Proceeding of the 3rd Malikussaleh International Conference on Law, Legal Studies and Social Sciences (MICoLLS) 2023

CONFISCATION OF ASSETS IN CORRUPTION CASES WITHOUT COURT DECISION THROUGH IMPLEMENTATION OF DEPONERING (CASE SET-ASIDE) (A Study in Legal Philosophy Stream)

Lalu Syaifudin

Doctoral Law Program, Universitas 17 Agustus 1945 Jakarta

Email: lalu.sya71@gmail.com

ABSTRACT

The act of confiscation of assets is a solution to eradicate criminal acts of corruption which is used as a sanction against perpetrators of criminal acts of corruption in terms of efforts to return the proceeds of crime. The the study aims to examine legal issues related to the absence of regulations and/or norms regarding confiscation of assets without criminal prosecution which is not clearly regulated in Indonesian law and seeks solutions to the above problems in the process of reforming criminal law in Indonesia. Therefore, the title of the study is " confiscation of assets in corruption cases without court decision through implementation of deponering (case set-aside) (a study in legal philosophy stream)

Keywords: Confiscation of Assets, Crime, Corruption Crime, Deponering, Legal Substance.

1. INTRODUCTION

The eradication of corruption has been conducted for a long time through various means and imposing severe sanctions on corrupt individuals. However, corruption continues to prevail in Indonesia. This corruption has worsened, becoming so severe that it can destroy almost every aspect of life, including the economy, politics, law (judiciary), culture, society, health, agriculture, and security and defense. Surprisingly, even in religious life, which has long been considered a sacred zone full of moral nuances, immoral behavior also happens among its followers.[1]

The corruption is an amoral act, causing suffering to the people, damaging the nation's moral values, and in Indonesia, it seems to have been ingrained since ancient times, both before and after independence, during the colonial period, in the Old Order era, New Order era, and keep continuing until today during reformation era.[2] This is clearly detrimental to the country's economy and hinders

[1] Muhammad Yusuf, *Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia* (Confiscating corruptors' Asset: A solution for Eradicating the Corruption in Indonenesia) (Jakarta: Kompas Media, 2013).

[2] Hartanto, "Korupsi Perbuatan Tak Bermoral Menjatuhkan Wibawa Bangsa Dan Merampas Kesejahteraan Rakyat," (Corruption, an Immoral Act, Undermines the Nation's Dignity and Deprives Social Welfare) *Surakarta: Universitas Muhammadiyah Surakarta*, Pp: 2018, 287–96.

the progress of development for Indonesia. The impact of the criminal act of corruption is so extensive that it is considered an "extraordinary crime".[3]

Corruption has become an international issue.[4] Indonesia has ratified the United Nations Convention Against Corruption (UNCAC) through Law No. 7 of 2006 on the Ratification of UNCAC 2003, adopted in a plenary session of the Indonesian People's Consultative Assembly (DPR RI) on March 20, 2006. Article 20 of the UNCAC addresses the issue of illicit enrichment of public officials, allowing for asset confiscation if a state official cannot explain the unreasonable increase in their wealth in connection with their lawful income. While the convention contributes to framing corruption as a global issue, it is still not robust enough as a comprehensive security measure to eradicate corruption networks at the global level.[5]

The United Nations Convention Against Corruption (UNCAC) stipulates that Mutual Legal Assistance (MLA) is fundamental to international cooperation in asset recovery. UNCAC provides an accessible avenue for victim countries to engage in the asset recovery process. It mandates each participating country to provide Mutual Legal Assistance to victim countries in need.[6] The regulation concerning Mutual Legal Assistance represents a breakthrough for victim countries, allowing them to overcome conventional limitations that have traditionally hindered the asset recovery process.

Asset forfeiture is one of the solutions for combating corruption, regulated and implemented as a sanction against perpetrators of corruption in an effort to recover the proceeds of crime. This is stated in Article 38 Paragraph (5) of Law No. 19 of 2019 concerning the Eradication of Corruption, which positions asset forfeiture not only as a criminal sanction but also allows it to be carried out against defendants who have passed away before a final judgment supported with sufficient evidence. In such cases, the judge, upon the prosecutor's request, may decree the forfeiture of assets that have been seized earlier.

The mentioned approach allows for the forfeiture of assets resulting from criminal activities based on *in rem* way (against the assets) rather than against the corrupt individuals themselves. The Non-Conviction Based (NCB) asset forfeiture creates a broad opportunity to seize any assets suspected to be the proceeds of crime and other assets reasonably believed to be or have been used as tools (instrumentalities) for criminal activities. The NCB concept serves as an effective solution to enhance the recovery of state losses by utilizing foreclosure and taking over assets *in rem* or lawsuit against assets as a form of criminal law policy[7]. The NCB (Non-Conviction Based) approach can also be utilized as an alternative to obtain compensation or restitution for state losses. Therefore, even if assets are newly discovered and not in the listed assets that can be seized based on a final and binding

[3] Ida Lamsihar; Halawa Midarmi; Pasa Indah Prihatiani Malau Marbun, Roy Ganda; Sitompul, "Tinjauan Yuridis Tindak Pidana Korupsi Sebagai Extra Ordinary Crime," *Jurnal Ilmiah Simantek* 4, no. 3 (2020): 234–43.

