

ABSTRAK

KAJIAN KEBIJAKAN HUKUM PIDANA TERHADAP PEMULIHAN ASETTINDAK PIDANA KORUPSI MELALUI MEKANISME TANPA PEMIDANAAN

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Pendekatan konvensional yang mengandalkan sistem pidana sebagai instrumen utama pemberantasan korupsi menunjukkan keterbatasan dalam hal pemulihan aset hasil korupsi. Meskipun KPK dan Kejaksaan telah berhasil memulihkan aset senilai triliunan rupiah pada periode 2020-2024, nilai yang berhasil dikembalikan masih jauh dari total kerugian negara akibat korupsi. Maka dari itu penulis akan menganalisis terkait bagaimanakah kajian kebijakan hukum pidana terhadap pemulihan aset tindak pidana korupsi melalui mekanisme tanpa pidana dan apakah urgensi pembaharuan terhadap pemulihan aset tindak pidana korupsi melalui mekanisme tanpa pidana.

Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Data sekunder diperoleh dari bahan hukum primer berupa peraturan perundang-undangan terkait pemberantasan korupsi, bahan hukum sekunder dari literatur, jurnal, dan Naskah Akademik RUU Perampasan Aset, serta bahan hukum tersier. Pengumpulan data dilakukan melalui studi kepustakaan dan wawancara dengan narasumber dari dosen akademisi hukum pidana Fakultas Hukum Universitas Lampung dan Jaksa Fungsional pada bidang Tindak Pidana Khusus pada Kejaksaan Tinggi Lampung. Data yang terkumpul dianalisis secara deskriptif kualitatif dengan menggunakan kerangka teori politik hukum pidana dan teori pembaharuan hukum pidana.

Hasil penelitian menunjukkan bahwa kajian kebijakan hukum pidana terhadap pemulihan aset tindak pidana korupsi melalui mekanisme tanpa pidana perlu mengalami pergeseran paradigma dari "*follow the suspect*" menjadi "*follow the asset*". Melalui tiga tahap kebijakan yaitu tahap formulasi yang merupakan tahapan awal perumusan atau pembentukan suatu peraturan perundang-undangan yang mengenai mekanisme tanpa pidana atau *non-conviction based asset forfeiture*, dilanjutkan tahap aplikasi sebagai tahapan penerapan norma atau penerapan peraturan yang dilaksanakan oleh para aparat penegak hukum mulai dari pemetaan aset sampai dengan pemblokiran aset yang diduga hasil tindak pidana korupsi, dan tahapan terakhir yaitu eksekusi sebagai tahapan pelaksanaan dari keputusan pengadilan berupa pemulihan aset kembali ke kas negara. Urgensi pembaharuan hukum terhadap pemulihan aset melalui mekanisme tanpa pidana didasarkan

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pada landasan filosofis yang sejalan dengan tujuan negara menciptakan kesejahteraan rakyat, landasan sosiologis yang merespons kompleksitas kejahatan korupsi semakin modern dan lintas negara, dan landasan yuridis yang berpijak pada ratifikasi UNCAC serta berbagai peraturan perundang-undangan nasional yang mengamankan perlindungan keuangan negara.

Penelitian ini menyarankan agar pembentuk undang-undang segera menyelesaikan RUU Perampasan Aset dengan mempertimbangkan landasan filosofis, sosiologis, dan yuridis yang kuat, lembaga penegak hukum membangun persamaan persepsi dalam implementasi mekanisme ini, agar tercipta modernisasi hukum yang berlandaskan keadilan dan prinsip hak asasi manusia. Penguatan aturan, kelembagaan, dan kapasitas sumber daya manusia di semua tahap kebijakan akan menentukan keberhasilan Indonesia memanfaatkan mekanisme *non-conviction based asset forfeiture*, secara maksimal dalam pemberantasan korupsi dan pemulihan kerugian keuangan negara.

Kata Kunci: Kebijakan Hukum Pidana, *Non-Conviction Based Asset Forfeiture*, Tindak Pidana Korupsi

ABSTRACT

**CRIMINAL LAW POLICY STUDY ON ASSET RECOVERY OF
CORRUPTION CRIMES THROUGH NON-CONVICTION
BASED MECHANISMS**

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The conventional approach, which relies on the criminal justice system as the primary instrument for eradicating corruption, has demonstrated limitations in recovering assets from corruption. Although the Corruption Eradication Commission (KPK) and the Attorney General's Office (AGO) have successfully recovered trillions of rupiah in assets between 2020 and 2024, the recovered value still falls far short of the total state losses due to corruption. Therefore, the author will analyze how criminal law policy examines the recovery of assets from corruption through non-criminal mechanisms and the urgency of reforming the recovery of assets from corruption through non-criminal mechanisms.

This research employs a normative juridical method with statutory and conceptual approaches. Secondary data was obtained from primary legal materials in the form of legislation related to corruption eradication, secondary legal materials from literature, journals, and the Academic Draft of the Asset Forfeiture Bill, as well as tertiary legal materials. Data collection was conducted through literature study and interviews with sources from criminal law academic lecturers at the Faculty of Law, University of Lampung, and Functional Prosecutors in the Special Crimes Division at the Lampung High Prosecutor's Office. The collected data was analyzed using qualitative descriptive methods within the theoretical framework of criminal law policy and criminal law reform theory.

The results of the study indicate that the study of criminal law policy on the recovery of assets from corruption crimes through non-punitive mechanisms needs to undergo a paradigm shift from "follow the suspect" to "follow the asset". Through three policy stages, namely the formulation stage which is the initial stage of formulating or forming a law and regulation regarding the non-punitive mechanism or non-conviction based asset forfeiture, followed by the application stage as the stage of implementing norms or implementing regulations implemented by law enforcement officials starting from asset mapping to blocking assets suspected of being the result of corruption, and the final stage is execution as the stage of implementing court decisions in the form of recovering assets back to the state treasury. The urgency of legal reform on asset recovery through non-punitive mechanisms is based on a philosophical foundation that is in line with the state's goal of creating public welfare, a sociological foundation that responds to the

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complexity of increasingly modern and transnational corruption crimes, and a juridical foundation that is based on the ratification of the UNCAC and various national laws and regulations that mandate the protection of state finances.

This study recommends that lawmakers immediately finalize the Asset Forfeiture Bill by considering strong philosophical, sociological, and legal foundations, and that law enforcement agencies establish a common understanding in implementing this mechanism, in order to create legal modernization based on human justice and human rights principles. Strengthening regulations, institutions, and human resource capacity at all policy stages will determine Indonesia's success in maximizing the use of the non-conviction based asset forfeiture mechanism in eradicating corruption and recovering state financial losses.

Keywords: Criminal Law Policy, Non-Conviction Based Asset Forfeiture, Criminal Act of Corruption