URGENCY OF REFORM ASSET FORFEITURE MODEL OF NARCOTICS CRIME IN INVESTIGATION

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\textbf{ABSTRACT}

\textbf{Purpose:} The Narcotics Law as a foundation in law enforcement to eradicate illicit drug trafficking, is not effective enough in tackling narcotics crime, because the legal paradigm adopted in the narcotics law is oriented towards imprisoning the perpetrator (follow the suspect), while the assets resulting from narcotics crimes continue to be used for narcotics trafficking and distribution. The problem is what is the urgency of renewing the model of asset forfeiture from narcotics crimes? What is the ideal model of asset forfeiture from narcotics crimes?

\textbf{Design/Methodology/Approach:} The research method used is a normative approach and empirical approach sourced from primary data and secondary data. Primary data is obtained by means of field studies and interviews while secondary data is obtained by means of literature studies. The data that has been collected is analyzed qualitatively.

\textbf{Findings:} The urgency of updating the model of seizure of assets resulting from narcotics crimes must receive attention in criminal law policy, this is because the current mechanism is not adequate and even tends to use assets as an instrument of illicit drug trafficking, which should be maximized for the rehabilitation of drug addicts and abusers. The future model of asset forfeiture in relation to the renewal of the investigation for asset forfeiture of narcotics crimes is a model of asset forfeiture without punishment. This model is known as in rem forfeiture, or also known as civil forfeiture, and NCB asset forfeiture. The NCB model is essentially a suit brought against assets, not against persons. The action is separate from the criminal court, but only determines that the assets have been tainted by the criminal offense.

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URGÊNCIA DA REFORMA DO MODELO DE PERDA DE ATIVOS DE CRIMES DE ESTUPEFACIENTES NA INVESTIGAÇÃO

\textbf{RESUMO}

\textbf{Finalidade:} A Lei de Entorpecentes como base para a aplicação da lei para erradicar o tráfico de drogas ilícitas, não é suficientemente eficaz no combate ao crime de entorpecentes, porque o paradigma legal adotado na lei de entorpecentes é orientado para a prisão do autor (siga o suspeito), enquanto os ativos resultantes de crimes de entorpecentes continuam a ser usados para o tráfico e distribuição de entorpecentes. O problema é qual é a urgência de renovar o modelo de confisco de bens de crimes de narcóticos? Qual é o modelo ideal de confisco de bens de crimes de narcóticos?

\textbf{Projeto/Metodologia/Abordagem:} O método de pesquisa utilizado é uma abordagem normativa e empírica baseada em dados primários e secundários. Os dados primários são obtidos por meio de estudos de campo e entrevistas, enquanto os dados secundários são obtidos por meio de estudos de literatura. Os dados coletados são analisados qualitativamente.

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**Constatações:** A urgência de atualizar o modelo de apreensão de bens resultantes de crimes de narcóticos deve receber atenção na política de direito penal, pois o mecanismo atual não é adequado e até tende a usar bens como instrumento de tráfico ilícito de drogas, que deve ser maximizado para a reabilitação de toxicodependentes e abusadores. O futuro modelo de confisco de ativos em relação à renovação da investigação de confisco de ativos de crimes de narcóticos é um modelo de confisco de ativos sem punição. Este modelo é conhecido como perda real, ou também conhecido como perda civil, e perda de ativos dos BCN. O modelo de BCN é essencialmente uma ação intentada contra ativos, não contra pessoas. A ação é distinta do tribunal penal, mas apenas determina que os bens foram manchados pela infração penal.

