



Optimization of asset confiscation in prevention and eradication of money laundering

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ABSTRACT

Transnational money laundering threatens economic stability and national security. One effective way to end this crime is to confiscate assets to stop the flow of criminal cash and prohibit their utilization. However, legal complexity, technological asset tracking hurdles, institutional coordination issues, and international collaboration issues hinder asset seizure in Indonesia. The lack of openness and accountability in seized asset management damages the state and lowers public faith in the judicial system. This work analyzes the asset confiscation mechanism specified in Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering and other associated laws using a normative legal research technique with a descriptive and juridical-analytical approach. As well as the Money Laundering Law and the Criminal Procedure Code (KUHP), this research uses literature, periodicals, and comparative analysis with foreign legal systems. This research optimizes asset confiscation and identifies legal, technological, and administrative barriers. The analysis found that although the legislative foundation is appropriate, its execution is difficult. Weak law enforcement cooperation, technical limits in asset monitoring, and legal loopholes that produce variations in the reverse burden of evidence principle hinder asset confiscation. Additionally, inadequate asset management repeatedly costs the state money. To improve asset management transparency and accountability, legislative modifications, cross-institutional and international collaboration, and contemporary technology are required.

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1. Introduction

Criminal law is the fundamental tool for social order and preserving society's interests (Abdussamad et al., 2024). Criminal law regulates harmful or hazardous human activity (Harahap et al., 2023). Criminal law seeks to punish criminals and deter future crimes (Muhtar, 2023). This repressive and preventative purpose is the foundation of criminal law in many nations, including Indonesia (Arief et al., 2023).

Society and criminal law have grown together. Criminal law has always mirrored societal ideals, from customary law to current times (Imran et al., 2024). Criminal law's principle of legality holds that an act cannot constitute a crime without a rule that openly limits it (Pakaja et al., 2024). This concept safeguards people against arbitrary prosecution and makes the law obvious to all levels of society (Huruji et al., 2024).

Criminal law also distinguishes material and formal offenses. Material crimes include illegal actions with specific repercussions, whereas formal crimes concentrate on the act itself (Lahmado et al., 2024). The Criminal Code (KUHP) of Indonesia reflects this split by defining criminal actions, their parts, and the penalties for offenders (Hamzah, 2015).

Indonesia's asset forfeiture practices in combating money laundering, governed by Law Number 8 of 2010 (TPPU Law), face significant challenges compared to countries with more effective systems, such as the United States and Singapore. While these countries leverage robust frameworks, advanced technology, and strong institutional coordination, Indonesia struggles with uneven enforcement due to inconsistent regulations, limited training, weak institutional collaboration, and insufficient technological infrastructure. Specifically, the implementation of Article 67 of the TPPU Law is hindered by unclear guidelines, delays in court processes, and challenges in cross-border asset recovery. Addressing these issues requires legal reform, capacity building, and technological innovation to align with global best practices and enhance the effectiveness of asset forfeiture in Indonesia.

Criminal law also considers the perpetrator-victim connection. The victim's rights have become increasingly important in current criminal law. This is found in crime victim restitution and compensation laws. Restorative justice emphasizes restoring relationships between the culprit, victim, and society, offering an alternative to traditional criminal justice. However, criminal law execution is difficult. Regulations must adapt to cybercrime, money laundering, and other international crimes due to rapid social, technical, and economic developments. Law enforcement inequity, which hurts underprivileged groups, is another critique of the criminal justice system. Thus, constant reform is essential to keep criminal law current, effective, and fair for everyone (Arifah, 2011).

Article 67 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes allows asset seizure. Asset seizure is used to stop criminals from using crime proceeds for further crimes. The regulation, law enforcement, and administration of seized assets are difficult to execute in Indonesia. Lack of coordination between law enforcement authorities makes asset seizure inefficient and fraught with administrative and technological issues (Dennis, 2021).

Major examples like the corruption prosecution of former Democratic Party General Treasurer Muhammad Nazaruddin show the difficulties of asset seizure. This case involves assets earned via corruption and money laundering that are dispersed locally and internationally. Strong proof of a link between assets and crime and cross-jurisdictional collaboration are needed to confiscate assets. In other circumstances, seized assets are mismanaged and lose their economic worth or become a governmental burden. This calls into question whether current legislation can ensure that crime-related assets are utilized for the public good (Sembiring, 2024).

