvS voor Nederlandsch Indie which It was enforced in 1915 and since 1946 the WvS has been promulgated through Law Number 1 of 1946 concerning Criminal Law which is enforced in Indonesia. Then, through Law Number 73 of 1958, precisely on September 29 1958, Law Number 1 of 1946 was declared to be in force for the entire territory of Indonesia, so that since then one Criminal Code has been in effect. Furthermore, the Criminal Code functions as general material criminal law which contains various kinds of criminal acts and the principles of material criminal law (Wiryono Prodjodikoro, 1986: 11).

According to Article 39 of the Criminal Code, the convict's belongings, which were obtained from a criminal act or were intentionally used to commit a criminal act, are confiscated. Confiscation of confiscated goods is only carried out against guilty people. According to Article 39 of the Criminal Code, before being confiscated an object is already in a state of confiscation. The policy of criminal legislation in the Criminal Code is the confiscation of property or possessions as an additional criminal act. As an additional criminal act, the confiscation of the convict's property or possessions is ordered by a judge, if the perpetrator commits a criminal act of corruption. proven guilty of committing a crime.

2. Criminal Policy for Confiscation of Assets based on Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.

Although various efforts have been made to eradicate corruption crimes, the results achieved are still far from expectations. However, the public is aware that eradicating corruption is not an easy matter, even though efforts to eradicate corruption crimes have been carried out since the independence of the Republic of Indonesia. These laws and regulations include Law Number 24/Prp/1960 concerning Investigation, Prosecution and Examination of Corruption Crimes; and Law Number 3 of 1971 concerning the Eradication of Corruption Crimes (Arief W.H. & Arief N. W., 2007: 23).

In addition to the two statutory regulations mentioned above, the state through the People's Consultative Assembly issued regulations in the form of TAP MPR Number IX/MPR/1998 concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism. This TAP MPR gives a mandate to relevant state administrators, especially law enforcers, including police, prosecutors and judges, as instruments in eradicating criminal acts of corruption. After the issuance of the TAP MPR, a law was issued regarding the eradication of criminal acts of corruption which is still in use today, namely Law Number 28 of 1999 concerning Implementation that is Clean and Free from Corruption, Collusion and Nepotism; Law Number 31 of 1999 concerning Eradication of Corruption Crimes; and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Arief W.H. & Arief N. W., 2007: 23).

Regarding the first type of additional crime, namely confiscation of goods, which is also known as a general crime but differs in terms of the conditions for the goods confiscated. In the criminal law of corruption, criminal confiscation of tangible goods and the value (money) of the goods confiscated can be imposed (if the goods for certain reasons cannot in fact be confiscated, for example the goods cannot be found or have been destroyed by the maker) (Adami Chazawi, 2003: 378).

The confiscation of certain items used for or obtained from criminal acts of corruption as regulated in the provisions of article 18 Paragraph (1) letter a of the Anti-Corruption Law aims to harm the convict as proven through a court decision which has permanent legal force (inkracht) has committed a criminal act of corruption, so he cannot enjoy the proceeds of the criminal act. Confiscation of assets resulting from crime can only be carried out if the main case is examined and the defendant is found guilty, then the goods obtained from the proceeds of crime can be determined by the court to be confiscated by the state for destruction or other action is taken so that the goods or assets can be used for the interests of the state. how to give it away or hold an auction for assets resulting from criminal acts (Marfuatul Latifah, 2015: 22). Apart from the criminal mechanism, the Corruption Eradication Law also regulates the mechanism for confiscation of assets through civil law means (non-conviction bases asset forfeiture / NCB asset forteiture), this is as regulated in article 32 Paragraph (1), article 33, article 34 and article 38 C of the Corruption Law. The complete text of the provisions of Article 32 Paragraph (1), Article 33, Article 34, Article 38 C of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

