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When the victim's assets become state property: A normative analysis of the victim's right to restitution in money laundering criminal acts

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Abstract
Restitution for money laundering crimes in Indonesia is entirely directed at the state in the form of asset confiscation from parties who have been subject to criminal sanctions. However, this becomes problematic when there are victims who are directly harmed by money laundering due to the absence of a restitution mechanism that is supposed to be the victim's right. Based on this problem, this study aims to analyze the conformity between normative provisions on asset confiscation and the victim restitution mechanism within the applicable legal framework in Indonesia. The method used is normative legal research with a statutory, conceptual, and case-based approach, referring to the case of Decision Number 3692 K/Pid.Sus/2023. The results of the study indicate that the legal norms related to money laundering and victims' restitution rights encounter a structural norm conflict composed of three layers of gaps: substantive conflict between norms at the same level, the absence of a coordination clause in the Money Laundering Law, and the limitations of the Supreme Court Regulation as a procedural instrument. The disparity in decisions in the cases discussed in this article indicates a direct consequence of the structural deficiencies in the legal norm system within the country. Based on this, the author suggests the need for legislative reform that integrates the concept of restoring victims' restitution rights into the asset confiscation framework.

Keywords: Confiscation, money laundering, restitution

Introduction

The development of digital economic crime in Indonesia has given rise to increasingly complex money laundering schemes, particularly schemes disguised as investments and binary options trading. The state has responded by making the mechanism of asset confiscation as one of the forms of criminal sanction for the perpetrators to disrupt the flow of criminal funds and prevent perpetrators from enjoying the results of their crimes [1]. However, this asset confiscation mechanism, which is entirely aimed at the state, raises issues when victims seek restitution [2].

The crime of money laundering in Indonesia is normatively regulated in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. Basically, money laundering is an act of placing, transferring, spending, hiding or disguising the origin of assets that are known or reasonably suspected to be obtained from criminal acts. This regulation aims to prevent perpetrators from enjoying the results of their crime and disguising the source of wealth obtained unlawfully [3]. Therefore, apart from imprisonment and fines, Indonesian law also recognizes a mechanism for confiscating assets that are obtained from criminal acts. Confiscation of assets as a legal consequence of money laundering is regulated in various provisions in Law Number 8 of 2010, which gives the state the authority to confiscate assets proven to be related to the crime of money laundering. After obtaining permanent legal force, the confiscated assets in principle become the property of the state and are used in accordance with the provisions of the applicable laws and regulations.

Within the framework of the Indonesian criminal law, restitution is the victim's right to obtain compensation for the losses caused by the perpetrator of the crime, including in cases of money laundering. Restitution is generally given in cases where there are victims who can be clearly identified and directly suffered losses from the criminal acts [4]. However, the concept of restitution is not commonly applied in money laundering criminal cases. This is because money laundering is generally seen as a crime that affects the public interest and harms the state or the economic system in a broad sense. As a result, the legal mechanisms adopted are more oriented towards confiscating assets for the state rather than returning assets to affected parties. Thus, there is no restitution mechanism that specifically regulates the return or restoration of assets resulting from money laundering confiscation to victims who experienced economic impacts due to these actions.

The right to restitution is a crucial instrument in the development of modern criminal law, focused on the protection and restoration of victims. This concept aligns with the restorative justice approach, which positions victims as subjects whose rights must be restored, not merely as evidence in the criminal justice process. Through restitution, perpetrators are encouraged to take direct responsibility for the losses caused by their crimes. This approach reflects a paradigm shift from a purely repressive model of punishment to a more just and restorative model. In the context of the development of Indonesian criminal law, strengthening the right to restitution demonstrates the state's commitment to balancing the interests of law enforcement with the need for victim protection. The right to restitution for victims is seen as a concrete manifestation of the restorative justice paradigm, which is the direction of reforming Indonesian criminal law [5].

The Doni Salmanan case serves as a unique illustration of money laundering in Indonesia. The case stemmed from his role as an affiliate of the binary options platform Quotex, which allegedly promoted illegal investment activities and

misled the public. During the legal process, Doni was charged with money laundering for allegedly disguising and enjoying the proceeds of crime obtained from these illegal activities. On appeal, the Bandung High Court found Doni Salmanan guilty of money laundering, sentenced him to prison, and ordered the confiscation of various assets belonging to the state. The confiscated assets included cash, luxury vehicles, houses, and various other valuable assets related to the proceeds of crime. The ruling emphasized that the assets resulting from the money laundering were not returned to the victims but were instead confiscated and became the property of the state in accordance with the mechanisms stipulated in the law. However, Doni Salmanan and the Public Prosecutor filed a cassation to the Supreme Court, which ultimately resulted in Supreme Court Decision Number 3692 K/Pid.Sus/2023, dated August 15, 2023, rejecting both parties' appeals. By rejecting the cassation, the Supreme Court essentially upheld the Bandung High Court's decision, which sentenced him to eight years in prison, a fine of Rp. 1 billion, and confiscated assets related to the crime for the state. This cassation decision rendered Doni Salmanan's case legally binding (*inkracht van gewijsde*), allowing the state to execute all confiscated assets in accordance with applicable law [6].

