



Legal Politics in the Formation of the Asset Forfeiture Bill and the Application of Check and Balance in the Management of Criminal Assets

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Abstract— *This article reviews the importance of a chain of validity in the legal system that supports the division of power in implementing a good governance system. Issues arise when the bill states that the executor of the Asset Forfeiture Bill is appointed asset manager. At the same time, the basic rules of criminal procedure in Indonesia stipulate that the state-confiscated object house (Rupbasan) is an agency with the authority to manage confiscated objects. The study will be carried out using doctrinal legal research methods. The conceptual and statutory approaches are the basis for looking at possible legal inconsistencies and their impact on the process of administering the government system. The eight principles of legality have shown that in a legal rule there should be no conflicting rules. This condition will be the basis argument that shows the importance of consistency of legal rules in creating a solid state. The results of the study show that there is a discrepancy between the basic regulation of criminal law procedures with this bill because starting from proof, prosecution, implementation of judges' decisions, and even asset management in this draft law is handled by one institution, namely the prosecutor's office so that it can result in abuse of power. For this reason, the legal politics of the Asset Forfeiture Bill needs to be studied in the context of the effectiveness of the implementation of the bill and the implementation of the principle of checks and balances in managing its assets.*

Keywords— *Asset Forfeiture; Asset management; Check and Balances*

I. INTRODUCTION

Corruption is violating the law that results in material losses experienced by the state. For this reason, the Government has set up a mechanism for confiscating assets obtained from criminal acts of corruption to recover lost state assets. The implementation of this procedure is regulated explicitly through the provisions in the Criminal Procedure Code.[1] In its development, the mechanism for confiscating assets obtained in violation of the law was deemed unable to fulfill the philosophical objectives of the process. Inefficiency arises due to several causal factors. First, the management of the goods and the management of the looted goods are held by different agencies. This condition then limits property managers from submitting management plans for confiscated goods. Based on current conditions, the property administrator can only provide management proposals. In this case, the Corruption Eradication Committee, the Prosecutor's Office, and the Judiciary are the agencies authorized to handle the goods. This problem arises because of a second condition, which shows a legal basis for the property manager's authority.

Referring to the provisions in the Criminal Procedure Code and the State Treasury Law and Government Regulations regarding the management of state property, the Prosecutor's Office only has the authority to act as the executor of confiscated assets. The basis for the authority to submit management proposals for confiscated

assets considered part of State Property (BMN) comes from the interpretation of BMN management given to property managers, property users, and property users' proxies. Third, another problem also arises from the unclear boundaries of interpretation of the authority of state institutions in managing confiscated assets, which are then recorded as part of the Corruption Eradication Committee/Attorney General's Power of Attorney User Report. This problem arises because looted assets should not be reported as part of the assets used to support the agency's work. However, the need for an appropriate reporting mechanism has made this reporting model one of the available alternative solutions.

Apart from the problems arising from weak juridical boundaries that explain the mechanism for managing the looted assets, other problems also arise from a material perspective. Philosophically, the mechanism for confiscating assets obtained from the proceeds of criminal acts should be used to recover state losses arising from legal violations. However, in practice, the asset confiscation mechanism currently carried out using the principle of conviction-based asset forfeiture has placed a budgetary burden on the state to manage these assets until the court decision is permanent.[2] Moreover, the length of the trial process also allows for asset management costs to increase, which further burdens state finances. On the other hand, the process of waiting for the court decision also causes a decrease in the quality and value of the assets that have been confiscated. If we refer to these problems, it is clear that a legal reform needs to be made to strengthen the juridical basis of the asset confiscation process.

Due to these concerns, the Government began to launch a discourse to create a bill on confiscating assets related to criminal acts. Even though it has been discussed for twenty years or four government periods, the bill has yet to be discussed. The Asset Forfeiture Bill has been included as a Medium Term Bill (2020 to 2024) in DPR Decision Number 1/DPR RI/IV/2020-2021 at serial number 137. He will be proposed by the Government to be agreed upon as a Priority Bill for 2022. However, until now, the bill has yet to be decided. The following is a brief flow and, in general, the discussion of the Asset Forfeiture Bill.