The reverse burden of evidence concept in Article 77 of the Money Laundering Law, which requires the accused to show that their assets are not unlawful, is another issue. This theory helps eliminate money laundering, but it frequently conflicts with the Indonesian criminal law system's presumption of innocence (Pandiangan, 2017). Defendants without overwhelming proof may lose their assets even if they did not commit a crime. This pits law enforcement against human rights. The lack of openness and accountability in seized asset management is also a major issue. Several studies indicated seized assets were not completely documented or lost in administrative processes. The poor oversight of seized assets in this instance might harm public faith in the justice system.

How to maximize asset seizure to prevent and eliminate money laundering in Indonesia is a vital concern. Implementing regulations, the reverse burden of proof principle, technical and administrative obstacles in asset confiscation, and managing confiscated assets to maximize state and society benefits are all issues. Harmonization between law enforcement and human rights protection is also necessary to guarantee that asset seizure is fair, transparent, and legal. In-depth study is required to discover a complete and strategic solution to this challenge. This study's challenge is (1) How can asset confiscation be optimized to prevent and eliminate money laundering in Indonesia? (2) What are the challenges of asset seizure and how may they be solved to help end money laundering?

2. Method

This paper uses a normative legal research technique to assess relevant legislative requirements to optimize asset seizure for money laundering offenses in Indonesia. This research uses Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes, legal literature, scientific publications, and comparative legal systems from various nations. This paper addresses the technique for maximizing asset confiscation and the barriers and strategies required to eliminate money laundering (Mahmud Marzuki, 2011).

This research utilizes a normative descriptive technique to solve the first issue formulation: how to optimize asset seizure to prevent and eliminate money laundering offenses. This method maps asset seizure, analyzes legal rules, and identifies best practices. This research also examines how asset seizure and the reverse burden of evidence in Article 77 of the Money Laundering Law might create legal clarity and discourage criminals (Anisah & Nurisman, 2022).

A systematic strategy that stresses alignment with Indonesia's distinctive legal, social, and institutional frameworks is needed to make comparative analysis relevant to Indonesia's legal setting. First, choose comparable countries that share legal traditions, socio-economic situations, or asset confiscation and anti-money laundering issues with Indonesia. ASEAN nations or those with hybrid legal systems may provide greater insights.

Second, the study should identify practical legal concepts, methods, and institutional practices that may be changed without violating Indonesia's legal standards, including Pancasila and the Constitution. Indonesia's legal system contains gaps in asset tracking, freezing, and cross-border cooperation, thus focus on how other jurisdictions have solved comparable issues.

Finally, the approach should critically assess how these comparable practices might be incorporated into Indonesian legislation. Adoption feasibility, regulatory issues, and legal changes are examined. The comparative study may be tailored to Indonesia's setting to provide academically strong and practically implementable outcomes.

3. Analysis and Results

3.1. Optimization Mechanism for Asset Confiscation in the Prevention and Eradication of Money Laundering Crimes in Indonesia

In Indonesia, maximizing asset seizure to prevent and eliminate money laundering activities breaks the cycle of crime by diminishing the criminals' economic rewards. This idea holds that crimes must be punished not just physically via incarceration or penalties, but also by targeting the pecuniary incentives that motivate them (Fadilah, 2022). Asset seizure deters crime and prohibits criminals from utilizing the profits for new crimes. Due to the complexity and multinational nature of money laundering, which involves hard-to-trace funds, this idea is more important in fighting it.

Indonesian asset seizure is based on Law Number 8 of 2010 on Money Laundering Prevention and Eradication. Article 67 of the Money Laundering Law allows the state to seize money laundering assets via a criminal court ruling or a civil process if they cannot be connected to a

culprit. The accused must also establish that his assets are not criminally derived under Article 77 of the Money Laundering Law. This development in Indonesian criminal law, which normally follows the assumption of innocence, speeds up money laundering trials that are sometimes convoluted (Nurhadi & Hamzah, 2019).

Asset confiscation is backed by the Money Laundering Crime Law and the Criminal Procedure Code (KUHAP), which controls evidence confiscation and seizure. Government Regulation Number 43 of 2015, Procedures for the Implementation of Confiscation, administration, and Handover of Confiscated State Goods and Found Goods, regulates the administration of crime-related assets following state confiscation. This rule gives technical guidelines on how seized assets must be handled transparently and accountably to retain their economic worth and benefit the state or society.