Several previous studies have addressed this issue from different angles. Adilah (2023) [7] highlighted the legal certainty aspect for victims of Doni Salmanan's fraud at the district court level; Bayu (2024) [8] examined the role of digital forensics in proving cases. Conceptually, Gumilang (2024) [2] and Lonna (2023) [1] examined the seizure of money laundering assets from the perspective of justice and urgency. However, these studies have not specifically unraveled the structural relationship between norms that cause victims' restitution rights to be marginalized when faced with the seizure of state assets.

Based on the background described above, this article was written to systematically map the gap in the legal norms between the asset confiscation and the victim restitution, as well as to trace its implications for the disparity in decisions at three levels of justice in the Doni Salmanan case as a relevant case study.

Research Method

This article uses a normative legal research method that examines positive legal norms as the primary object [9]. The approaches employed include a statutory approach, a conceptual approach, and a case approach, examining Decision Number 3692 K/Pid.Sus/2023, along with decisions at two previous levels of court, as analytical material for more holistic results. This article is analyzed descriptively and qualitatively using primary legal materials in the form of laws and court decisions. Furthermore, secondary legal materials in the form of previous research also serve as the basis for this article's analysis.

Results and Discussion

1. Provisions on Asset Confiscation and Restitution Mechanisms in Indonesia

If the court finds the defendant guilty, all assets proven to be the proceeds of a money laundering crime should, normatively, be confiscated by the state. This formulation is imperative and does not provide room for the judge to exclude some assets for the benefit of the victim (Sjahdeini, 2007). This provision is as stated in Article 67 paragraphs (1) and (2) of Law No. 8 of 2010, which respectively read as follows:

"In the event that no person and/or third party submits an objection within 20 (twenty) days from the date of the temporary suspension of the Transaction, the Financial Transaction Reports and Analysis Center will hand over the handling of Assets which are known or reasonably suspected to be the proceeds of the crime to investigators for investigation."

"In the case that the person suspected of being the perpetrator of the crime is not found within 30 (thirty) days, the investigator can submit an application to the district court to decide that the assets are state assets or to return them to the rightful party."

The procedures for asset confiscation are regulated in Article 68, which requires the public prosecutor to submit a request for confiscation, and Article 71, which states that confiscated assets must be handed over to the state. There is not a single article in the Money Laundering Law that regulates a scheme for redistributing confiscated assets to victims or a coordination mechanism between asset confiscation and restitution.

Furthermore, Article 7, paragraph (1) of the Law Number 31 of 2014 concerning Protection of Witnesses and Victims stipulates that victims of certain crimes have the right to restitution in the form of compensation for lost wealth, income, suffering, and other costs directly resulting from the crime. This right is binding and is part of the perpetrator's criminal liability, not a matter of court discretion. In addition, Supreme Court Regulation Number 1 of 2022 provides procedural regulations regarding the submission, proof of the amount of losses, and implementation of restitution decisions. However, a crucial problem arises when the source of restitution financing, namely the defendant's assets, has already been completely confiscated by the state, so that the Supreme Court Regulation procedural mechanism cannot be operationalized.

2. Normative Gaps in Asset Confiscation and Restitution Mechanisms

There is a normative gap in the mechanism for confiscating assets and fulfilling the rights of restitution for victims of money laundering crimes. The first layer is the substantive conflict between norms of the same level. Article 67 of the Money Laundering Law and Article 7 of the Protection of Witnesses and Victims Law are in the same hierarchy according to Article 7 of Law Number 12 of 2011 concerning Formation of Legislation, so there is no norm that is automatically higher. The two run side by side without a conflict resolution mechanism, thus opening up a wide room for interpretation and disparity in decisions between levels of justice. It is important to be noted as well that Indonesia adopts the principle of *lex superior derogat legi inferiori*, meaning that in the hierarchy of legal regulations in Indonesia, a higher-level rule will override the lower one if the two contradict each other [10].