**Palavras-chave:** Perda de Bens, Narcóticos, Sem Condenação.

**URGENCIA DE LA REFORMA DEL MODELO DE DECOMISO DE ACTIVOS DEL DELITO DE ESTUPEFACIENTES EN INVESTIGACIÓN**

**RESUMEN**

**Finalidad:** La Ley de Estupefacentes, como fundamento de la aplicación de la ley para erradicar el tráfico ilícito de drogas, no es lo suficientemente eficaz en la lucha contra el delito de estupefacentes, porque el paradigma jurídico adoptado en la ley de estupefacentes está orientado a encarcelar al autor (seguir al sospechoso), mientras que los activos resultantes de los delitos de estupefacentes siguen utilizándose para el tráfico y la distribución de estupefacentes. El problema es ¿qué es la urgencia de renovar el modelo de confiscación de activos de los delitos relacionados con los estupefacentes? ¿Qué es el modelo ideal de confiscación de activos de los delitos relacionados con los estupefacentes?

**Diseño/Metodología/Enfoque:** El método de investigación utilizado es un enfoque normativo y un enfoque empírico basado en datos primarios y datos secundarios. Los datos primarios se obtienen mediante estudios de campo y entrevistas, mientras que los datos secundarios se obtienen mediante estudios de literatura. Los datos que se han recogido se analizan cualitativamente.

**Hallazgos:** La urgencia de actualizar el modelo de incautación de activos producto de delitos relacionados con estupefacentes debe ser objeto de atención en la política penal, esto se debe a que el mecanismo actual no es adecuado e incluso tiende a utilizar activos como instrumento de tráfico ilícito de drogas, lo cual debe ser maximizado para la rehabilitación de drogadictos y abusadores. El futuro modelo de decomiso de activos en relación con la renovación de la investigación por decomiso de activos de delitos relacionados con estupefacentes es un modelo de decomiso de activos sin castigo. Este modelo se conoce como decomiso in rem o también como decomiso civil y decomiso de activos por el BCN. El modelo del BCN es esencialmente una demanda interpuesta contra activos, no contra personas. La acción es independiente del tribunal penal, pero solo determina que los activos han sido manchados por el delito penal.

**Palabras clave:** Decomiso de Activos, Narcóticos, Sin Condena.

**INTRODUCTION**

Illegal drug trafficking and abuse in Indonesia is growing massively and continues to increase. The illicit drug trafficking is carried out in an organized manner, connected to various national and transnational networks. In 2019, Indonesia’s National Narcotics Agency (BNN) managed to map 98 narcotics syndicate networks, as many as 84 narcotics syndicate networks have been successfully revealed by BNN. Data from BNN as many as 84 networks consist of 27 international drug syndicate networks, 38 domestic networks or new networks and 19 drug syndicate networks involving prisoners or prisoners who act as network controllers in 14 correctional institutions. (Times, 2021)
Tackling illicit drug trafficking relies on the law enforcement process. Regulatory reforms and the establishment and strengthening of institutions to tackle illicit drug trafficking in Indonesia have not been able to significantly overcome drug trafficking crimes. Therefore, it is necessary to think about efforts that strengthen the success of prevention and eradication. In this case, it is important to juxtapose the provisions governing the crime of money laundering with the provisions of narcotics crimes. The urgency of parallel application of the Narcotics Law (Law No. 35/2009 on Narcotics) with the Law on Money Laundering is because the existing provisions in the Narcotics Law are not sufficient to tackle the rise of narcotics crime. Therefore, it is not optimal to only imprison the perpetrators, while the trade and circulation continue, even though the dealers are imprisoned, the circulation can still be controlled from inside the correctional institution. (Garnasih, 2019)

Several cases of drug crime convictions show that in law enforcement to tackle illicit drug trafficking in Indonesia there are still various obstacles, especially in the confiscation of assets resulting from drug crimes. The confiscation of assets resulting from narcotics crimes, as stipulated in Article 101 of Law Number 35 of 2009 concerning Narcotics, can only be carried out if the perpetrator of the crime has been legally and convincingly proven guilty of committing a narcotics crime by the court. In other words, there is a requirement to wait for a court decision if you want to confiscate assets from the proceeds of crime.

By having to wait for the Court's decision, it is as if the state allows drug dealers to enjoy the wealth of the proceeds of their crimes or transfer these assets. This can happen because the mechanism of the criminal justice system in Indonesia, which starts from the stages of investigation, investigation until the stage of the Court decision that has permanent legal force, requires a long time, which is at least 6 (six) months. However, this time can be even longer in the event that there are parties who do not accept the decision of the District Court Panel of Judges and appeal to cassation, the defendant will be more free to carry out various manipulations of the assets he owns from the proceeds of narcotics crime.

