

ABSTRACT

The embezzlement of public assets is a problem that threatening national development conditions. Confiscation of assets is a crucial step in the implementation of stolen asset recovery. Based on Law No.1/2006 on Mutual Assistance in Criminal Matters, Ministry of Justice and Human Rights was designated as Central Authority to play a key facilitating role in the implementation of Mutual Legal Assistance, including in the implementation of deprivation of assets located abroad. Article 57 also stipulates the agreement on cost-sharing from forfeited assets (sharing assets forfeited), but until now Indonesia does not have specific regulations related to. This study aims to find out the implementation of assets confiscation and sharing of assets forfeited by the Ministry of Justice and Human Rights as the Central Authority under the Mutual Legal Assistance and its constraints.

This study is a normative empirical research with statute approach, case approach, and conceptual approach. The data consisted of two sources, namely primary and secondary data. Data were collected through fieldwork and research libraries. Fieldwork research was carried out directly in sphere place with interviews to interviewees as primary data sources. While the literature research conducted by examining secondary data, either in the form of primary legal materials and secondary law materials relevant to this study. Data collected and analyzed by qualitative descriptive method analysis.

The results of this study show the role of the Ministry of Justice and Human Rights of Republic Indonesia in confiscating assets mechanism and sharing of forfeited assets, which facilitates communication between the state and as the representative of Governments in submitting requests. Sharing forfeited asset has been held for two times, which is between US-Indonesia in narcotics cases and between Hong Kong-Indonesia for confiscation of Hendra Rahardja's assets located in Hong Kong. There were domestic challenges: freezing or seizure of assets, nexus test, and the legal vacuum in sharing forfeited assets legislation. Challenges from abroad comes in dual criminality test, due process of law test, and registration of external confiscation order.

Keywords: Ministry of Justice and Human Rights, Mutual Legal Assistance, Sharing Asset Forfeited.

INTISARI

Pencurian aset publik merupakan masalah yang mengancam kondisi pembangunan nasional. Perampasan aset merupakan salah satu langkah yang krusial dalam pelaksanaan pemulihan aset yang telah dicuri tersebut. Berdasarkan Undang-Undang Republik Indonesia Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia adalah Otoritas Sentral pada pelaksanaan *Mutual Legal Assistance*, termasuk dalam pelaksanaan perampasan aset yang berada di luar negeri. Pasal 57 undang-undang tersebut juga mengatur adanya kesepakatan mengenai biaya bagi hasil dari harta kekayaan yang dirampas (*sharing asset forfeited*), namun hingga saat Indonesia masih belum mempunyai regulasi khusus terkait *sharing asset forfeited*. Penelitian ini bertujuan mengkaji pelaksanaan perampasan aset maupun *sharing asset forfeited* oleh Kementerian Hukum dan Hak Asasi Manusia selaku Otoritas Sentral dalam *Mutual Legal Assistance* tersebut beserta hambatan-hambatan pelaksanaannya.

Penelitian ini merupakan penelitian normatif empiris dengan pendekatan peraturan perundang-undangan (*statute approach*), pendekatan kasus (*case approach*), dan pendekatan konseptual (*conseptual approach*). Pengumpulan data terdiri dari dua sumber yaitu data primer dan sekunder. Data dikumpulkan melalui penelitian lapangan dan penelitian pustaka. Penelitian lapangan dilakukan secara langsung di lokasi penelitian dengan wawancara dengan narasumber sebagai data primer. Sementara penelitian pustaka dilakukan dengan meneliti data sekunder, baik berupa bahan hukum primer maupun bahan hukum sekunder yang relevan dengan penelitian ini. Data dikumpulkan dan dianalisis dengan metode deskriptif kualitatif analisis.

Hasil dari penelitian ini menunjukkan peran Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia dalam mekanisme perampasan aset dan *sharing asset forfeited*, yakni menjadi perantara negara dan perwakilan Pemerintah Republik Indonesia dalam menyampaikan permintaan *Mutual Legal Assistance*. Pelaksanaan *sharing asset forfeited* telah dilakukan sebanyak 2 (dua kali), yaitu antara Amerika-Indonesia dalam kasus narkoba dan antara Hong Kong-Indonesia atas aset Hendra Rahardja yang berada di Hong Kong. Hambatan dari dalam negeri berupa masalah terkait mekanisme pembekuan dan perampasan aset, nexus dan kekosongan hukum atas *sharing asset forfeited*. Hambatan dari luar negeri berupa masalah penerapan prinsip kriminalitas ganda, prinsip *due process of law* serta tantangan terkait dengan proses registrasi aset yang dirampas.

Kata kunci: Kementerian Hukum dan Hak Asasi Manusia, *Mutual Legal Assistance*, *Sharing Asset Forfeited*.