[4] Novy Septiana Damayanti, "Kedudukan Perjanjian Ekstradisi Dan Pengembalian Aset Dalam Penegakan Hukum Pidana Internasional Terhadap Pelaku Tindak Pidana Korupsi Di Indonesia," *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (2019), https://doi.org/10.25105/hpph.v1i2.5549.

[5] Romli atmasasmita, *Sekitar Masalah Korupsi: Aspek Nasional Dan Aspek Internasional* (Bandung: Mandar Maju, 2004).

[6] Bisdan Sigalingging, "Bantuan Hukum Timbal Balik Dalam Perampasan Aset Korupsi Antar Lintas Batas Negara," *Iuris Studia: Jurnal Kajian Hukum* 2 (2021): 387–98, https://doi.org/10.55357/is.v2i3.152.

[7] M Said Karim, "The Concept of Non-Conviction Based Asset Forfeiture As a Legal Policy in Assets Criminal Action of Corruption," *Legal Brief* 11, no. 5 (2022): 2613–22, https://doi.org/10.35335/legal.The.

criminal judgment (*inkracht)*, the mechanism of asset forfeiture for criminal activities can still be applied through the NCB Asset Forfeiture process.[8]

The criminal law framework established in Indonesia tends to focus on uncovering criminal acts, identifying perpetrators, and imposing punishments. The penalties imposed are generally limited to criminal sanctions such as imprisonment. Meanwhile, the confiscation and forfeiture of assets resulting from criminal activities seem to have not yet become a crucial part. The modus operandi for concealing assets derived from criminal activities is evolving rapidly, even crossing various international jurisdictions.

Various assets are taken out of the country, as in the case of Gayus Tambunan, which caused a loss to the country amounting to IDR 106,700,000,000 and USD 18,000,000. Out of this amount, only IDR 2,081,000,000 has been returned to the state treasury, and the rest has not been successfully repatriated as it is suspected to still be held abroad. In other cases, the Attorney General's Office suspects that the assets of the *Jiwasraya* case suspect are stored in 10 countries. Indonesian criminal law, especially regarding corruption, needs legal reforms that encompass Non-Conviction Based (NCB) asset forfeiture as a solution for asset recovery. Legal reforms in criminal law are crucial to free the country from colonial constraints, especially in regulations addressing the crackdown on corruption.[9]

The discussion above serves as the basis for this study to examine legal issues related to the absence of regulations and norms regarding asset forfeiture without undergoing criminal prosecution, which is not explicitly regulated in Indonesian legislation. Indeed, law is not objective and neutral because it exists due to the underlying social-political interaction processes, thus being socially reconstructed. As a social construct, law involves the interaction and negotiation of various interests. Therefore, law is laden with diverse interests.[10] Nevertheless, Legal Philosophy does not remain passive, as it encompasses values and currents that sometimes cannot be ignored, even if there is no concrete and perfect norm regulating them in the law.

In the field of Legal Philosophy, especially concerning the streams it encompasses for example, the natural law (naturalism), positive law, utilitarianism, historical school, sociological jurisprudence, and legal realism streams. These streams in Legal Philosophy highlight legal phenomena each respective stream or school. Each legal stream that develops in legal philosophy has different theses.[11] In addition, there are different perspectives, yet legal philosophy will provide a profound answer.

2. DISCUSSION

2.1 Comparison of Legal Substance on the Confiscation of Assets in Corruption Offenses from the Perspective of the Authority of the Attorney General's Decision on Diponering (Case Set-aside)

[8] Muhammad Yusuf, *Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia*.

[9] Ahmad Arif Hidayat, "PERBANDINGAN PERAMPASAN ASET TANPA PEMIDANAAN DALAM TINDAK PIDANA KORUPSI DI BEBERAPA NEGARA" (UNIVERSITAS HASANUDDIN MAKASAR, 2023).

[10] Indra Rahmatullah, "Filsafat Hukum Aliran Studi Hukum Kritis (Critical Legal Studies); Konsep Dan Aktualisasinya Dalam Hukum Indonesia," *Adalah* 5, no. 3 (2021): 1–10, https://doi.org/10.15408/adalah.v5i3.21393.

[11] Mahrus Ali, "Pemetaan Tesis Dalam Aliran-Aliran Filsafat Hukum Dan Konsekuensi Metodologisnya," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 2 (2017): 213–31, https://doi.org/10.20885/iustum.vol24.iss2.art3.

