

Indonesia Prepares Assets Confiscation Bill

Introduction

Following public criticism over a spate of cases involving state officials living in luxury beyond their means, the House of Representatives and the Government of Indonesia are preparing a new law for the confiscation of assets related to criminal actions (“**Bill**”). The latest version of the Bill is from April 2023.

The main purposes of the Bill are as follows:

1. Regulate and provide guidelines for the confiscation of assets related to criminal action (“**Assets Confiscation**”), including tracing (*penelusuran*), blocking (*pemblokiran*), seizure (*penyitaan*) and confiscation (*perampasan*) by the state. These actions align with the international standards outlined in Chapter V of the United Nations Convention Against Corruption.
2. Fill the existing legal void in Indonesia’s criminal justice system on Assets Confiscation.
3. Provide guidance to law enforcement agencies, enabling them to take legal actions for Assets Confiscation, without waiting for a court decision on the alleged crime.
4. In addition, the Bill clearly states that the legal actions for Assets Confiscation are directed against the assets themselves and not the individuals. These actions are not contingent on upon the conviction on the perpetrator of the criminal action. Furthermore, any Assets Confiscation actions under the Bill will not prevent the state from prosecuting the perpetrator of the criminal action.

Important Definitions

Some of the important definitions under the Bill are:

1. **Assets:** This refers to all movable and immovable assets, either tangible or intangible, that hold economic value.
2. **Criminal Assets:** These are assets that can be forfeited by the state under the provisions this Bill.
3. **Assets Forfeiture:** This means coercive measures implemented by the state to assume control and/or ownership of the Criminal Assets. This is carried out based on a final and binding court decision and is independent of any sanctions against the perpetrator (non-conviction).
4. **Documents:** This refers to any data, recording or information that can be seen, read and/or listened to. It includes both physical forms (such as paper) and electronic recordings. It includes: (i) any writing, voices or pictures; (ii) maps, designs, photographs or similar media; and (iii) alphabets, marks, numbers, symbols or perforations that convey meaning or can be understood by individuals capable of reading or interpreting them.

This advisory provides an overview of the highlighted provisions under the Bill on Assets Forfeiture, including the brief procedures for the legal actions that the state can undertake through government institutions.

Confiscated Criminal Assets

What kind of Criminal Assets can be forfeited?

The Bill specifies the following types of Criminal Assets that can be confiscated:

1. Assets derived from the proceeds of crime or obtained directly or indirectly from criminal actions. This includes assets granted or converted into personal wealth, capital, income or any other economic profit for oneself, others or corporations.
2. Assets known, presumed or used for conducting criminal actions.
3. Other valid assets owned by the perpetrator of a criminal action as replacements for assets already forfeited by the state.
4. Assets classified as found items (*barang temuan*) known or presumed to originate from criminal action.

Additionally, the Bill allows for the confiscation of other assets, including:

1. Assets that are disproportionate to the declared income or any other lawful sources of wealth and are presumed to be related Criminal Assets obtained since the enactment of

this regulation.

2. Assets constituting seized goods obtained from or used in criminal actions.

Furthermore, the Bill sets criteria for the confiscation of Criminal Assets as follows:

1. Assets with a minimum value of IDR100,000,000 (one hundred million Rupiah).
2. Assets related to criminal actions punishable by imprisonment of four years or more.

Conditions for Assets Confiscation

Under the Bill, the confiscation of Criminal Assets that can be forfeited as listed above will take place under either of the following conditions:

1. The suspect or the accused is deceased, has fled, is permanently ill or their whereabouts are unknown.
2. The accused has been acquitted of all criminal charges.

Assets Confiscation can also be carried in the following cases:

1. The criminal case cannot proceed to trial.
2. The accused has been found guilty based on a final and binding court decision, and it is subsequently discovered that there are additional Criminal Assets that have not been confiscated.

These provisions constitute the requirements or key elements that must be established before the state, including its officers, can proceed with the actions for Assets Confiscation.

Actions for Assets Confiscation

The Bill lists the following actions for Assets Confiscation:

Tracing (*Penelusuran*)

Tracing involves a series of actions to search, inquire, obtain and analyze information to determine the origin, existence and ownership of Criminal Assets.