The Police, Prosecutor's Office, and Financial Transaction Reports and Analysis Center must work together to optimize asset seizure. To successfully discover, trace, and confiscate assets, particularly those beyond Indonesia's jurisdiction, this collaboration is crucial. Indonesia ratified the UNCAC and Palermo Convention to facilitate cross-border cooperation in the confiscation of crime-related assets.

The Indonesian asset confiscation process prevents and eliminates money laundering by identifying, tracing, securing, and confiscating criminal assets for the state. Law enforcement investigates to see whether the assets recovered are related to the crime. Financial analysis, money tracking, and document review, including Financial Transaction Reports and Analysis Center suspicious transaction reports, are common in this inquiry. To locate assets transported overseas, cross-agency collaboration and international cooperation are often needed (Khairul et al., 2011).

Investigators confiscate assets under Article 39 and Article 46 of the Criminal Procedure Code (KUHAP) after identification. Except in emergency situations governed by law, its confiscation requires judicial authority. Investigators must also prevent the use or movement of confiscated assets during judicial proceedings. Government Regulation Number 43 of 2015 requires temporary state asset management to retain asset economic worth and avoid damage or loss.

Next is judicial proof, the essence of asset seizure. Article 77 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes states that Indonesia uses reverse burden of evidence in money laundering cases. The accused must establish that his assets were gained legitimately and are not tied to illegal conduct under this premise. However, the presumption of innocence must be considered while using this approach to prevent human rights breaches. In practice, the accused must offer documented proof, witnesses, or other evidence indicating the assets were gained legally, such as inheritance or company.

If the defendant cannot establish that their assets are unrelated to the crime, the court may take them based on public prosecutor proof. This approach allows the court to analyze the link between the assets and the crime using the balance of probability, which is lower than the threshold of evidence beyond reasonable doubt in criminal proceedings.

This aids asset seizure in sophisticated crimes like money laundering. After the court verdict is final, the state will handle the confiscated assets via legal channels. Assets might be auctioned, donated, or utilized to prevent and end crime. Technical issues like valuing assets or third-party litigation typically plague this management.

The legal, administrative, and technological challenges of Indonesia's money laundering asset confiscation system limit its implementation. In a contemporary financial system that permits culprits to employ technology to hide cash, showing the relationship between assets and illegal conduct is difficult. Complex deals involving several parties and overseas countries may hide illegal assets. This makes it harder for law enforcement to identify and monitor assets due to a lack of cross-border information and technology.

Asset seizure is complicated, as shown by the 2008 Bank Century money laundering incident. In this instance, money suspected of corruption and power abuse were routed via national and international financial institutions. Although some assets were confiscated, judicial proof was difficult owing to the lack of documentation evidence linking them to the crime. Third-party actions claiming asset ownership complicated the judicial procedure and slowed seizure (Beaton et al., 2017).

The reversal burden of evidence premise in Article 77 of Law Number 8 of 2010 is another issue. This idea speeds up the judicial process, although it frequently generates assumption of innocence issues. Defendants may feel disadvantaged if they lack the means to establish their holdings are not criminal. This typically happens with long-held property or investments without comprehensive ownership paperwork. Thus, innocent people may be unfairly criminalized.

Lack of cooperation between law enforcement authorities like the Police, Prosecutors, Financial Transaction Reports and Analysis Center, and others is the next issue. International collaboration is essential for cross-jurisdictional assets. Differences between legal systems, inefficient bureaucracy, and ineffective cooperation agreements hinder this coordination. In situations of money laundering with assets in countries without extradition agreements with Indonesia, access to information and assets is difficult, slowing the judicial process (Ali, 2011).

Seized asset handling also causes issues. State-seized assets sometimes lose value owing to bad management or delayed administrative procedures. Property assets that are not quickly auctioned or managed correctly might suffer physical damage or a reduction in market price, diminishing the state's economic gains. The corruption crime of BLBI (Bank Indonesia Liquidity Assistance) shows how state-seized assets are mismanaged and burdensome to maintain (Arifin & Utami, 2019).

Final complicating aspect is community and linked party ignorance of asset confiscation regulations and processes. Many criminals and third parties don't comprehend the legal repercussions of having problematic assets. This causes substantial legal opposition and time- and resource-intensive counterclaims. Complexity of evidence, coordination between institutions, international collaboration, and poor asset management are asset confiscation mechanism concerns.