The position of prosecutors in the judiciary is crucial for carrying out the duties entrusted to them spatially and specifically. The authority and assignments of a Prosecutor General have been stipulated in Article 35 of Law No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia, which outlines the authority and assignments of the Attorney General within the Indonesian State[12]. Accordingly, the existence of criminal law serves the function of regulating and creating an orderly and safe societal environment.[13]

Based on Article 35 letter c in the government regulation that contains the authority and assignments of the Attorney General, the existence of the Attorney General involves carrying out prosecution or dismissing a case in the common interest that can be related to the principle of public interest. The public interest refers to the interests of the nation and state and/or the interests of the broader society. Public interest also encompasses the interests of the nation and state, as well as social, political, psychological interests, and the interest of national security defense based on the principles of national development while adhering to national resilience and archipelagic outlook[14]. In the existence of the opportunity principle in criminal prosecution, it refers to the authority of a public prosecutor to decide whether or not to pursue charges in a case. If the initiation of prosecution is considered not opportune, it is ineffective or not beneficial for social interest.[15]

The decision of the Attorney General is to set aside a case for public interest. Setting aside a case as referred to in this provision is the implementation of the principle of opportunity. The Attorney General is the only institution, without intervention, that can issue a *deponering* (setting aside a legal case). The Attorney General's authority, including *deponering* (setting aside cases), is solely in the hands of the Attorney General. This is intended to ensure, as far as possible, that it is not abused. The Attorney General, in making such decisions, always consults with relevant senior officials associated with the case.[16]

Before issuing a *deponering* decision, the Attorney General is required by law to hear the advice and opinions of State Authorities. However, this obligation only extends to "considering" the suggestions and opinions, not implementing them directly. The highest state institutions that can provide suggestions and opinions include the People's Consultative Assembly (DPR), the President, the Supreme Audit Agency (BPK), the Supreme Court (MA), and the Constitutional Court (MK). These institutions are the ones that can issue suggestions and opinions.

From the perspective of Utilitarianism, the Attorney General's act of considering the suggestions and opinions of State Authorities before issuing a decision on *deponering* is considered a good step as it provides broader benefits. Legal Justice, according to Jeremy Bentham's perspective within utilitarianism, has a strong philosophical principle or stance that every fair punishment for legal offenders must consider the subsequent consequences.[17] Therefore, it is a fairer and more beneficial step to listen to the opinions and suggestions from State Authorities, as each decision on deponering has its legal consequences.

---

[12] Pasal 35, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia" 2004, no. May (2004): 352.

[13] I Gusti Agung Ngurah Satya Widiana, "Wewenang Jaksa Agung Dalam Penyampingan Perkara (Deponering) Dalam Proses Peradilan Pidana," *Analogi Hukum* 4, no. 1 (2022): 60, https://doi.org/https://doi.org/10.22225/ah.4.1.2022.60-65.

[14] Muhammad Yusrizal, "Perlindungan Hukum Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum," *De Lega Lata* 2, no. 1 (2017): 113–38, https://doi.org/https://doi.org/10.30596/dll.v2i1.1143.

[15] Yusrizal.

[16] Marsudi Utoyo, "KEWENANGAN DEPONERING DALAM SISTEM PERADILAN PIDANA INDONESIA," *Doctrinal* 1, no. 2 (2016): 229–44.

[17] Frederikus Fios, "Keadilan Hukum Jeremy Bentham Dan Relevansinya Bagi Praktik Hukum Kontemporer," *Humaniora* 3, no. 1 (2012): 299, https://doi.org/10.21512/humaniora.v3i1.3315.

2.2 Comparison of Asset Forfeiture Implementation in Several Countries

The asset forfeiture model has evolved over time, and currently, there are three types of asset forfeiture models. *First,* criminal asset forfeiture (in personam forfeiture), which involves seizing assets associated with the conviction of a criminal individual. *Second*, civil asset forfeiture (*in rem* forfeiture), which is the seizure of assets done without any criminal conviction, and *third,* administrative asset forfeiture, which is an attempt to seize property carried out by a federal agency without court intervention.[18]

Asset forfeiture without conviction, also known as Non-Conviction Based (NCB) asset forfeiture, is a concept of recovering state losses that first developed in common law countries, such as the United States.[19] Non-Conviction Based forfeiture, also known as civil forfeiture (*in rem forfeiture*) or in some legal systems as objective forfeiture, is an action directed towards the asset itself rather than the individual (person). This action is separate and not part of the criminal justice process, requiring evidence that the asset or property is suspected to be derived from criminal activity.[20]

Therefore, asset forfeiture must be carried out using *in rem* mechanisms, or in other words, asset forfeiture is done without criminal prosecution, as regulated in Article 54 Paragraph (1) letter c of the United Nations Convention Against Corruption (UNCAC) 2003, so that the forfeiture of assets and the recovery of wealth from criminal perpetrators can be proceeded in a relevant manner.[21] Non-Conviction Based Asset Forfeiture, as a mechanism for seizing assets derived from corrupt activities without criminal prosecution, provides a solution to the issue of asset forfeiture in corruption cases when an individual cannot be criminally charged due to death or inability to undergo the criminal prosecution process as referred to in Article 77 and Article 83 of the Indonesian Criminal Code (KUHP).[22]

