

ABSTRAK

NON CONVICTION BASED ASSET FORFEITURE DALAM UNDANG-UNDANG PEMBERANTASAN TINDAK KORUPSI DI MASA MENDATANG SEBAGAI ALTERNATIF UPAYA PENGEMBALIAN ASET

Isu hukum yang diteliti adalah : (1). Dasar filosofis Non-Conviction Based Asset Forfeiture hasil tindak pidana korupsi; dan (2). Pengaturan Non-Conviction Based Asset Forfeiture dalam undang-undang pemberantasan tindak pidana korupsi yang berlaku di masa mendatang.

Penelitian ini menggunakan 3 (tiga) pendekatan, yaitu : (1). Pendekatan perundang-undangan (statute approach), (2). Pendekatan konsep (consep approach); dan (3). Pendekatan perbandingan (comparative approach).

Simpulan penelitian : (1). Dasar filosofis Non Conviction Based Asset Forfeiture tidak dapat dipisahkan dengan salah satu tujuan negara Republik Indonesia sebagaimana tercantum dalam alenia ke 4 Pembukaan Undang-Undang Dasar 1945, yaitu “memajukan kesejahteraan umum”, yang merupakan tanggungjawab (kewajiban) negara untuk mewujudkannya dan pada sisi lain merupakan hak bagi masyarakat untuk mendapatkan dan menikmati kemakmuran. (2). Pengaturan Non Conviction Based Asset Forfeiture dalam undang-undang pemberantasan tindak pidana korupsi sangat urgen mengingat instrumen hukum yang berlaku sekarang jangkauannya sangat terbatas, tidak efektif dan efisien. Dalam RUU Perampasan Aset Tindak Pidana dan RUU Pemberantasan Tindak Pidana Korupsi tersebut diatur tentang beban pembuktian “ballanced of probability principle” yang tertuju kepada pihak ketiga yang merasa berhak atas aset yang diajukan permohonan perampasan oleh Jaksa, sehingga pihak ketiga itulah yang harus membuktikan bahwa aset tersebut, bukan hasil Tindak Pidana Korupsi, yang mana tidak bertentangan dengan UUD 1945 dan ICCPR. Sebagai alternatif upaya pengembalian aset hasil tindak pidana korupsi, kiranya perlu diterapkan perampasan aset Non Conviction Based untuk mengantisipasi peradilan pidana tidak dapat dilaksanakan pada keadaan-keadaan tertentu. Pengaturan Non Conviction Based Asset Forfeiture perlu secara khusus dituangkan dalam Undang-Undang Pemberantasan Tindak Korupsi di masa yang akan datang (ius constituendum) sehingga terintegrasi dalam sistem pemberantasan tindak pidana korupsi. .

Kata-kata kunci : Non Conviction Based Asset Forfeiture, Tindak Pidana Korupsi, Pengembalian Aset

ABSTRACT

NON CONVICTION BASED ASSET FORFEITURE IN CORRUPTION CRIME ERADICATION ACT IN THE FUTURE AS ALTERNATIVE EFFORT TOWARDS ASSET RECOVERY

The legal issues of this research are: (1) the philosophical ground of the Non Conviction Based Asset Forfeiture upon the results of the corruption crime; (2) the regulation on Non-Conviction Based Asset Forfeiture enforced in Corruption Crime Eradication Act in the future.

There are three (3) approaches used in this research are namely: (1) statute approach, (2) conceptual approach; and (3) comparative approach.

The conclusions of the research are (1) the philosophy of Non Conviction Based Asset Forfeiture cannot be separated from on of the goals of the state of the Republic of Indonesia as stipulated in the fourth paragraph of the Preamble of the 1945 Constitution, namely “to advance the public welfare” which constitutes the responsibility (obligation) of the state to actualize it and on the other hand it is the right of the society to get and enjoy the welfare. (2) In the Bill concerning Asset Forfeiture of A Crime and in the Bill concerning Eradication of Corruption Crime (Government’s Proposal version) it is regulated the burden of evidence of “ballanced of probability principle” directed to the third party who feels entitled to the asset which has been requested for forfeiture by the Public Prosecutor, so the said third party who has to prove that the asset has been obtained not from a crime. This burden of evidence is neither contrary to the human right stipulated in 1945 Constitution. As an alternative effort of asset recovery from the result of corruption crime, it is deemed necessary to apply the Non-Conviction Based Asset Forfeiture in order to anticipate criminal justice can not be performed in particular situation. Legalization of Non-Conviction Based Asset Forfeiture must be specially included in Corruption Crime Eradication Act in the future (ius constituendum) so it is integrated into corruption criminal justice system.

Keywords : Non Conviction Based Asset Forfeiture, Corruption Crime, Asset Recovery