Another problem in the investigation and prosecution of illegal drug trafficking is that the police have difficulty uncovering the source of the drug trafficking network. It takes a long time to get to the level of drug dealers or "big bosses". In addition, there are security threats for police officers in the implementation of investigations and investigations. On the other hand, the Indonesian National Police (INP) as an institution has a target operation, so that in the implementation of the operation, disclosure and arrests are made against small networks. With
this method, there is an impression that in law enforcement against narcotics crimes law enforcers are "selective".

Investigation and investigation are the initial "gates" to uncover and shut down drug trafficking networks. Based on the provisions of Article 2 paragraph (1) of Law Number 8/2010 on the Prevention and Eradication of Money Laundering, the Police through investigation and investigation can simultaneously track the results of narcotics crimes and seize the proceeds of crime. Asset forfeiture in narcotics crimes can shut down all networks (syndicates) of narcotics criminals, therefore a new mechanism must be used that does not only focus on confiscation after the sentencing decision, but confiscation also includes civil confiscation or in rem. which begins with confiscation. This is as mentioned by Stewart J. D’alessio and Lisa Stolzenberg that: “The standard constitutional due process rights that are afforded a defendant in his or her criminal case, such as proof of guilt beyond a reasonable doubt, are required in a criminal forfeiture proceeding. In a civil forfeiture or in rem forfeiture, by contrast, the state focuses specifically on the tainted property rather than on the individual. This shift in focus permits the state to confiscate an individual’s property without an adjudication of guilt”. (Stolzenberg, 2015)

The tracking and confiscation of assets resulting from the illegal trade of narcotics and narcotics precursors is very important, because the source of the drug dealers' wealth is the money of the victims (the public) which is "hidden" in various ways aimed at saving the money from the crime, one of which is by money laundering5. According to Yunus Husein and Roberts, money laundering has become a business crime that does not only occur in financial institutions, whether it is banking or non-bank financial institutions in a small scope or may be carried out by individuals or corporations through cross-border or without certain boundaries anymore. This is what makes it so difficult for countries to eradicate the results of this money laundering crime optimally. (K, 2019)

The system and mechanism for confiscating assets resulting from drug crimes is difficult to implement due to several reasons, for example: the suspect/defendant has died, fled, is permanently ill, or his whereabouts are unknown; or the defendant has been acquitted of all charges; or the criminal case has not/ cannot be tried without clear reasons. This situation means that the state allows the perpetrators to continue to control the proceeds of drug crimes and use the proceeds to commit other crimes. Therefore, other efforts are needed, as we know with asset forfeiture without punishment, although this has caused a lot of debate because it limits the legal process rights of the defendants, as written by Eric L. Jensen & Jurg Gerber, that: Asset
forfeiture has been used as a criminal sanction but has been camouflaged as a civil procedure, thus in effect limiting the due process rights of those accused. The state has extended its control over citizens and has simultaneously weakened the rights of individuals to protect themselves against state intrusion. (Gerber, 1996)

The criminal law system applied in narcotics crimes in Indonesia still aims to uncover criminal acts that occur, then find the perpetrators and punish the perpetrators of criminal acts with criminal sanctions, especially "corporal punishment" either imprisonment or confinement. Meanwhile, international legal development issues such as confiscation and forfeiture of criminal proceeds and criminal instruments have not yet become an important part of the criminal law system in Indonesia. Without diminishing the meaning of corporal punishment against drug traffickers, it must be recognized that merely imposing corporal punishment against drug traffickers has proven not to have a deterrent effect.

In this paper, it is studied that the system of asset forfeiture of the proceeds of drug trafficking crimes can be carried out since the investigation or investigation stage, without having to wait for the verdict of the criminal offender. This study describes the urgency of reforming the model of asset forfeiture of drug offenses and the ideal model of asset forfeiture of drug offenses.