In various democratic countries, Non-Conviction Based Asset Forfeiture (NCBAF or *in rem* forfeiture) has been implemented, including key concepts issued by StAR, such as in Australia. However, this mechanism has not yet been implemented in Indonesia. Asset forfeiture in Indonesia follows the mechanism of criminal forfeiture. According to Mardjono Reksodiputro, the form of asset forfeiture with criminal proceedings involves the seizure of specific items. If these items are used by the defendant to commit a criminal act, then based on a final legal decision, the said items are confiscated for the state.[23]

Australia adopts two mechanisms for asset forfeiture: conviction-based confiscation laws, where asset forfeiture occurs after a court decision or conviction, and non-conviction-based confiscation laws, which allow for asset forfeiture without a conviction. All states and two territories, except Tasmania, have legislation for both forms of asset forfeiture mechanisms. Proof requirement for non-conviction-based confiscation laws is on the balance of probabilities which require the lower

[18] Muhammad Yusuf, *Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia*.

[19] Irwan Hafid, "Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law," *Jurnal Lex Renaissance* 6, no. 3 (2021): 465–80, https://doi.org/10.20885/jlr.vol6.iss3.art3.

[20] Hafid.

[21] Ramelan, "Naskah Akademik Rancangan Undang-Undang Tentang," 2012.

[22] Fathin Abdullah, Prof. Triono Eddy, and Dr. Marlina, "Perampasan Aset Hasil Tindak Pidana Korupsi Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) Berdasarkan Hukum Indonesia Dan United Nations Convention Against Corruption (Uncac) 2003," *Jurnal Ilmiah Advokasi* 9, no. 1 (2021): 19–30, https://doi.org/10.36987/jiad.v9i1.2011.

[23] Irma Reisalinda Ayuningsih and Febby Mutiara Nelson, "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia," *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–61.

standard than conviction-based confiscation laws which is beyond reasonable doubt.[24] From the perspective of the Philosophy of Law, particularly associated with the Historical School, which emerged in line with the nationalist movement in Europe, there has been a shift in focus from the individual to the nation, specifically the national spirit (volksgeist). Figures associated with this school include Friedrich Karl von Savigny, Puchta, and Henry Summer Maine.[25] In the context of the confiscation of assets resulting from corrupt practices through the mechanism of Non-Conviction Based Asset Forfeiture, if linked to volksgeist, such actions are necessary. This is because the acquisition of assets by an individual or group as a result of corrupt activities is considered inconsistent with the national spirit. Laws that do not align with the national spirit are seen as unlikely to develop in accordance with the values that live within that society. This perspective aligns with the concept that prioritizes the national spirit (volkgeis), with the expression coined by Von Savigny, "Das recht wird nicht gemacht, est ist und wird mit dem volke," which can be interpreted as "Law is not made, but grows and develops with the people." [26]

2.3 Comparison of the Implementation of Case Set-side (Diponering) in Several Countries

In various countries, both those using the Anglo-Saxon system and the Continental European system, there are some that adhere to the principle of oportuneness and others that do not. In South Australia, although it belongs to the Anglo-Saxon legal tradition, according to Chris Summer.[27] Attorney General in South Korea tends to lean towards the principle of legality. This means that prosecutors do not set aside cases in South Korea. In France and Belgium, there is no formal recognition of the opportunity principle and legality. However, after the French Revolution, public prosecutors in these countries gained the authority to set aside criminal cases, known as "*classer sans suite*".

Countries officially adopting the opportunity principle include the Netherlands, and this principle was later adopted by Indonesia. In the Netherlands, the opportunity principle is interpreted as "The public prosecutor may decide to prosecute or not prosecute with conditions or without conditions." In this context, it can be stated that the position of the public prosecutor is very strong, as they have individual freedom to prosecute or not. According to the report *ministry van justice* in the Netherlands in 1990, it mentioned that more than fifty percent of criminal cases were not brought to court by the prosecutor. The setting aside of criminal cases in the Netherlands broadly includes:[28] a. Cases are set aside for policy reasons, including minor cases, the defendant's old age, and the damage has been repaired b; For technical reasons (insufficient evidence, exceeding the time limit, and others); c. Because the case is combined with another case.

In Indonesia, cases can be set aside for the public interest only if they fall under the first point mentioned, while for the third point, the author agrees with Andi Hamzah that it is not qualified as the setting aside of criminal cases. In other words, criminal cases are not forwarded to the court because they are already combined with the existing cases in Indonesia know as "*concursus*". The provision regarding *concursus* essentially deals with how to resolve cases and impose penalties. In a

---

[24] Irma Reisalinda Ayuningsih and Febby Mutiara Nelson, "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia," *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–61, https://doi.org/10.22212/jnh.v10i1.1217.84.

[25] Cucu Rahmawaty, "Philosophy Law Hukum Indoensia Dewasa Ini Ditnjau Aliran Aliran Filsafat Hukum," *Esensi Hukum* 2, no. 1 (2020): 113–22, https://doi.org/10.35586/esensihukum.v2i1.3.