3. Criminal Policy for Confiscation of Assets based on Law Number 1 of 2023 concerning the Criminal Code.

In its preparation, the provisions related to criminal acts of corruption contained in Law Number 1 of 2023 concerning the Criminal Code of the Republic of Indonesia (hereinafter referred to as the "National Criminal Code") were approved on January 2 2023. The national criminal law replaces the old Dutch Criminal Code which has been used for more than a century. In accordance with Law Number 1 of 2023 concerning the Criminal Code, the Criminal Code Policy on Asset Confiscation regulates the confiscation of property or assets as an additional crime based on Article 66. Article 66 paragraph (2) regulates that other crimes may be imposed. if the punishment for the main offense alone is not sufficient to achieve the objectives of the offense. According to this method, confiscation of property is a type of punishment that cannot stand alone, but complements the heavy punishment imposed by the perpetrator if the judge cannot impose a heavy sentence to achieve the aim of the crime. sentence. a) Goods used in the commission or preparation of a criminal act d) Property obtained at the time of the commission of a crime, by the perpetrator or by an individual. According to the provisions of Article 92, for property that has not been confiscated, the amount of property that must be exchanged or replaced can be determined based on the amount determined by the judge based on market prices, and forfeited under the following conditions: If the goods cannot be handed over, then the goods must be exchanged or replaced according to the judge's calculations. The market price that will be replaced. The criminal law policy of the Criminal Code Number 1 of 2023 concerning confiscation of property still considers confiscation of property as an additional punishment for those who commit and continue to commit criminal acts, known as foreclosure. riches. Asset Confiscation and Judicial Confiscation Assets can only be obtained by court order in a criminal case.

4. Criminal Policy for Confiscation of Assets based on Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering.

Realizing the increasing trend of wealth and assets originating from the proceeds of crime, the government considers it necessary to establish an anti-money laundering regime. The development of an anti-money laundering regime was marked by the ratification of Law Number 15 of 2002 concerning the Crime of Money Laundering (TPPU), with the aim of preventing and eradicating the intensity of crimes that produce or involve wealth so that national economic stability and state security are maintained (Asep N. Mulyana, 2018: 195-196).

In order to strengthen and make the anti-money laundering regime more effective in Indonesia, Law Number 15 of 2002 was amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering. Furthermore, the TPPU Law was most recently refined through Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, which requires a strong foundation to guarantee legal certainty, the effectiveness of law enforcement, as well as tracing and returning assets resulting from criminal acts (Asep N. Mulyana, 2018: 195-196).

In handling the crime of money laundering at the trial, the obligation to prove that assets are not the proceeds of a crime is the defendant's obligation based on articles 77 and 78, if the defendant cannot prove that the assets that have been confiscated are not the proceeds of a crime then the assets are classified as acquired assets. or is related to a criminal act so that referring to Article 39 of the Criminal Code, confiscation can be carried out. The criminal law policy regarding asset confiscation in Law No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering based on Article 7, Article 77, Article 78, Article 79 places confiscation of assets as an additional crime or confiscation of assets based on the defendant's fault, also known as asset-based conviction. forfeiture. In Law no. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, the act of confiscation of assets apart from through criminal confiscation mechanisms can also be carried out through civil confiscation mechanisms (non-conviction bases asset forfeiture / NCB asset forfeiture) based on article 67 which states that assets allegedly originate from the crime after being handled by investigators, it turns out that within 30 (thirty) days the perpetrator of the crime is not found, the investigator can submit a request to the district court to decide that the assets are state assets or returned to the rightful person.

5. Law enforcement of asset confiscation in cases of criminal acts of corruption (gratification) and money laundering An. suspect Tri Nugraha, SH whose case was stopped by law.