RESEARCH METHODS

The approaches used in this research are normative approaches and empirical approaches. This type of research is a logical consequence of the science of law which is classified as a sui generis normative science. While the emphasis of research with a normative juridical approach is aimed at library research, which means that it will examine and study secondary data more, on the grounds that the problem studied as an object is the relationship between one regulation and another and its application in society.

RESULTS AND DISCUSSION

The Urgency of Updating the Model of Asset Forfeiture from Narcotics Crime in Investigation

Illicit trafficking of narcotics has reached a very alarming level where the circulation and abuse of narcotics is not only a problem for Indonesia but also an international problem, because it has a negative impact on the life of the community, nation and state. Various efforts and legal policies to tackle illicit drug trafficking have been carried out by the Government,
including criminal sanctions and their enforcement. Today, the discourse related to criminal law enforcement has shifted from the follow the suspect paradigm to the follow the money model. This legal paradigm shift is based on various facts that convicting drug offenders is not enough to tackle the increasingly massive drug trafficking, so there must be extraordinary methods, namely the asset forfeiture model.

The model/system of asset forfeiture from narcotics crimes is an integral part of various problems in law enforcement in Indonesia to tackle illicit drug trafficking. The asset forfeiture system applied as part of law enforcement for drug trafficking crimes is guided by the provisions of Article 101 of Law Number 35 of 2009 concerning Narcotics and Government Regulation Number 40 of 2013 concerning the Implementation of Law Number 35 of 2009 concerning Narcotics.

The narcotics law determines that assets resulting from narcotics crimes are confiscated by the state after a court decision that has obtained permanent legal force. This provision is as stipulated in Article 101 (1) Narcotics, Narcotics Precursors, and tools or goods used in the criminal act of Narcotics and Narcotics Precursors or related to Narcotics and Narcotics Precursors as well as the results are declared confiscated to the state. (3) All assets or possessions that are the proceeds of the criminal act of Narcotics and Narcotic Precursors and the criminal act of money laundering from the criminal act of Narcotics and Narcotic Precursors based on a court decision that has obtained permanent legal force shall be confiscated to the state and used for the purposes of: a. the implementation of prevention and eradication of the abuse of illicit trafficking of Narcotics and Narcotic Precursors; and b. medical and social rehabilitation efforts.

The explanation of Article 101 paragraph (3) of the Narcotics Law is elaborated as follows: Forfeiture of property and wealth or assets resulting from money laundering based on a permanent court decision, is confiscated to the state and can be used for the costs of preventing and eradicating the abuse and illicit trafficking of Narcotics and Narcotics Precursors as well as for the payment of premiums for members of the public who have been instrumental in revealing the existence of Narcotics and Narcotics Precursors criminal acts. Thus, the community is stimulated to actively participate in the prevention and eradication of the abuse and illicit trafficking of Narcotics and Narcotic Precursors. In addition, the property and assets confiscated by the state can also be used to finance the medical and social rehabilitation of victims of narcotics and drug precursor abuse. The process of investigating assets and property
or assets resulting from money laundering is carried out in accordance with Law Number 15 of 2002 concerning the Crime of Money Laundering as amended by Law Number 25 of 2003.

Article 44 of Government Regulation No. 40 of 2013 concerning the Implementation of Law No. 35 of 2009 concerning Narcotics.

1. Assets of Criminal Offenses based on a court decision that has obtained permanent legal force shall be declared confiscated to the state;
2. The procedures for the management, administration, and utilization of Criminal Assets as referred to in paragraph (1) shall be carried out in accordance with the provisions of laws and regulations.

It is technically specified in Article 45 as follows:

1. In the event that the assets of the crime whose verdict is confiscated for the state are in the form of cash, they shall be deposited directly to the state treasury by the prosecutor's office as non-tax state revenue in accordance with the provisions of laws and regulations;
2. In the case of Criminal Assets in the form of securities, movable goods or immovable goods, both tangible and intangible, the management shall be carried out by the Minister of Finance in accordance with the provisions of laws and regulations.