The discussion regarding the asset confiscation bill is a legal reform expected to strengthen the juridical basis and resolve material issues relating to managing confiscated assets. However, in reality, this discussion also raises controversy and new problems. This condition arises because Article 50 states that the prosecutor can manage assets based on professional principles, legal certainty, openness, efficiency, and accountability. It is further explained that this management process is carried out by storing, securing, maintaining, assessing, transferring, using, exploiting, and returning criminal assets. This provision is seen as a solution to the juridical problem, which so far has yet to provide a legal basis for the prosecutor's office to manage confiscated assets.

New legal issues then arise from these problems. However, there should be consistency in a legal system so there are no conflicting rules. This concept was put forward by Lon Fuller,[3] who emphasized the eight principles of legality. One of the basic principles that must guide the government in formulating legal rules must at least be guided by the fact that consistency in a legal system is essential. This consistency shows no conflicting rules between one rule and another. For this reason, this article aims to see how consistent the government is in managing confiscated assets, as outlined in the asset confiscation bill.

In the final draft of the draft law, it is stated that the prosecution agency is the institution that carries out asset management with the consideration of having juridical responsibility. In contrast, the basic rules of criminal procedure law stipulate that the asset storage institution is an agency that has the authority comparable with the Criminal Procedure Code to implement a "check and balance" mechanism through the principle of neutrality and the principle of separation of functions in the implementation of law enforcement, protection of human rights and rescue of proceeds of criminal acts. In the regulation confiscation of criminal proceeds, the management of collateral assets and the implementation of prosecution and the evidentiary process are handled by one institution, which results in abuse of power. The truth about control, division, and authority of checks and balances is applied in the legal handling of the management of stolen assets by ensuring that the power and authority in the management of stolen assets are not centralized in one party or institution but are distributed in a balanced and fair manner. So that in its implementation, it will not cause polemics and new problems.

II. LITERATURE REVIEW

An excellent legal rule must be formulated based on the principles of legal formation. Fuller became one of the philosophers who then provided a fairly significant description of what factors the government needed to consider when formulating a policy.[4] If the government cannot accommodate one of the aspects required in these principles, then this could trigger failure in the implementation process of the law. To explain the importance of guidelines in forming legal rules, Fuller illustrates the famous King Rex, who wanted to reform the law as a form of concern for the chaotic condition of the country.[5] According to him, unfavorable conditions in society result from inadequate legal regulations. For this reason, after taking the throne, King Rex immediately overhauled all existing legal regulations in the country. He demonstrated this seriousness by being the person who directly created new legal rules.

Even though King Rex's actions were carried out with good intentions, this policy must have worked according to his wishes. The country's condition became unstable because of King Rex's changing policies, so people needed to figure out precisely what they should do and avoid. From this illustration, Fuller emphasized the importance of the eight principles of legality as a means to guide legislators in forming laws and regulations. At

least the eight principles explained by Fuller include the following[6]: First, the government must make general legal rules. Second, the government must promulgate the legal regulations it makes as a form of publication to the public so that they can be known and obeyed. Third, the government must formulate regulations that are prospective or regulate something in the future. Fourth, the formulation of legal rules must clarify the boundaries of actions permitted and not permitted by the government. Fifth, legal provisions must not require something contradictory. In other words, coherence in the legal system is essential to ensure that the rules can be appropriately implemented.