The Investigator (an official that is entitled to conduct investigation under the Bill or any other laws) is authorized to conduct tracing and has the right to request Documents from any parties, government institutions or any related institutions.

In response to a request for Documents, the requested party (i.e., parties, government institutions or any related institutions) **must** provide the Investigator with the original or authenticated Documents.

The Bill does not specify any consequences or sanctions that the requested party may face for non-compliance with the Investigator's requests. However, it does offer legal protection to the requested party if they comply with the Investigator's request; specifically, they will be granted immunity from any civil, state administrative or criminal lawsuits. The implementation of this immunity provision will require clarification from the Indonesian courts.

In a full criminal investigation, if the requested party refuses to provide the requested documents (as they are under no obligation to do so), the Investigator can use coercive measures, such as search and seizure, to obtain the required documents.

Blocking (*Pemblokiran*) and Seizure (*Penyitaan*)

The Bill defines blocking as a series of actions taken for the temporary freezing of Assets assumed to be Criminal Assets, while seizure involves temporarily taking control of Assets assumed to be Criminal Assets for evidentiary purposes in the petition for Assets Forfeiture during court proceedings.

If the Assets to be blocked or seized are located outside Indonesia, a request should be submitted to the relevant authorities in the jurisdiction where the Assets are located. If the request is rejected, the Investigator can block or seize assets within Indonesia that are owned or controlled by the person whose Assets are located overseas. The value of these local Assets will be equal to the value of the overseas Criminal Assets intended for blocking or seizing.

Further, if the tracing results indicate that the related assets are the criminal assets that can be forfeited, the Investigator is entitled to block and/or seize them. During the blocking and/or seizing period, the Criminal Assets cannot be transferred to any other parties.

Blocking

The blocking is carried out through an order issued by the Investigator's supervisor, after obtaining approval from the relevant district court, to the relevant institution.

The blocking will remain in effect for 30 working days. If necessary, it can be extended for

another 30 working days with approval from the relevant district court for further examination. Once this timeline has expired, the blocking will cease in accordance with the law.

Seizure

The mechanism and procedures for seizure are as follows:

- (i) If the tracing results indicate that the Assets are the criminal assets that can be forfeited, the Investigator, after receiving approval from the relevant district court, is authorized to carry out the seizure.
- (ii) During the seizure process, the Investigator must present the order for seizure issued by their supervisor to the person who owns or controls the Criminal Assets to be seized.
- (iii) The seizure is conducted by issuing a seizure report (in the form of 'minutes'), signed by the Investigator, the person who owns or controls the Criminal Assets to be seized, and two witnesses.

In the case of seized land or immovable assets, the Investigator must promptly notify and register the seizure, along with the minutes of seizure report, with the relevant authorities.

Following the seizure, the Investigator is required to:

- (a) request a court order from the relevant district court within 14 days; and
- (b) hand over the seized Criminal Assets and the supporting Documents to the Attorney General's Office, which will then maintain them securely.

Legal Remedy for Affected Parties

The Bill states that any individuals (excluding suspects or accused individuals who have fled, are wanted, or their proxies) who believe their rights have been infringed upon due to the blocking and/or seizure have the right to file an objection. The objection should state that the blocked and/or seized Assets are legally owned by the individual and do not qualify as Criminal Assets. An optional claim for compensation can also be included.

- c. Filing a Petition for Assets Confiscation

Filing

The filing procedures will be carried out by the Investigator or the Public Prosecutor, and subsequently once the filing is completed, it must be submitted to the State Attorney (*Jaksa Pengacara Negara*). The State Attorney must submit the petition for Assets Confiscation to the relevant district court within 14 working days of receiving the complete filing.

Petition for Assets Confiscation

The petition for Assets Confiscation will be submitted by the State Attorney (*ex officio*, without needing any power of attorney) to the relevant district court.

In general, the relevant district court is the one that has jurisdiction over the Assets. If the Criminal Assets are located outside Indonesia, the authorized district court would be the Central Jakarta District Court.