[26] Iwan Darmawan, Roby Satya Nugraha, and Sobar Sukmana, "Essensi Mazhab Sejarah Dalam Perkembangan Filsafat Hukum," *Pakuan Justice Journal of Law (PAJOUL)* 3, no. 1 (2022): 1–14, https://doi.org/10.33751/pajoul.v3i1.5722.

[27] Andi Hamzah, *Terminologi Hukum Pidana* (Jakarta: Sinar Grafika, 2008).

[28] Andi Hamzah.

situation if one person has committed more than one criminal act, and all these criminal acts have not been examined and decided by the court.[29]

The opportunity Principle is also applied in various countries in the Asia-Pacific region. For example, in countries such as Thailand, Cambodia, and Japan, which share similarities with the Netherlands as civil law system traditions, the authority of public prosecutors is quite extensive. In Norway, the official adoption of the opportunity principle is based on the 1887 Law. In Turkey, the "*asas oportunit lokasi as*" or "*the principle of discretionary prosecution* " or "*the principle*" allows the prosecutor the opportunity not to prosecute a criminal case if it is deemed inappropriate or if the prosecution would harm public or governmental interests, with the impact on individual interests also taken into account.[30]

The principle of oportunity is also widely or selectively practiced by the Prosecution Service in the Philippines, Singapore, Malaysia, Brunei Darussalam, and Myanmar, countries with traditions of common law system and/or Anglo-American law system. The Crown Prosecution Service in England, established in 1986, allows for the discontinuation of prosecution for policy reasons commonality of the offense, age of the perpetrator, or being a minor. Consequently, English prosecutors must discontinue prosecutions for technical reasons, such as evidence and witnesses are insufficient and the case has already expired. The Attorney General for England allows for the termination of cases that have entered the court system through the legal action of "*nolle prosequi*" (will not prosecute), wherein the Attorney General informs the court that they will not pursue the case.[31]

The implementation of forfeiture varies among different countries; however, each country has its own background and conditions. This is relevant to the perspective of Sociological Positivism in Legal Philosophy. According to John Austin (1790-1859), law is the command of the state ruler. The essence of law lies in that "command" element. Law is seen as a system that is fixed, logical, and closed. Furthermore, the state, as the superior, determines what is permitted and what is not. The power of the state compels people to obey. The state, as the superior, enforces the law in a coercive manner, directing people's behavior towards its desired direction. Law is a command that compels, which can be either wise and just, or otherwise.[32]

2.4 Asset Forfeiture is Stopped due to Case Set-aside (Diponering), Reviewed from the Perspective of Inquiry Investigation

The discontinuation of investigation and prosecution is carried out solely based on legal reasons and interests:[33] Firstly, in the suspension or *deponering* of a case, the involved case has sufficient reasons and evidence to be brought to and examined in a court trial. Based on the existing facts and evidence, it is likely that the defendant could be sentenced. However, this case with sufficient evidence is" intentionally set aside*"*and not brought to trial by the public prosecutor on the grounds of "for the public interest." In this case, it can be seen that the discriminatory nature of this principle not only disregards the principle of legal certainty in a rule of national law but also sacrifices the principle of equality before the law and the protection of human rights: *Secondly,* in the

[29] Dedi Supriadi, "TINJUAN YURIDIS MENGENAI PENERAPAN CONCURSUS (KETENTUAN PASAL 65 KUHP) OLEH HAKIM DALAM HUKUM PIDANA INDONESIA (Studi Putusan Nomor 91/Pid. B/2013/Pn. AMP).," *Yayasan Akrab Pekanbaru* 4 (2016): 1–23.

[30] Hakeri, "Euporean Journal on Criminal Policy and Research Xix," *European Journal on Criminal Policy and Research* 14 (2008): 161.

[31] Jennifer Hilger et al., "A Systematic Review of Vitamin D Status in Populations Worldwide," *British Journal of Nutrition* 111, no. 1 (2014): 23–45, https://doi.org/10.1017/S0007114513001840.

[32] Sukarno Aburaera, et.al., Filsafat Hukum Teori Dan Praktek, *dalam* Rahmawaty, "Philosophy Law Hukum Indoensia Dewasa Ini Ditnjau Aliran Aliran Filsafat Hukum."

[33] M. Yahya Harahap, *Pembangunan Permasalahan Dan Penerapan KUHAP, Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2001).

discontinuation of prosecution, the reason is not based on public interest but solely on legal grounds, namely*: first,* the involved case lacks sufficient evidence; *second*, what is accused against the defendant is not a criminal act (crime or offense); *third,* the case is closed based on legal reasons or set aside, which includes a) the suspect/defendant has passed away (Article 77 of the Criminal Code), b) the *nebis in idem* reason in Article 76 of the Criminal Code, and c) expiration regulated in Articles 78-80 of the Criminal Code.