Secondly, the absence of a coordination clause in the Money Laundering Law. The law does not clarify whether asset confiscation can be carried out simultaneously with restitution or whether they are mutually exclusive. This ambiguity is apparent when the public prosecutor attempted to accommodate the victims by requesting that some of the seized evidence be returned to them proportionally through the Doni Salmanan Victims Association. However, this request lacks a strong normative basis.

Third, the limitations of Supreme Court Regulation No. 1 of 2022 as a procedural instrument. The regulation does not provide guidance on funding sources for restitution if all of a convict's assets have been confiscated by the state, making normatively recognized rights difficult to realize in practice.

3. Case Study of Money Laundering Case by Doni Salmanan

At the first instance, the Bale Bandung District Court, through Decision Number 576/Pid.Sus/2022/PN Blb declared the defendant, Doni Salmanan, guilty of violating the Information and Electronic Transaction Law but not committing money laundering. Therefore, the majority of the evidence was returned to the defendant. The rejection of the money laundering charge invalidated Article 67, and paradoxically, assets worth far more than the victim's losses were returned to the defendant, not the victim.

On the appeal level, the Bandung High Court overturned the District Court's ruling, declaring the defendant guilty of multiple crimes and fully applying Article 67, resulting in the forfeiture of all evidence to the state. The Bandung High Court even dismissed the prosecutor's demand for some of the assets to be returned to the victim, citing the lack of a coordinating clause.

Lastly, at the cassation level, the Supreme Court rejected the petitions of both parties and upheld the Bandung High Court decision without providing legal considerations regarding the position of the 142 victims or the relevance of Article 7 of the Protection of Witnesses and Victims Law and Supreme Court Regulation No. 1 of 2022. It is noteworthy to see that the Supreme Court noted that the defendant's income from Quotex affiliate activities was approximately IDR 210 billion, far exceeding the victim's total loss of IDR 24.3 billion. This fact shows that, economically, it is actually possible to fulfill restitution for victims as well as confiscate assets for the state; this opportunity was missed simply because of the absence of a normative framework that regulates it [8].

4. Theoretical Analysis on Kelsen and Radbruch's Legal Theory

Hans Kelsen viewed law as a hierarchal structured normative order (*Stufenbau des Recht*), where the validity of a norm derives from norms at a higher level of hierarchy, and coherence between norms is a prerequisite for the functioning of the legal system [11]. If two norms of the same level regulate conflicting interests without a mechanism for resolving the conflict, there is a structural flaw in the normative system. Kelsen called this condition a norm conflict (*Normwiderspruch*), a case that requires the creation or change of norms as a means of harmonization, not merely interpretation for its resolution.

Meanwhile, Gustav Radbruch stated that law has three main objectives that must be realized harmoniously, namely justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*) [12]. Through Radbruch’s idea, if the injustice of a positive norm has exceeded an intolerable limit, the norm loses its legal character and must be set aside for the sake of higher justice. Placing this idea into the case framework that has been mentioned previously, this formula serves as a test tool to determine whether the full confiscation of assets to the state while ignoring the right to restitution of 142 victims approaches the condition of statutory injustice (*gesetzliches Unrecht*).[13]

In Kelsen's framework, each norm has formal validity but does not form a coherent order when applied in the same situation [7]. This incoherence represents a flaw at the structural level of the normative system that can only be resolved through legislative synchronization, not simply judicial interpretation.

From Radbruch's perspective, this gap demonstrates a partial failure of positive law. Legal certainty is met in the narrow sense, but benefits are not achieved because 142 victims do not receive redress, and justice is distorted because state interests are placed above the interests of victims guaranteed by equivalent norms [12]. This condition has the potential to approach *gesetzliches Unrecht*, which must be rejected by a responsible legal system.

Conclusion

The asset confiscation provisions in the Money Laundering Law, victim restitution mechanisms in the Protection of Witnesses and Victims Law, and Supreme Court Regulation No. 1 of 2022 are not in harmony. This disharmony is structural and is composed of three layers of normative gaps: substantive conflicts between norms at the same level, the absence of a coordination clause in the Money Laundering Law, and the limitations of the Supreme Court Regulation as a procedural instrument. The disparity in decisions at the three levels of the judiciary in the Doni Salmanan case is not simply a matter of differing reasoning among judges, but rather a direct consequence of the structural deficiencies of the normative system. Therefore, legislative reforms are needed that explicitly integrate victim restitution mechanisms into the asset confiscation framework within the Money Laundering legal framework, for example, through a coordination clause that prioritizes the fulfillment of victim restitution before the remaining assets are paid to the state.

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