Sixth, the government must only require something possible. Seventh, the government must form established rules so that the consistency of the rules can be maintained because they do not change. Eighth, the government must ensure that the material promulgated is by its law enforcement processes. Based on these provisions, the government must specifically pay attention to the process of forming legal rules so that the implementation of legal rules can run well. Specifically, in this study, the fifth aspect, which requires that the government make regulations that are not contradictory, and the seventh aspect, which discusses the consistency of legal rules, are essential guidelines in forming legal rules, especially the Asset Forfeiture Bill. These two aspects are essential in ensuring that the laws created by the government will last for a long time and comply with the validity chain of those who created them. These two aspects were chosen, considering the authority to manage confiscated criminal goods is still unclear. Meanwhile, the government's draft of the Asset Forfeiture Bill also caused controversy because it gave the prosecutor's office the authority to manage these assets.

III. METHOD

This article was created using a type of doctrinal legal research[7]. Conceptual and statutory approaches are the basis of reference in this paper.[8] The principles of legality are specifically a concept used to examine critical aspects that the government must consider in formulating the Asset Forfeiture Bill. This concept was chosen because it can show essential points in the policy formulation process so that the rules can be implemented well. In addition, the basis for applying these indicators is necessary to ensure that the regulations regarding the confiscation of assets resulting from criminal acts that have been in force do not contradict each other and can work in tandem. This conceptual approach was also strengthened by the legislative approach model chosen in this study. A legislative approach is fundamental to ensure that regulation-making has an appropriate validity chain to guarantee the validity of the Law. The results of the analysis will be presented in descriptive form.[9] The analysis technique chosen in this study is the deductive analysis method.[10]

IV. DISCUSSIONS AND RESULTS

The implementation of the government system in a country will be based on a model of state administration that is recognized and applies legally. In choosing this model, there is a consequence that the distribution of authority to run the government system will also be significantly affected. In this case, under the Constitution in force in Indonesia, the implementation of the government system is based on a presidential system.[11] This system also recognizes the existence of political parties that support the democratic process, which takes place every five years. Even though they are not state institutions, political parties have a central role in determining the policy direction chosen by the government. This cannot be separated from the fact that political parties are vehicles needed by public officials who have a strategic role in implementing the government system in Indonesia. The President and Vice President are public officials within the executive power elected with political party support. Apart from that, there are also DPR members who come from political parties and have a strategic role in forming laws.[12]

Even though the officials who fill the executive and legislative powers are part of political parties in carrying out their duties and obligations, they are subject to the provisions of the applicable laws and regulations. According to the authority theory, every public official will be equipped with formal power granted by statutory regulations. This provision then becomes a barrier for political parties to be able to influence the direction and policies taken by the government. Limiting the authority and power possessed by state administrators is important in ensuring that their duties and functions can run well. As expressed by Montesquieu,[13] *trias politica* ensures the operation of checks and balances mechanisms within the government. The government then adopted this concept in the procedures for establishing laws. After the amendments to the 1945 Constitution were implemented, the legislative power had a central role in forming laws. However, on the other hand, the President, as the executive power, still has the right to submit proposed bills which the DPR must discuss. Apart from that, the Constitution also mandates that the promulgation of laws made by the DPR is carried out jointly with the President. This way, a legal system that can operate optimally to support government development policies will be formed.

Specifically, this study then wants to examine the drafting of the Asset Forfeiture Bill. The urgency of the process of confiscating assets resulting from criminal acts has been explained in the previous sub-chapter. From this presentation, it can be seen that confiscation of assets obtained from criminal acts still originates from various legal regulations, such as the Criminal Procedure Code, the State Treasury Law, and Government Regulations governing the management of BMN. Even though no law explicitly regulates the management of confiscated assets, this provision is already in effect based on these laws and regulations. The statutory regulations regarding

the management of confiscated assets as part of BMN explain that the authority to manage confiscated objects lies with the Confiscated Objects Storage House (Rupbasan),[14] which the Ministry of Law and Human Rights manages. This decision was based on the consideration that the government needed to implement an asset management system to recover state losses in a neutral manner and uphold human rights values.