This intricacy suggests that although the legal foundation is appropriate, its execution needs better. To make the asset confiscation mechanism work and eliminate money laundering in Indonesia, a more integrated and strategic approach is needed, including increasing law enforcement capacity, improving regulations, and strengthening international cooperation.

3.2. Obstacles in the Implementation of Asset Confiscation and Strategic Steps to Overcome Them to Support the Effectiveness of Eradicating Money Laundering

The legislative structure, enforcement methods, and institutional cooperation all hinder asset seizure to combat money laundering in Indonesia. These issues impede law enforcement and generate legal ambiguity that might erode public faith in the criminal justice system.

Despite regulating asset confiscation's essential principles, the legal framework has not given clear and complete instructions for all phases of implementation. Existing legal rules may not be detailed enough to handle the complexity of money laundering offenses, particularly cross-border financial transfers. The legislation does not specifically govern how to resolve asset ownership issues when a third party submits a claim, resulting in legal deadlocks that hinder seizure. The reversal burden of evidence in Article 77 of the Money Laundering Law sometimes leads to judicial interpretations that are inconsistent and may violate the presumption of innocence (Sembiring, 2024).

Technically, tracking and seizing illegal assets is difficult. Advanced money laundering tactics leverage digital technology and worldwide financial networks to hide cash sources and

destinations. This makes identifying and tracking assets difficult, particularly when they have been relocated to countries with lax financial rules or that don't cooperate with Indonesian law. Also, law enforcement officials' low technical ability to examine complicated financial data is an issue. Lack of modern technologies to track cash wastes time and resources.

Asset confiscation also struggles with agency coordination. Indonesia has the Financial Transaction Reports and Analysis Center, the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK), but operational integration is lacking, resulting in overlapping authorities and inefficient case handling. Poor agency communication has delayed decision-making and prevented the seizure of tracked assets. Differences in priority amongst agencies, when each prioritizes its own responsibilities above collaboration, worsen this difficulty.

Lack of international collaboration is the next challenge in money laundering cases involving cross-border assets. Many countries that receive profits of crime do not have bilateral or multilateral law enforcement agreements with Indonesia, making it impossible to acquire information or return assets beyond national jurisdiction (Arrsa, 2014). Even with international institutions like the UNCAC and Palermo Convention, legal discrepancies and a lack of political commitment from governments hinder collaboration (Muhtar, 2019).

Asset management of state-seized assets presents further issues. Due to inefficient administration, seized assets might become administrative burdens. Property assets can lose value if not auctioned or handled properly. This hurts the state economically and casts doubt on the government's competence to manage crime-related assets. Asset management transparency and accountability are also questioned, with instances of assets being lost or improperly documented, which might lead to systemic corruption. Finally, public ignorance about asset seizure as a tool to combat money laundering is the last impediment. Money laundering is done by many people and businesses without comprehending the legal consequences. Buying property or investing in financial products might help criminals conceal their gains. This lack of understanding sometimes leads to legal opposition, including litigation from parties who feel offended by asset seizure, even if the assets are tied to the crime.

Strategic initiatives must address policy, coordination, technical competence, and international collaboration to solve asset confiscation challenges and promote money laundering elimination in Indonesia. First, clarify and enhance the asset confiscation process, including more explicit restrictions on cross-jurisdictional assets, ownership disputes, and asset management. To be consistent and protect human rights, provisions that might lead to divergent judicial interpretations, such as the reverse burden of evidence, must be revised. Additional rules might offer technical instructions for law enforcement authorities on asset seizure and management operations.

Operationally, law enforcement collaboration is crucial. A combined information center or special task force with the Financial Transaction Reports and Analysis Center, the Police, the Prosecutor's Office, the Corruption Eradication Commission, and other institutions is needed by the government. This technology allows sharing information, developing cooperative plans, and real-time asset monitoring, confiscation, and seizure. To reduce inefficiencies caused by overlapping authority, agency function and responsibility laws must be defined. An AI-based financial data analysis solution may help agencies integrate and speed up asset monitoring.

Indonesia must extend extradition and MLA agreements to improve international collaboration. The government might strengthen its worldwide network in addressing illegal assets overseas by participating more in international organizations like the Financial Action Task Force (FATF). Strategically, establishing a more flexible bilateral or multilateral collaboration mechanism with destination nations for illicit finances is also vital. This collaboration includes law enforcement and cross-border financial regulatory harmonization, making asset monitoring quicker and more efficient.