Based on the provisions of Article 101 of Law Number 35 of 2009 concerning Narcotics and Article 44, Article 45 of Government Regulation Number 40 of 2013 concerning the Implementation of Law Number 35 of 2009 concerning Narcotics, the assets resulting from narcotics crimes can be confiscated by the state after a court decision that has permanent legal force. Seeing this, the model adopted in the Indonesian legal system is still oriented in a follow the suspect model, namely arresting and punishing drug offenders.

The follow the suspect model is not effective because to prove the existence of criminal acts against organized and transnational crimes in the practice of law enforcement, various obstacles are encountered, so a new breakthrough must be used, namely the follow the money method of following and knowing the track record of assets resulting from the original criminal act. After it is completed, followed by asset forfeiture, the assets generated from criminal acts are confiscated so that the perpetrators of criminal acts cannot enjoy the results of the criminal acts committed.

In this case, if the wealth resulting from the criminal act which is the goal of the perpetrator of the crime is confiscated, and the perpetrator cannot enjoy the results of his criminal act, then the perpetrator of the crime will die slowly. As stated by Muhammad Yusuf, based on his observations in Indonesia and other countries, it shows that uncovering criminal acts, finding the perpetrators and placing the perpetrators in prison (follow the suspect) is not
effective enough to reduce the crime rate, if it is not accompanied by efforts to confiscate and confiscate the proceeds and instruments of criminal acts. (Yusuf, 2013)

In addition to the obstacles in the legal paradigm of narcotics crimes, efforts to seize assets from narcotics crimes are also hampered by the characteristics of narcotics crimes whose proof is very detailed and takes a very long time. On the other hand, the efforts of drug dealers or traffickers to hide the proceeds of their crimes have been carried out since the illicit trafficking occurred. The average time span of 2 to 3 years to resolve a corruption case provides a very loose time for the perpetrators to eliminate traces of the assets obtained from narcotics crimes. The difficulty of detecting assets from drug crimes (asset tracing) increases if the activity of moving assets to another country has been carried out.

Asset forfeiture in the Indonesian legal system is part of additional punishment in the form of deprivation of certain goods resulting from criminal acts. This applies generally to every criminal offense that occurs in the realm of criminal law in Indonesia with the aim of harming convicts who are proven through binding court decisions to have committed a criminal offense so that they cannot enjoy the proceeds of crime. The consequence of additional punishment is that it cannot stand alone and always follows the main case, meaning that additional punishment can only be imposed together with the main punishment. The confiscation of assets from the proceeds of 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 to be destroyed and other actions can be taken so that the goods or assets can be used for the benefit of the state by granting them or conducting an auction of assets resulting from criminal acts.

Based on the existing provisions in Indonesian criminal law, asset forfeiture can certainly only be carried out with a court decision that has binding legal force. Therefore, the practice of asset forfeiture from criminal offenses takes a very long time, because the time needed for a case to obtain a binding court decision can take months or even years. The length of time required, makes it easier for the defendant to hide the assets obtained and used in the criminal offense so that the initial purpose of asset forfeiture, which is to seize the proceeds of crime so that the perpetrator cannot enjoy wealth that is not his right, is not achieved because the perpetrator has made efforts to escape the assets. Thus, based on the paradigm of the legal system in Indonesia regarding asset forfeiture and these inhibiting factors, it is urgent to reform the legal system in Indonesia to regulate the forfeiture of assets resulting from narcotics crimes.
Ideal Model of Asset Forfeiture of Proceeds of Narcotics Crime at the Investigation Stage

The failure of the follow the suspect model to tackle illicit drug trafficking triggers the discourse on asset forfeiture (follow the money) from drug crimes. Complementing the follow the money discourse, the reorientation needs to be juxtaposed with a law enforcement model that starts from the investigation and investigation stages.