Position Case

The former Head of the Denpasar City and Badung Regency Land Office, Tri Nugraha, SH, allegedly received gratuities in the form of Rp. 5,465,000,000 as thanks for his services. This gift consists of several transactions, such as the issuance of a property rights certificate amounting to Rp. 300,000,000,-, acceleration of certificate issuance amounting to Rp. 3,025,000,000,-, purchase of land and buildings amounting to Rp. 350,000,000,-, land purchase and certificate issuance amounting to Rp. 800,000,000,-, purchase of land in the Imam Bonjol area for Rp. 790,000,000,-, and certificate processing amounting to Rp. 200,000,000,-. Apart from that, Tri Nugraha is also suspected of receiving gratuities amounting to Rp. 60,140,464,812,- in several bank accounts in his own name or other people under his control. These accounts include BCA Accounts with a total of Rp. 10,741,943,662,-, Bank Mandiri Accounts with a total of Rp. 1,106,000,000,-, West Java BJB Bank Accounts with a total of Rp. 1,180,000,000,-, Accounts BCA in the name of ER with a total of IDR 5,229,590,000,-, BJB Bank Account in the name of A. A. IDS with a total of IDR 22,075,390,292,-, and BJB Bank Account in the name of KOT with a total of IDR 19,807,540,858,- . Tri Nugraha is suspected of using the gratification money to buy insurance policies, foreign currency, foreign currency deposits, motor vehicles, plots of land, and build buildings such as houses, shop houses, villas and bale bengong. The suspect did not report his receipt of gratuities and acquisition of assets to the Corruption Eradication Commission (KPK) and did not report them in the LHKPN for the period 2008 to 2018, with the aim of hiding or disguising his assets which were allegedly obtained from the proceeds of criminal acts of corruption.

Objects or assets belonging to the suspect that have been confiscated

Bali High Prosecutor's Office investigators have confiscated several items and assets, based on a determination from the Chairman of the Corruption Crime Court at the Denpasar District Court and Bandung District Court. The items confiscated included a white Mazda car, a brown Jeep Wrangler, a green Kawasaki motorbike, a red and white Husqvarna motorbike, a land title book, a building use rights certificate, a red Ducati Monster car, a Kawasaki motorbike. The KZ1000 Police is white, the Mitsubishi Exceed is black, the Jeep is army green, the Morris Mini is turquoise, the Jeep is green, the Mercedes Benz truck is green, and the Leyland truck is green. Apart from that, there is also land owned with a certificate of ownership in the names of Tri Nugraha and WI, with a certain area and date of acquisition. Also confiscated were boarding houses, bale bengong, 3-story shophouses, houses on owned land, and villas. These items were confiscated from Tri Nugraha.

The alleged article

First: Article 12B paragraph (1) letter a of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes, OR Second: Article 11 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law no. 20 of 2001 concerning amendments to Law no. 31 of 1999 concerning the eradication of criminal acts of corruption. Second: Article 3 paragraph (1) of Law number 15 of 2002 concerning the Crime of Money Laundering as amended by Law number 25 of 2003 concerning Law number 15 of 2002 concerning the Crime of Money Laundering. Third: Article 3 of Law no. 8 of 2010 concerning the prevention and eradication of the crime of money laundering.

Investigation stopped because the suspect died

Pada tahap penyidikan di Kejaksaan Tinggi Bali tersangka Tri Nugraha ditetapkan sebagai tersangka tindak pidana korupsi gratifikasi dan tindak pidana pencucian uang (TPPU), namun pada tanggal 1 September 2020 tersangka Tri Nugraha meninggal dunia sehingga berdasarkan ketentuan pasal 77 KUHP kewenangan untuk melakukan penuntutan terhadap diri tersangka menjadi hapus, oleh karena itu penyidik pada Kejaksaan Tinggi Bali telah menerbitkan Surat Perintah Penghentian Penyidikan (SP3), yaitu : Nomor : 02/N.1/Fd.1/11/2020 tanggal 2 Nopember 2020 dalam perkara dugaan tindak pidana korupsi gratifikasi kepada Pegawai Negeri/Penyelenggara Negara pada Kantor Pertanahan Kota Denpasar dan Kabupaten Badung atas nama tersangka Tri Nugraha; dan Nomor : 03/N.1/Fd.1/11/2020 tanggal 2 Nopember 2020 dalam perkara dugaan tindak pidana pencucian uang atas tindak pidana asal yakni korupsi gratifikasi kepada Pegawai Negeri/Penyelenggara Negara pada Kantor Pertanahan Kota Denpasar dan Kabupaten Badung atas nama tersangka Tri Nugraha.