It is significant that if the latest reasons emerge to prosecute a case that has been discontinued due to lack of evidence, the public prosecutor can initiate prosecution against the suspect again (Article 140 Paragraph (2) point d of the Criminal Procedure Code). Therefore, the decision of the public prosecutor to set aside a case through discontinuation of prosecution (aside from the principle of opportuneness) does not apply *nebis in idem.*[34]

The legal provision governing *ne bis in idem* in Indonesian Criminal Law is regulated in Article 76 Paragraph (1), (2) of the Criminal Code (KUHP), Chapter VIII on the lapse of the right to prosecute and execute punishment. In this article, a legal basis commonly referred to *ne bis in idem* is stated, which means a person cannot be prosecuted again for an act that has been decided by a judge. The application of the *ne bis in idem* principle is due to a final decision by a judge on the written events concerning a person, and the decision is irrevocable. A decision that can be categorized as *ne bis in idem* is a judge's verdict in a criminal case are: a) Acquittal verdict (vrijspraak), b) Verdict released from all legal claims, c) Postponement verdict (Veroordeling)".[35]

The termination of the criminal law enforcement process for corruption involves both the cessation of investigation and the termination of prosecution. These legal mechanisms halt the process of enforcing criminal law against corruption based on considerations such as insufficient evidence or the discretion of the Attorney General, who has the authority to "terminate a case," which is different from "not prosecuting a case." The doctrine of not prosecuting a case involves three elements: *first*, not prosecuting the case; s*econd*, considerations of public interest; *third*, the authority of the Prosecutor/Attorney General, not the Police. Deviations from the principles of the rule of law will have implications for the protection of Human Rights, which is a fundamental aspect for humans and requires comprehensive protection without discrimination, meaning no distinction based on ethnicity, religion, race, social status, and group. There are three forms of discrimination categorized in human rights violations: economic, religious/belief, and social status. Essentially, the implementation of the non-discrimination principle is meant to protect actions against discrimination.[36]

In the Philosophy of Law, there are various values that exist within a legal system, and the values of human rights and justice are commonly encountered. Justice is considered the highest value in law because the philosophical foundation of justice serves as a fundamental element that enables every individual to receive and act in accordance with their rights and responsibilities. Justice becomes a key concept within the legal framework.[37] Therefore, the termination of investigation and

[34] Andi Hamzah, *Terminologi Hukum Pidana*.

[35] Mairiko Alexander Kotu, "Penerapan Asas Nebis in Idem Dalam Putusan Perkara Pidana," *Lex et Societatis* 4, no. 2 (2016): 1000.

[36] Nicken Sarwo Rini, "Analisis Implementasi Prinsip Non-Diskriminasi Dalam Peraturan Daerah Di Bidang Pendidikan Dan Kesehatan," *Jurnal HAM* 9, no. 1 (2018): 19, https://doi.org/10.30641/ham.2018.9.19-36.

[37] Wahyu Widodo Agus Sutono, "Tinjauan Filsafat Hukum Atas Undang Undang RI No 23 Tahun 2002 Tentang Perlindungan Anak," *Civis: Jurnal Ilmiah Ilmu Sosial Dan Pendidikan Kewarganegaraan*, no. 23 (2002), https://doi.org/https://doi.org/10.26877/civis.v2i2/Juli.376.

prosecution in corruption cases must be carried out solely on the basis of legal reasons and interests, ensuring that it does not undermine the value of justice.

2.5 Types of Assets Resulting from Corruption Offenses Subjected to Forfeiture n

There are various categories that can be confiscated through the NCB asset forfeiture mechanism: *first,* assets acquired directly or indirectly from criminal activities, including those that have been donated or converted into personal wealth, by others, or corporations; *second*, assets strongly suspected to be intended for criminal activities; *third*, other assets that are legitimate replacements for criminal assets or assets that are suspected to be found from criminal activities; and *fourth*, assets owned by anyone that are disproportionate to their income or wealth accumulation sources, and cannot be proved their legitimate origin, these assets can be confiscated. It worth to note that although asset forfeiture has been carried out, it does not automatically erase the criminal act.[38]

Based on Article 54, Paragraph (1), letter c of UNCAC 2003, it stipulates the obligation of participating countries to implement, according to their respective national laws that enable the confiscation of assets acquired through or involved in the commission of a crime without a criminal conviction if the perpetrator cannot be criminally prosecuted due to reasons such as death, escape, illness, or absence.[39]

Asset forfeiture can be carried out for various types of assets acquired directly or indirectly from the proceeds of a criminal act, as well as those that have been donated or converted into personal, others', or corporate assets. Additionally, assets that are strongly suspected to be intended for criminal activities and others that are believed to originate from criminal acts can be subject to forfeiture because they were obtained unlawfully. This is in line with the philosophical perspective in Legal Philosophy, where the philosophical meaning of corruption itself is self-enrichment. Therefore, the most suitable punishment for corrupt behavior is considered to be impoverishment. It is believed to have a deterrent effect because corrupt behavior reveals the greed of individuals towards material possessions or wealth, violating not only norms but also moral principles concerning corruption in the legal philosophy perspective.[40]

3. CONCLUSION

Corruption is a criminal act involving embezzlement and misappropriation of state funds that should be used for public purposes. This criminal act significantly harms both the state and society. In cases of corruption, the state has the right to seize assets. The implementation of non-conviction-based asset forfeiture in corruption cases is returning state assets aimed at maximizing the enforcement of criminal acts to prevent new problems and as a compensation or financial restitution to the state, intending to impose sanctions on the perpetrators by reducing their wealth. In various legal philosophy perspectives, corruption, which enriches individuals, is considered most suitable for punishment through impoverishment.