Increased law enforcement capabilities should also be a priority. Officers may develop their technical skills via continuous training in financial analysis, asset monitoring, and cash flow identification using new technology. Financial forensic specialists and foreign legal advisers may also help with difficult issues. However, police must be legally protected and supported to do their jobs without outside interference.

Management of seized assets requires fundamental modifications to maximize their use. The government may create a competent, transparent entity to manage criminal assets. This institution needs severe internal and external audits to be accountable. Recording and monitoring seized assets using blockchain technology may promote transparency and avoid corruption. High-value assets must be auctioned or used for community-benefitting social programs like education or health.

Raising awareness of asset confiscation in money laundering is another technique. Public education efforts using mass media and internet channels may show how illegal assets harm economic and social stability. Thus, the public may report questionable activity and assist judicial proceedings.

Optimizing asset seizure to eliminate money laundering in Indonesia requires regulatory improvements, either via legislation modifications or the approval of new, more thorough rules. Enhancing Law 8 of 2010 on Money Laundering Prevention and Eradication is a priority. This legislation might incorporate more specific asset confiscation restrictions, including third-party claims, ownership disputes, and transparent asset management.

The Money Laundering Law should also harmonize with other relevant legislation, such as the Criminal Procedure Code (KUHAP), to prevent normative disputes that sometimes impede the court process. Money laundering offenses are complicated and typically include cross-jurisdictional assets, thus the KUHAP's seizure and evidence procedures may be changed. Asset confiscation revenues should not be used to pay crime prevention initiatives like law enforcement and public education without stricter constraints.

Rewriting the Money Laundering Law may increase international collaboration to enable cross-border asset confiscation. By increasing mutual legal assistance (MLA) and extradition agreements and giving the Financial Transaction Reports and Analysis Center (PPATK) more ability to interact with foreign financial institutions. This regulatory modification must also follow FATF criteria to boost Indonesia's reputation and make it easier to access foreign data and assets.

The operational steps of asset seizure need new technical laws in addition to the Money Laundering Law modification. Modifying Government Regulation 43 of 2015 on Procedures for the Implementation of Confiscation, Management, and Handover of Confiscated State Goods to incorporate blockchain-based asset management may boost openness and accountability. This law may also clarify the sale of seized assets and the distribution of auction revenues for social rehabilitation or criminal victim compensation (Puspitasari et al., 2021).

Legal strength must be complemented with legislative and judicial ability to handle money laundering issues. To ensure consistency and avoid conflicting with the assumption of innocence, the Supreme Court may set guidelines for judges to apply reversal burden of evidence. Several nations, notably the UK Office of Asset Management and Kenya's Asset Recovery Agency, have effectively managed crime-related assets. The executive branch should speed the creation of such an agency (OJK, 2020).

These regulatory improvements will strengthen the legal foundation and make the legal system more harmonious and responsive to modern problems. The asset confiscation procedure will be more legally successful and benefit the society economically and socially with sufficient regulatory backing. This approach stresses law's role in ensuring justice and eliminating crimes that harm the public.

4. Conclusion

This study optimizes asset seizure to fight money laundering in Indonesia. This method punishes criminals and impairs their ability to fund illegal operations by targeting money flows. However, legal intricacy, asset tracking technology limits, institutional coordination, and international collaboration issues make this system challenging to execute. Lack of asset management transparency and accountability hinders attempts to end this crime.

This paper discusses the "reverse burden of proof," which puts the onus on the accused to show their assets are legitimate. This method improves confiscation, but it raises problems about whether it violates Indonesia's assumption of innocence. Justice and fairness require balancing these values.

To make Law Number 8 of 2010 and accompanying regulations more comprehensive and responsive, strategic proposals include modifying them. Improving law enforcement, institutional coordination, and international cooperation should also be prioritized. Implementing blockchain technology for transparent asset management and educating the public about asset confiscation may enhance this framework.

Optimization of asset confiscation may reduce money laundering, boost economic development, protect social justice, and restore public faith in the judiciary with a well-integrated plan and strong political backing. Law enforcement in a worldwide environment must reconcile novel legal tools like the reverse burden of evidence with fundamental values like the presumption of innocence.

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