OPTIMIZING ASSET RECOVERY FROM CORRUPTION OFFENSES THROUGH THE APPLICATION OF REVERSE BURDEN OF PROOF

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ABSTRACT

This study pursues three primary objectives. First, to identify and analyze the challenges faced by prosecutors in optimizing the recovery of assets derived from corruption crimes. Second, to explore the urgency of implementing reverse burden of proof mechanisms in efforts to enhance asset recovery. Third, to formulate and recommend an applicable model for the future implementation of reverse burden of proof in optimizing the recovery of corruption-related assets.

The study adopts an empirical normative legal method, employing statutory and conceptual approaches, and is further enriched by comparative analysis of legal systems in other jurisdictions. Research data were gathered through a literature review encompassing primary, secondary, and tertiary legal materials, and subsequently analyzed qualitatively.

The findings of the study lead to three key conclusions. First, prosecutor faces challenges in optimizing asset recovery in corruption cases, particularly concerning the complexity of tracing the origin of assets; the assets that have been transferred, disguised, or concealed abroad; the limitations of cross-jurisdictional asset tracing instruments; weak inter-agency coordination among law enforcement bodies; the absence of integrated technical guidelines for implementing the reverse burden of proof and non-conviction based asset forfeiture; also the underutilization of synergistic approach between the Anti-Corruption Law (UU PTPK) and the Anti-Money Laundering Law (UU TPPU). Second, the application of reverse burden of proof is deemed urgent, as it can accelerate the verification of asset origins and support state efforts in confiscating illicit assets without relying solely on conventional criminal conviction mechanisms and aligns with international practices in the implementation of non-conviction based asset forfeiture. Third, Indonesia holds a strategic opportunity to optimize its asset recovery model in corruption cases through the implementation of a reverse burden of proof system that is firmly and proportionally designed. Regulations under the UU PTPK and UU TPPU serve as a normative foundation for shifting certain evidentiary responsibilities to the defendant, particularly in cases involving gratification and the origin of assets, through the adoption of follow the money' strategy that remains compliant with the principles of the rule of law and human rights.

Keywords : *asset recovery, corruption, reverse burden of proof, non-conviction based asset forfeiture.*

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OPTIMALISASI PENGEMBALIAN ASET TINDAK PIDANA KORUPSI MELALUI PENERAPAN SISTEM PEMBUKTIAN TERBALIK

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INTISARI

Penelitian ini memiliki tiga tujuan. Pertama, mengetahui dan menganalisis problematika yang dihadapi oleh penuntut umum dalam upaya optimalisasi pengembalian aset tindak pidana korupsi. Kedua, mengetahui dan mengkaji urgensi penerapan pembuktian terbalik dalam upaya optimalisasi pengembalian aset tindak pidana korupsi. Ketiga, merumuskan dan merekomendasikan model penerapan pembuktian terbalik dalam upaya optimalisasi pengembalian aset tindak pidana korupsi di masa mendatang.

Penelitian ini menggunakan metode normatif empiris dengan pendekatan peraturan perundang-undangan dan konseptual, serta dikombinasikan dengan studi perbandingan terhadap sistem hukum negara lain yang telah menerapkan *non-conviction based asset forfeiture*. Data penelitian diperoleh melalui studi pustaka terhadap bahan hukum primer, sekunder, dan tersier, lalu dianalisis secara kualitatif.

Penelitian ini menunjukkan tiga kesimpulan. Pertama, penuntut umum menghadapi sejumlah problematika dalam upaya optimalisasi pengembalian aset tindak pidana korupsi, terutama terkait kompleksitas pembuktian asal-usul harta, keterbatasan instrumen penelusuran aset lintas yurisdiksi, serta lemahnya koordinasi antar lembaga penegak hukum akibat belum optimalnya pemanfaatan kombinasi antara Undang-Undang Pemberantasan Tindak Pidana Korupsi (UU PTPK) dan Undang-Undang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (UU TPPU). Kedua, penerapan pembuktian terbalik menjadi sangat urgen karena dapat mempercepat proses pembuktian asal-usul harta terdakwa dan mendukung upaya negara untuk merampas aset hasil korupsi tanpa harus sepenuhnya bergantung pada pembuktian perbuatan pidana melalui mekanisme konvensional, serta sejalan dengan praktik internasional dalam rangka implementasi *non-conviction based asset forfeiture.* Ketiga, Indonesia memiliki peluang strategis untuk mengoptimalkan model pengembalian aset hasil tindak pidana korupsi melalui penerapan sistem pembuktian terbalik yang dirancang secara, tegas, dan proporsional melalui ketentuan UU PTPK and UU TPPU yang menjadi pondasi normatif untuk pembuktian terbalik, khususnya dalam perkara-perkara yang melibatkan gratifikasi dan pencarian asal harta kekayaan dari tindak pidana korupsi.

Kata kunci: pengembalian aset, korupsi, pembuktian terbalik, perampasan aset tanpa pemidanaan

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