Non-conviction-based asset forfeiture resulting from the act of corruption is also a solution to address issues in asset forfeiture when an individual cannot be prosecuted due to death or an inability to undergo the criminal prosecution process. The discretionary authority of the Attorney General in corruption cases lies in the fact that the Attorney General is the highest public prosecutor. The Attorney General's rights, including the suspension of cases *(deponering),* are solely in the hands

[38] Yunus Husein, *Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi*, 2019.

[39] Muhammad Yusuf, *Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia*.

[40] R. Y. Bramantyo, "Perspektif Filsafat Hukum Terhadap Tindak Pidana Korupsi," *Morality: Jurnal Ilmu Hukum* 6, no. 1 (2020): 74–81, https://www.jurnal.upgriplk.ac.id/index.php/morality/article/view/170.

of the Attorney General, even though decisions are made through consultation with high-ranking officials involved in the case. However, seizing assets obtained by individuals or groups as a result of corrupt practices is an act inconsistent with the national spirit. Laws that do not align with the national spirit do not evolve according to the values that exist within the nation. This is in line with the concept that prioritizes the national spirit (volkgeis).

ACKNOWLEDGMENTS

Expressions of gratitude and the deepest appreciation are extended to the lecturer supervising the Legal Philosophy course in the Postgraduate Program at Universitas 17 Agustus 1945 Jakarta. The sincerely gratititude is also conveyed to the international conference organizing team who kindly agreed to publish this manuscript in the Proceedings of the 3rd Malikussaleh International Conference on Law, Legal Studies, and Social Sciences (MICoLLS) 2023

REFERENCES

Abdullah, Fathin, Prof. Triono Eddy, and Dr. Marlina. "Perampasan Aset Hasil Tindak Pidana Korupsi Tanpa Pemidanaan (Non-Conviction Based Asset Forfeiture) Berdasarkan Hukum Indonesia Dan United Nations Convention Against Corruption (Uncac) 2003." *Jurnal Ilmiah Advokasi* 9, no. 1 (2021): 19–30. https://doi.org/10.36987/jiad.v9i1.2011.

Agus Sutono, Wahyu Widodo. "Tinjauan Filsafat Hukum Atas Undang Undang RI No 23 Tahun 2002 Tentang Perlindungan Anak." *Civis: Jurnal Ilmiah Ilmu Sosial Dan Pendidikan Kewarganegaraan*, no. 23 (2002). https://doi.org/https://doi.org/10.26877/civis.v2i2/Juli.376.

Ahmad Arif Hidayat. "PERBANDINGAN PERAMPASAN ASET TANPA PEMIDANAAN DALAM TINDAK PIDANA KORUPSI DI BEBERAPA NEGARA." UNIVERSITAS HASANUDDIN MAKASAR, 2023.

Ali, Mahrus. "Pemetaan Tesis Dalam Aliran-Aliran Filsafat Hukum Dan Konsekuensi Metodologisnya." *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 2 (2017): 213–31. https://doi.org/10.20885/iustum.vol24.iss2.art3.

Andi Hamzah. *Terminologi Hukum Pidana*. Jakarta: Sinar Grafika, 2008.

Ayuningsih, Irma Reisalinda, and Febby Mutiara Nelson. "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia." *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–61.

———. "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia." *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–61. https://doi.org/10.22212/jnh.v10i1.1217.84.

Bramantyo, R. Y. "Perspektif Filsafat Hukum Terhadap Tindak Pidana Korupsi." *Morality: Jurnal Ilmu Hukum* 6, no. 1 (2020): 74–81. https://www.jurnal.upgriplk.ac.id/index.php/morality/article/view/170.

Damayanti, Novy Septiana. "Kedudukan Perjanjian Ekstradisi Dan Pengembalian Aset Dalam Penegakan Hukum Pidana Internasional Terhadap Pelaku Tindak Pidana Korupsi Di Indonesia." *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (2019). https://doi.org/10.25105/hpph.v1i2.5549.

Darmawan, Iwan, Roby Satya Nugraha, and Sobar Sukmana. "Essensi Mazhab Sejarah Dalam Perkembangan Filsafat Hukum." *Pakuan Justice Journal of Law (PAJOUL)* 3, no. 1 (2022): 1–14. https://doi.org/10.33751/pajoul.v3i1.5722.