Efforts to confiscate the proceeds of crime are one of the main concerns in tackling crime with the typology of organized crime. In response to this phenomenon, the United Nations (UN) has included asset forfeiture as one of the norms in the 2003 UNCAC United Nations Convention Against Corruption. Article 53 of the UNCAC is designed to ensure that each State Party recognizes the other State Parties as having equal legal standing to bring civil actions and other direct means to recover illegally obtained property that has fled abroad. In this regard, this includes, among others:

1. As a plaintiff in a civil action, where the State Party should review the requirements for access to the Court where the plaintiff is a foreign state, as in many jurisdictions this may raise jurisdictional and procedural issues.
2. As a state to be recovered from damages caused by criminal acts (corruption). Receipts from corruption should be recovered only by reason of confiscation, and States Parties are required to enable their courts to recognize the rights of victims of States Parties to receive compensation. This is relevant to offenses (criminal acts) that have caused harm in another State Party.

With the existence of this norm, countries are required to maximize all efforts to seize assets resulting from crime without going through the process of criminal prosecution non-conviction based asset forfeiture (NCB asset forfeiture). Asset forfeiture without criminalization or non-conviction based asset forfeiture (NCB asset forfeiture) is a concept of restoring state losses that first developed in common law countries, such as the United States. This concept aims to recover state losses incurred as a result of a crime without first imposing a sentence on the perpetrator. Historically, the NCB asset forfeiture method was born due to the phenomenon of organized crime of interstate drug trafficking which made it difficult for law enforcement to combat it. The amount of money obtained from the proceeds of crime is very large and can finance subsequent criminal activities. Until 1986, law enforcement efforts in the United States to combat drugs by imprisonment proved unsuccessful. Law enforcement sought other methods to pursue criminals, namely going for the money by cutting directly to the center of the crime (head of the serpent). They used the concept of criminal and civil forfeiture as a first step. The law enforcement paradigm at that time was no longer limited to
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the pursuit of perpetrators, but also through the pursuit of illegal 'profits' (confiscate ill-gotten gains). (Husein, 2021)

Asset forfeiture is the forcible taking of assets or property that the government believes is closely related to a criminal offense. There are three methods of asset forfeiture developed in common law countries, especially the United States, namely criminal forfeiture, administrative forfeiture, and civil forfeiture. Criminal forfeiture is asset forfeiture carried out through criminal justice so that asset forfeiture is carried out simultaneously with proving whether the defendant actually committed a criminal offense. Meanwhile, administrative forfeiture is an asset forfeiture mechanism that allows the state to seize assets without involving judicial institutions. (Harvard, 2018) Civil forfeiture, on the other hand, is asset forfeiture that places the lawsuit against the asset rather than the perpetrator of the crime, so that the asset can be forfeited even though the criminal justice process against the perpetrator has not been completed. Civil forfeiture, when compared to criminal forfeiture, does not require many requirements and is therefore more attractive to implement and beneficial to the state. (Types of Federal Forfeiture, 2018)

Indonesia, as a state party to UNCAC, does not yet have a regulatory framework that comprehensively regulates the asset forfeiture scheme without criminalization. In practice, this mechanism has actually been applied in various criminal cases, such as money laundering and narcotics crimes. However, it is considered not optimal enough to be a means of recovering state losses through criminal and civil asset forfeiture. In addition to the problem of optimization and effectiveness of criminal law in this case the application of criminal sanctions of asset confiscation bodies as an effort to tackle illicit drug trafficking in Indonesia, illicit drug trafficking modus operandi of drug distribution and abuse in the current development is increasingly modern. Transactions are carried out by utilizing communication media, so that this illegal goods business can be controlled from anywhere and from any country.