Penetapan status Aset/Benda Sitaan

Regarding objects or assets that have been confiscated by the Investigating Team in this case, the Head of the Bali High Prosecutor's Office has issued a Determination Letter on the Status of Confiscated Goods Number: B-3882/N.1/Fd.3/12/2020 dated 10 December 2020 which determines that the goods The confiscations in the alleged corruption case involving gratification and the money laundering crime case in the name of the suspect Tri Nugraha were confiscated for the state.

The auction process for confiscated objects/assets cannot be carried out

Furthermore, the Bali High Prosecutor's Office submitted a request for an assessment of confiscated goods on behalf of the suspect Tri Nugraha, SH to the Denpasar State Property and Auction Service Office (KPKNL), but based on this request letter the Head of the Denpasar State Property and Auction Service Office (KPKNL) issued letter number: S -2624/WKN.14/KNL.01/2021 dated 11 June 2021 addressed to the Head of the Bali High Prosecutor's Office, one of the points of which explains as follows:

"In the application it is stated that the object is confiscated goods, but in the attachment to the application letter there is no court decision stating that the object is confiscated goods, in the attachment to the letter there is only a copy of the Determination Letter on the Status of Confiscated Goods number: B-3882/N.1/Fd.3 /12/2020 dated 10 December 2020 dated 12 December 2020. In order to ensure the category of the object of assessment as confiscated goods so that a Verdict on Confiscated Goods can be attached."

With the publication of the letter from the Head of the Denpasar State Assets and Auction Services Office, the Bali High Prosecutor's Office has not been able to auction off confiscated assets/objects in the case of alleged corruption in gratification and money laundering in the name of suspect Tri Nugraha, SH.

B. Criminal Policy for Confiscation of Assets Proceeding from Crimes of Gratification, the Case of which is Discontinued for the sake of Ideal Law in the Future.

1. Confiscation of assets according to justice theory and law enforcement theory.

Law has a fundamental position in a country's system, so it can be said that the stability of a country can be measured by the quality of the system and the application of the laws that apply to that country. According to O. Notohamidjojo, law is the first and main capital in organizing the social life of society (O. Notohamidjojo, 1975: 15). Basically, law is closely related to the nature of humanity. Theo Hujbers emphasized that the presence of law is a good rule of life that is prepared rationally and morally by relying on human rights (Theo Hujbers, 1990: 1). However, a new law will be useful and can be implemented if it has been confirmed by a country.

The concept of the rule of law in continental Europe, known as rechtsstaat, was developed by Immanuel Kant by giving it the meaning of nachtwachyter staats (night watchman state) whose main task is to ensure order and security in society (H. Muhammad Tahir Azhary, 2003: 89). In its development, the concept of nachtwachyter staats has benefited the entrepreneurial community and capital owners who control the economy. This is because the state does not interfere at all in economic affairs, so that the widest opportunities are open for the bourgeoisie and capital owners to control economic resources. As a result, many parties are of the view that the concept of nachtwachyter staats has failed to improve the welfare of the people, because only the bourgeoisie is getting richer while the proletariat, which is larger in number, lives in deprivation and poverty, giving rise to a world economic crisis at the beginning of the 20th century (Muhammad Yusuf, 2013: 39-41).

The failure of the state to achieve people's welfare has resulted in the concept of a welfare state, which is responsible not only for state security but also for the welfare of society. The state's tasks are increasingly complex, covering political, economic, cultural and social aspects. The concept of a social legal state involves the state in administering the national economy, sharing services, mediating disputes, and various other areas of life. The state must expand its responsibility for social problems facing society, including intervention in social and economic problems to create shared prosperity. The rule of law also includes the protection of human rights in the constitution. The principle of the rule of law is a political system in which the state is responsible for the welfare of its citizens, providing a minimum standard of living, protecting against poverty, disease and social impoverishment. Corruption is the cause of poverty and social instability which is contrary to the principles of justice. Eliminating social inequality benefits everyone. The government is responsible for achieving social justice and eradicating corruption. The crime of corruption allows the government to return assets obtained illegally. Confiscation of corrupt assets is a form of justice carried out by the government. Poverty alleviation efforts include reducing losses due to corruption. Asset recovery is a legal process in which the state destroys, confiscates and confiscates the assets of corruptors. This is done to restore lost public funds and prevent criminals from using the proceeds of their crimes (Purwaningrum M. Yanuar, 2015: 56).