Fios, Frederikus. "Keadilan Hukum Jeremy Bentham Dan Relevansinya Bagi Praktik Hukum Kontemporer." *Humaniora* 3, no. 1 (2012): 299. https://doi.org/10.21512/humaniora.v3i1.3315.

Hafid, Irwan. "Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law." *Jurnal Lex Renaissance* 6, no. 3 (2021): 465–80. https://doi.org/10.20885/jlr.vol6.iss3.art3.

Hakeri. "Euporean Journal on Criminal Policy and Research Xix." *European Journal on Criminal Policy and Research* 14 (2008): 161.

Hartanto. "Korupsi Perbuatan Tak Bermoral Menjatuhkan Wibawa Bangsa Dan Merampas Kesejahteraan Rakyat." *Surakarta: Universitas Muhammadiyah Surakarta*, 2018, 287–96.

Hilger, Jennifer, Angelika Friedel, Raphael Herr, Tamara Rausch, Franz Roos, Denys A. Wahl, Dominique D. Pierroz, Peter Weber, and Kristina Hoffmann. "A Systematic Review of Vitamin D Status in Populations Worldwide." *British Journal of Nutrition* 111, no. 1 (2014): 23–45. https://doi.org/10.1017/S0007114513001840.

Husein, Yunus. *Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi*, 2019.

I Gusti Agung Ngurah Satya Widiana. "Wewenang Jaksa Agung Dalam Penyampingan Perkara (Deponering) Dalam Proses Peradilan Pidana." *Analogi Hukum* 4, no. 1 (2022): 60. https://doi.org/https://doi.org/10.22225/ah.4.1.2022.60-65.

Karim, M Said. "The Concept of Non-Conviction Based Asset Forfeiture As a Legal Policy in Assets Criminal Action of Corruption." *Legal Brief* 11, no. 5 (2022): 2613–22. https://doi.org/10.35335/legal.The.

Kotu, Mairiko Alexander. "Penerapan Asas Nebis in Idem Dalam Putusan Perkara Pidana." *Lex et Societatis* 4, no. 2 (2016): 1000.

M. Yahya Harahap. *Pembangunan Permasalahan Dan Penerapan KUHAP, Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika, 2001.

Marbun, Roy Ganda; Sitompul, Ida Lamsihar; Halawa Midarmi; Pasa Indah Prihatiani Malau. "Tinjauan Yuridis Tindak Pidana Korupsi Sebagai Extra Ordinary Crime." *Jurnal Ilmiah Simantek* 4, no. 3 (2020): 234–43.

Muhammad Yusuf. *Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia*. Jakarta: Kompas Media, 2013.

Pasal 35. "Undang-Undang Republik Indonesia Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia" 2004, no. May (2004): 352.

Rahmatullah, Indra. "Filsafat Hukum Aliran Studi Hukum Kritis (Critical Legal Studies); Konsep Dan Aktualisasinya Dalam Hukum Indonesia." *Adalah* 5, no. 3 (2021): 1–10. https://doi.org/10.15408/adalah.v5i3.21393.

Rahmawaty, Cucu. "Philosophy Law Hukum Indoensia Dewasa Ini Ditnjau Aliran Aliran Filsafat Hukum." *Esensi Hukum* 2, no. 1 (2020): 113–22. https://doi.org/10.35586/esensihukum.v2i1.3.

Ramelan. "Naskah Akademik Rancangan Undang-Undang Tentang," 2012.

Rini, Nicken Sarwo. "Analisis Implementasi Prinsip Non-Diskriminasi Dalam Peraturan Daerah Di Bidang Pendidikan Dan Kesehatan." *Jurnal HAM* 9, no. 1 (2018): 19. https://doi.org/10.30641/ham.2018.9.19-36.

Romli atmasasmita. *Sekitar Masalah Korupsi: Aspek Nasional Dan Aspek Internasional*. Bandung: Mandar Maju, 2004.

Sigalingging, Bisdan. "Bantuan Hukum Timbal Balik Dalam Perampasan Aset Korupsi Antar Lintas Batas Negara." *Iuris Studia: Jurnal Kajian Hukum* 2 (2021): 387–98. https://doi.org/10.55357/is.v2i3.152.

Supriadi, Dedi. "TINJUAN YURIDIS MENGENAI PENERAPAN CONCURSUS (KETENTUAN PASAL 65 KUHP) OLEH HAKIM DALAM HUKUM PIDANA INDONESIA (Studi Putusan Nomor 91/Pid. B/2013/Pn. AMP)." *Yayasan Akrab Pekanbaru* 4 (2016): 1–23.

Utoyo, Marsudi. "KEWENANGAN DEPONERING DALAM SISTEM PERADILAN PIDANA INDONESIA." *Doctrinal* 1, no. 2 (2016): 229–44.

Yusrizal, Muhammad. "Perlindungan Hukum Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum." *De Lega Lata* 2, no. 1 (2017): 113–38. https://doi.org/https://doi.org/10.30596/dll.v2i1.1143.