There are two types of asset forfeiture, namely asset forfeiture using civil law mechanisms (civil forfeiture, non-conviction based forfeiture or in rem forfeiture) and criminal asset forfeiture (criminal forfeiture or in personam forfeiture). Although they are divided into two different types, both have similar objectives. First, it is not allowed to benefit from violations of the law that have been committed. Second, prevention is carried out by eliminating the economic benefits of crime and preventing criminal behavior. (Greenberg, n.d.) The detailed classification of asset forfeiture is as follows:
Asset Forfeiture with in Personam Mechanism

In personam asset forfeiture or conviction-based asset forfeiture is a judgment in personam against the defendant, which means that the forfeiture carried out is closely related to the conviction of a convicted person. Asset forfeiture in personam, which is an action aimed at a person in persona (individual), therefore requires proof of the defendant's guilt first before seizing assets from the defendant. The Public Prosecutor must first prove the criminal offense committed by the defendant and the relationship between the actions committed by the defendant and the assets that are the proceeds or instruments of a criminal offense controlled by the defendant, if it has been proven then the court decision that has permanent legal force can be the legal basis for confiscating the defendant's property.

The standard of burden of proof for criminal asset forfeiture is higher than asset forfeiture through civil law mechanisms. In the common law system, criminal asset forfeiture requires a standard of beyond a reasonable doubt or intimate conviction, which means that there must be no doubt and confidence in the guilt of the defendant and the status of assets that are the proceeds or instruments of the criminal offense committed by the defendant, while in the civil law system, a negative statutory proof system (negatief wettelijk stelsel) is used, which requires proof based on valid evidence according to the law as well as the judge's confidence arising from the valid evidence to determine the guilt or innocence of the defendant. (Greenberg, n.d.)

The right of the court to confiscate assets from the proceeds and instrumentalities of a criminal offense arises from the conviction of the defendant on the charges filed by the public prosecutor. (Harrington) Only after the defendant has been found guilty can the court seize the assets from the proceeds and instruments of the criminal offense that are in the possession of the defendant because the assets controlled by the defendant are considered illegal as a result of the actions committed by the defendant which have been declared against the law, therefore the assets in the possession of the defendant that are related to the criminal offense he committed must be confiscated. If the court cannot prove that the defendant has committed a criminal offense then the court does not have the right to seize the assets in the defendant's possession. Asset forfeiture against a person who has committed a criminal offense is only forfeiture that is a consequence of the criminal offense. (Harahap, 2006)

In personam asset forfeiture has limited reach because efforts to seize assets that are the proceeds and instruments of criminal acts can only be carried out if the perpetrator of the crime has been proven and guilty of committing a criminal offense by the court. (Husein, Perampasan
Aset Hasil Tindak Pidana di Indonesia (Asset Forfeiture of Crime in Indonesia, 2010)
Therefore, another model of asset forfeiture is needed that is feasible and can overcome the constraints faced in the model as mentioned in the previous description.

**Asset Forfeiture within Rem Mechanism**

Asset forfeiture by civil law mechanism is also known as Non-conviction based forfeiture, in rem forfeiture, or civil forfeiture is an asset forfeiture that is not derived from a criminal case, the government represented by the State Attorney files an in rem lawsuit against property or property that is suspected of being the proceeds of crime or used to commit a crime, where the in rem lawsuit is filed without the need for a criminal case or after the criminal case is decided by a panel of judges. In rem forfeiture is an action against the asset itself (e.g. State v. USD 100,000) and not against an individual (inpersonam).

In rem asset forfeiture is a separate action from any criminal proceedings and requires proof that an asset is 'tainted' by a criminal offense. As the action is not against the individual defendant but against the asset, the owner of the asset is positioned as a third party who has the right to defend the asset.

The concept of in rem asset forfeiture utilizes the principle that the holder does not have the right to control assets obtained from unlawful conduct. In rem asset forfeiture the allegation that the asset originated from an unlawful act is completely neutral to the act committed by the holder/master of the asset. This is because in in rem asset forfeiture the focus is on the origin of the asset, therefore asset forfeiture will not depend on whether or not the right holder has committed an unlawful act against the asset due to the fault attached to the asset involved in a crime. (Harrington) This makes in rem asset forfeiture possible in the following circumstances:

1) Can be carried out even if the defendant dies;
2) May be carried out even if the accused is absconding;
3) May be carried out even if the defendant is acquitted by the court of all criminal charges;
4) Can be done without prosecution;
5) There is no need to know who owns the asset to be forfeited.