However, problems arise when the legal basis for managing these assets has not been clarified. The confiscated goods that should have been entrusted to Rupbasan were then handled mainly by the Corruption Eradication Committee, the Prosecutor's Office, and the Judiciary as administrators of the goods.[15] Checks and balances in asset management are an important element in realizing the legal ideals of the Asset Forfeiture Bill. So, good control supervision is needed so that there is no abuse of power, and the most important thing is that the state can take effective benefits from the issuance of a regulation. The balance of authority also has a positive impact on public trust.

According to the basic rules of criminal procedure, asset management is carried out by Rupbasan to create a check and balance mechanism. Meanwhile, the prosecutor's office investigates, prosecutes, and implements judges' decisions. However, in the Forfeiture Bill, it is also appointed as an asset manager, which includes storage, security, and asset management. This factor also makes time for the government to draft the Asset Forfeiture Bill related to how seized assets are stored and managed by whom. At that time, there were three alternatives. From the academic paper, consideration was given to the advantages and disadvantages of each institution between forming a new institution or establishing one of the three institutions between the Ministry of Finance, the Attorney General's Office, or the Ministry of Law and Human Rights (Rupbasan).[16]

Then, it was decided to appoint the Attorney General's Office, considering that Rupbasan in Indonesia needed to be improved. According to the author, this is less objective from the point of view of the fundamental criminal procedure law and has deviated far from the purpose of checks and balances. In Indonesia, there are 64 Rupbasan Offices spread throughout the country. In implementation, many Rupbasan in storage are not adequate. However, most of the assets deposited are stalled assets, where the handling is only waiting for the authority of the Prosecutor's Office itself, which needs to be faster in streamlining its completion.

Let us refer to the fifth aspect of the eight principles of legality. In that case, the draft of Asset Forfeiture Bill will create a condition that will cause differences in the principles used to manage confiscated assets. As explained previously, the Rupbasan, managed by the Ministry of Law and Human Rights, was created to ensure the implementation of legal procedures that still uphold ownership values and human rights. Apart from that, it is hoped that the management carried out by Rupbasan will better reflect the neutrality of state administrators. Suppose the bill is intended to increase the efficiency of managing confiscated goods so that it is under the philosophy of making these regulations. In that case, the government should focus more on changing the authority pattern of property managers so that they can provide more helpful management suggestions.

Meanwhile, let us look at the consistency aspect of the drafted bill. The discussion of the Asset Forfeiture Bill, which has been going on for more than twenty years, should formulate a concept for managing confiscated goods that is considered carefully. This needs special attention because, according to Fuller, legal rules must apply for an extended period and stay the same. For this reason, it is appropriate that the government's considerations in determining the authorized agency to manage the looted goods will last longer than the manufacturing process.

V. CONCLUSION

Analyzing the academic paper issued for consideration of the Draft Bill on Asset Forfeiture, here the author concludes that the executive has been urged by the highest leadership, namely the President, to complete the Asset Forfeiture Bill so that the discussion regarding the appointment of asset managers does not consider the element of institutional checks and balances in asset management and see the facts of the implementation of the duties of the prosecutor's office and Rupbasan in the regions. This research recommends: (a) The government harmonizes and synchronizes the problematic legal substance of criminal asset management by continuing to apply the Basic Rules of Criminal Procedure with a mechanism that is harmonized in chapter management of the asset forfeiture Bill that Rupbasan is not only with the sentence "can" but replaced with "together" So that in its implementation a check and balance is created starting from the assessment of the interpretation of assets and culminating in being appointed but as a storage and management function, which includes administrative and physical scope which is regulated in more detail in the technical guidelines involving three institutions related to confiscated goods and effectively integrated; (b) The government, with the national legislation team, immediately finalizes the Law on asset forfeiture; (c) building a proportional and professional legal culture by applying the principle of functional deferential principles; (d) Legal and political policies are based on checks and balances.

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