Legal Remedy for the Person whose Rights are Harmed

If a person believes their rights have been harmed due to the submission of a petition for Assets Confiscation, they have the right to file a written rebuttal to the chairperson of the relevant district court. The rebuttal, which should state that the Assets in question are not Criminal Assets, must be submitted before or on the hearing date.

d. Examination at Court Hearing (*Pemeriksaan di Sidang Pengadilan*)

During the court hearing, the examination of the petition for Assets Confiscation will generally follow the civil procedure laws and regulations, unless specified otherwise in the Bill. The examination will be conducted in court hearings open to the public. More detailed procedures for the examination of the petition for Assets Confiscation will be regulated by the Supreme Court through a separate regulation.

Presence of Assets

During the examination at the court hearing, the State Attorney is required to present the Assets. However, if it is not feasible to present the Assets physically, the examination may take place where the Assets are located or through electronic means. In the case of accounts or intangible goods, the evidence presented at the court hearing can be in the form of an affidavit from the service provider.

Admissible Evidence

Under the Bill, the following types of evidence are admissible:

1. Letters;
2. Documents;
3. Testimony of witness(es);
4. Testimony of expert(s);
5. Electronic evidence;
6. Affidavit from the service provider;
7. Any other evidence that emerges during the proceedings.

Court Decision and Legal Remedy

Once the examination is completed, the panel of judges will convene for deliberation to reach a decision on the petition for Assets Confiscation. If there is a dissenting opinion among the judges, it must be attached to the court decision.

If the State Attorney successfully proves its petition for Assets Confiscation, the court decision must declare acceptance of the petition, and rejection of the rebuttal and/or objection (if any). Subsequently, within 14 working days of receiving the court decision, the State Attorney must transfer the seized Assets to the relevant institution responsible for handling the Criminal Assets.

On the other hand, if the court decision rejects the petition for Assets Confiscation, it will accept the rebuttal and/or objection (if any) and order the return of the Assets to the entitled party.

Any party dissatisfied with the court decision has the right to file an appeal (*kasasi*) to the Supreme Court. The appeal process will follow the prevailing civil procedural laws and regulations.

e. Assets Management (*Pengelolaan Aset*)

The Attorney General (*Jaksa Agung*) is responsible for the management of the Confiscated Assets in accordance with the prevailing laws and regulations on state assets. The Assets Management process involves storage, custody, maintenance, assessment, transfer, usage, utilization, and return of the Criminal Assets.

IV. Important Notes

While the processes and procedures for Assets Confiscation appear straightforward, several issues have not been adequately addressed in the Bill, as outlined below.

(a) Checks and Balances

The Bill lacks provisions on checks and balances on the actions of the Investigator during the tracing process. Without proper oversight, there is a potential risk of abuse of power and violation of the rights of the individual who owns or controls the assets.

(b) Legal Classification

It unclear whether the Investigator's action should be conducted in accordance with the Criminal Procedure Code or the Civil Procedure Code. Considering that Assets Confiscation is a legal action targeting assets, which falls within the realm of civil matters, it would be more appropriate to classify the procedures for Assets Confiscation as legal actions rather than coercive measures (*upaya paksa*). In civil matters, parties seeking to pursue a claim, including the confiscation of assets, must file a lawsuit and wait until the issuance of a final and binding court ruling before taking any action against the assets.

(c) Obligation to Provide Documents

In both the Civil Procedure Code and the Criminal Procedure Code, there is no obligation for a party to provide any information or documents upon request. In criminal law, if the Investigator deems it necessary to obtain the information or documents, they have the authority to take coercive measures, such as search and seizure, by following certain requirements and procedures. However, in the absence of any clear context regarding the applicability of the Civil Procedure Code or Criminal Procedure Code in the Bill, the provision obligating a party to provide documents on request raises questions over its legal basis.

(d) Legal Remedy for Assets Owners

The Bill only regulates legal remedies for parties who are aware of the actions taken against their Assets, such as blocking and/or seizure. However, if a party only learns of the confiscation of their Assets after a court decision has been issued, it is unclear whether they can take any legal actions against the decision. In theory, individuals should be able to file a third-party claim (*derden verzet*) to the relevant district court if they believe they are the rightful owners or controllers of the Assets.

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