In rem asset forfeiture utilizes a legal fiction that makes it appear as if the object was "at fault" at the time of its unlawful use or acquisition. By focusing on the "guilt" of the object, in rem asset forfeiture can still be carried out even if the object obtained from the unlawful act...
has been transferred to a third party in good faith, because no legal title can be recognized to the ownership of the unlawfully obtained object. (Harrington)

The object is guilty without the responsibility of a legal subject who owns the object because the previous ownership rights have been lost due to unlawful acts that have been committed. Every asset owner must know the assets he owns and also know what the assets can be used for and what obligations are attached to the assets, therefore if the asset owner has violated an obligation or obtained unlawfully then his ownership rights are lost.

In in rem asset forfeiture, the court will focus on the use of the asset and not on the good faith of the owner. The legal fiction of in rem asset forfeiture assumes that the person who controls the asset is not necessarily the owner of the asset so that if there is someone who feels that they own the asset even though they are not the actual owner, they have the right to file a claim. In in personam asset forfeiture, this cannot be done because there is a relationship between the criminal offense and the asset, this happens because in personam asset forfeiture focuses on the legal subject who controls the asset. There is no legal basis that allows asset forfeiture in in personam asset forfeiture until a criminal offense committed by the owner of the assets derived from the criminal offense is proven.

There are three circumstances in which in rem asset forfeiture can be carried out, namely: a. Things that make assets "guilty" (those involving "things guilty"); b. Assets in interstate feuds (things hostile); c. Debt relations (things indebted). Debt relationship (things indebted). Assets become guilty when there is an unlawful act, assets can be forfeited because there is hostility and because of the hostility the assets are owned or controlled by the enemy in a state of war, and asset forfeiture can occur due to a debt relationship when there is liability for the payment of a sum of money in accordance with a contract or the use of the asset.

All three types of in rem asset forfeiture are routinely found in maritime law. Vessels used to smuggle illegal goods make the vessel "guilty" and subject to forfeiture, enemy vessels or cargoes taken in a state of war are subject to asset forfeiture and vessels receiving supplies or utilities in a foreign port become indebted to the supplier under a treaty which may be subject to forfeiture by its own mechanism. Asset forfeiture due to a debt-receivable relationship can be carried out such as a pledge agreement, the pledgee has the right to sell the pledged goods if the pledgor defaults.

The purpose of in rem asset forfeiture is to determine the status of the asset rather than to prove guilt in a criminal offense. It is not a punishment, but rather a mechanism to request the court to determine the ownership status of the asset.
In asset forfeiture using civil law mechanisms, there is a wide opportunity to confiscate all assets suspected of being the proceeds of crime and other assets that are suspected to be used or have been used as a means to commit a criminal offense without proving the guilt of the perpetrator of the crime. The existence of a criminal who has been found guilty by a court decision is not a requirement for asset forfeiture. According to Remmelink, property rights should not be viewed as an absolute right, all property or legal interests can certainly be sacrificed in favor of other higher or more valuable interests. (Remmelink, 2003)

The characteristics of in rem asset forfeiture that are relevant under the Indonesian legal system are: (Husein).

1. There is no need to allege a specific unlawful act, the state need only allege that a person has held unlawfully acquired assets;
2. Lower burden of proof standard of in personam asset forfeiture.

CONCLUSION

1. The urgency of updating the model of seizure of assets resulting from narcotics crimes must receive attention in criminal law policy, this is because the current mechanism is not adequate and even tends to use assets as an instrument of illicit drug trafficking, which should be maximized for the rehabilitation of addicts and drug abusers.
2. The future model of asset forfeiture in relation to the renewal of investigation for asset forfeiture of drug offenses is the model of asset forfeiture without conviction. This model is known as in rem forfeiture, or also known as civil forfeiture, and NCB asset forfeiture. The NCB model is essentially a suit brought against assets, not against persons. The action is separate from the criminal court, but only determines that the assets have been tainted by the criminal offense.
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