2. Confiscation of Assets Without a Criminal Process (Non Conviction Based Asset Forfeiture) based on the Draft Law on Confiscation of Assets Related to Criminal Acts.

The substance of statutory regulations for criminal acts of corruption plays an important role in law enforcement for criminal acts of corruption. Weaknesses in these substances can hinder law enforcement, such as lack of clear regulations, overlapping regulations, and contradictions. In Indonesia, when a suspect dies, the asset confiscation process cannot continue even if the suspect's assets are suspected to be proceeds of crime. This is due to the absence of regulations regarding the mechanism for confiscating assets belonging to suspects in corruption cases. An example is the Tri Nugraha case in Bali. The United Nations (UN) has established several conventions and recommendations related to criminal law enforcement, including regulations regarding tracing, confiscation and confiscation of proceeds and instruments of criminal acts, as well as international cooperation in returning the proceeds and instruments of criminal acts between countries (Muhammad Yusuf, 2013 :39-41).

Indonesia has ratified the United Nations Convention Against Corruption (UNCAC) through Law No. 7 of 2006 which ratifies UNCAC. This ratification requires the Indonesian government to adapt existing legislation to the convention, including regarding civil lawsuits or confiscation of assets resulting from criminal acts of corruption. The government has formed a Draft Law (RUU) concerning Confiscation of Assets Related to Criminal Acts to regulate the confiscation of these assets.

Article 54 Paragraph (1) letter c UNCAC regulates confiscation of assets without a criminal conviction in certain cases such as perpetrators who cannot be prosecuted due to death, flight or absence. The Bill on asset confiscation adopts this provision in Article 5 Paragraph (1), (2), and Article 7 which regulates cases where asset confiscation is carried out, such as perpetrators who have died, run away, cannot be tried, or defendants who have been convicted but there are still criminal assets that have not been confiscated.

The bill on asset confiscation also regulates the types of assets that can be confiscated, including assets resulting from criminal acts, assets used to commit criminal acts, assets that are disproportionate to legitimate income, and assets that are items found from criminal acts. This bill also regulates the mechanism for confiscation of assets, including tracing, blocking, confiscation, filing, examination in court, and asset management (Muhammad Yusuf, 2013: 39-41).

This draft law is still waiting for approval from the President and DPR RI to become law. In law enforcement practices, investigators can use the mechanisms regulated in Supreme Court Regulation No. 1 of 2013 concerning Handling of Assets in Money Laundering or Other Crimes, which also adheres to the concept of confiscation of assets without being based on a criminal verdict. However, implementing this mechanism is not easy because it requires strong legal arguments and a progressive legal paradigm from investigators, prosecutors and judges.

With the existence of an asset confiscation mechanism, it is hoped that efforts to recover assets to recover state losses due to corruption can be maximized. Even though this bill has not yet been passed, it is hoped that the legal approach as regulations and court decisions can be a solution to the problem of asset confiscation in corruption cases. Judges are expected to prioritize legal values and a sense of justice in deciding on asset confiscation (Muhammad Yusuf, 2013:39-41).

CONCLUSIONS

The current policy of confiscation of assets in criminal acts of gratification which is stopped by law is based on Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes in conjunction with Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering and the Criminal Code. This regulation stipulates confiscation of assets as an additional crime that must be related to the main crime. The concept of confiscation of assets due to the defendant's mistakes is called conviction-based asset forfeiture. Apart from that, the asset confiscation mechanism is also regulated by a civil mechanism with the concept of Non-Conviction Based Asset Forfeiture. However, there are no regulations governing the mechanism for confiscation of assets in cases of gratification which are stopped by law, causing problems in law enforcement. In the future, the Asset Confiscation Bill will regulate mechanisms for confiscation of assets in special cases such as suspects who have died, run away, are permanently ill, or whose whereabouts are unknown.

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