
Juridical Analysis of Confiscation of Looted Goods and State Seizures in Corruption Crimes

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ABSTRACT

The act of confiscation of goods resulting from criminal acts of corruption is not easy and faces various obstacles in its implementation. The existence of confiscated and confiscated objects that have expensive maintenance costs has actually become a new burden for the government and has the potential to pose a big risk in the future. The purpose of this research is to examine the procedures for the confiscation of confiscated goods and state confiscations in corruption crimes as well as to formulate efforts that will optimize the regulation of confiscated goods and state confiscations resulting from criminal acts of corruption. This research is normative research using a law approach, a case approach, and a conceptual approach in the research approach. The results of the study indicate that the existing problem is that the procedure for confiscation of confiscated goods and state confiscations resulting from criminal acts of corruption is carried out and involves various agencies, namely the Attorney General's Office, the Corruption Eradication Commission (KPK), the Ministry and Rupbasan in accordance with the legislation that has been set. However, in practice, there are various obstacles that must be improved and minimized by the various agencies. With regard to confiscated and confiscated goods, criminal acts of corruption use the in personam principle

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1. Introduction

Marriage is a very important event in human life because in it there are elements of the rights and obligations of each party regarding family life issues that must be fulfilled.¹ Marriage is very important in society. The existence of these legal acts is to legalize the legal relationship between a man and a woman.²

The practice of law enforcement (hand having) against the proceeds of crime which is evidence of crime in the criminal process is often not in line with the purpose of the law itself, namely to obtain proportional truth. So that in a criminal case, whether general or special, such as a corruption case, forced efforts are needed in the form of confiscation of objects owned by the suspect so that they can then be used as evidence.

Law enforcement institutions that are authorized by legislation to confiscate or confiscate goods resulting from criminal acts of corruption are the Corruption Eradication Commission (KPK), the Attorney General's Office and the Police. In particular, efforts to maximize the handling of looted and confiscated goods resulting from criminal acts of corruption have also not been easy and have encountered various obstacles in each implementation.

The existence of Rupbasan is limited to its main task, namely to take care of looted and confiscated goods. With a time limit until there is a change in status, namely after a permanent legal decision (inkracht) on the case related to the confiscated object. Only after there is a legal decision can the confiscated goods become state assets which can then be sold through an auction process. However, the process of waiting for a legal decision that is not short and the lack of maintenance processes resulted in the spoils ending up being damaged before they could be auctioned off. As happened in the Class I State Confiscated Objects Storage House (Rupbasan) in Central Jakarta. As a result, many confiscated goods and looted proceeds from corruption caused problems because with 150 motorized vehicles and a limited budget and the execution of the auction had to wait for a court decision with permanent legal force, making the treatment of the confiscated goods not run optimally.³

¹ H. Hilman, Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan Hukum Adat Dan hukum Agama*, Bandung : Mandar Maju, 2007, hlm. 8.

² Salim. HS, *Pengantar Hukum Perdata Tertulis (BW)*, Jakarta: Sinar Grafika, 2001, hlm. 61.

³ Lihat, <https://www.medcom.id/nasional/hukum/1bVXDXaK-terbentur-anggaran-barang-sitaan-kasus-korupsi-terbengkalai>, Diakses tanggal 28 Oktober 2021

The problems that occur become very complex even though when referring to Law no. 17 of 2003 concerning State Finances, the confiscated and confiscated goods should be utilized as much as possible in order to obtain a refund from the state losses incurred. However, let alone to get a refund from the losses incurred, the presence of confiscated and confiscated objects that have expensive maintenance costs has actually become a new burden for the government and has the potential to pose a big risk in the future.

Departing from the description of the background above, the author is interested in studying and analyzing in more depth about the legal problems that arise from the confiscation of goods resulting from corruption, so the authors raise it in a problem formulation, namely how the procedure for confiscation of confiscated goods and state confiscations is carried out in criminal acts. corruption

2. Method

Based on the main problems described, this research will analyze the formulation of the problem in a normative or library research or doctrinal research using a law approach, a case approach, and a conceptual approach in a research approach. Doctrinal research is research that provides a systematic explanation of the rules governing a particular category of law, analyzes the relationship between regulations, explains areas of difficulty and may predict future developments.⁴

Activities carried out in the analysis of legal materials in normative legal research by means of legal materials obtained in a descriptive qualitative analysis, namely the analysis of data that cannot be calculated. The legal materials obtained are then discussed, examined and grouped into certain parts to be processed into information data. The results of the analysis of legal materials will be interpreted using a systematic (a) interpretation method; (b) grammatical; and (c) teleological⁵

3. Procedure for confiscation of looted goods and state confiscations in corruption crimes

The development of contemporary criminal law cannot be separated from the attention to protection from confiscated goods and booty. Especially corruption that causes losses to state finances. Criminal law in Indonesia itself is enshrined

⁴ Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011, hlm. 35.

⁵Lihat Jimly Asshiddiqie, *Teori & Aliran Penafsiran Hukum Tata Negara*.Ind. Hill.Co. Jakarta, 1997., Hlm. 17-18

in the Criminal Procedure Code (KUHAP) along with other laws and regulations. Examination of cases for criminal acts in the form of general and special crimes. In a criminal act of corruption, the investigator must take over or take coercive measures against certain goods or objects owned by the suspect, to be used as evidence for the next stage.

It should be understood that confiscated goods and confiscated goods are two different legal acts. The object is the same but comes from different legal actions. Confiscated objects are objects that are taken over by legal authority or are deprived of physical control, while confiscated goods are objects that are declared confiscated by court decisions for the state or for the sake of proving other cases.⁶

In the realm of regulation, there are 4 (four) categories of objects that can be subject to confiscation according to the Criminal Procedure Code, namely:⁷

1. Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as a result of a criminal act (Article 39 paragraph (1) letter a of the Criminal Procedure Code)
2. Packages or letters or objects whose transportation or delivery is carried out by the Post or Telecommunications Office, Communications or Transportation Service or Company as long as the package, letter or object is intended for the suspect or originating from him (Article 41 of the Criminal Procedure Code)
3. Other written documents from those who are obliged by law to keep it secret as long as it does not involve state secrets (Article 43 of the Criminal Procedure Code)
4. Prohibited objects such as unlicensed firearms, explosives, certain chemicals, drugs, books or magazines and pornographic films, counterfeit money.

confiscated objects which in the provisions of the criminal procedure are also referred to as confiscated objects as regulated in Article 1 Number 4 of PP No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code, is "objects confiscated by the State for the purposes of the judicial process". State confiscated goods in the sense according to the Regulation of the Minister of Justice of the Republic of Indonesia No. M.05.UM.01.06 of 1983 concerning Management of State Confiscated Goods and State Loot in the Confiscated Goods

⁶ Lihat, <https://acch.kpk.go.id/id/artikel/riset-publik/695-tata-laksana-benda-sitaan-dan-barang-rampasan>

⁷ Purwaning M. Yanuar, *Pengembalian Aset Hasil Korupsi Berdasarkan Konvensi PBB Anti Korupsi 2003 Dalam Sistem Hukum Indonesia*, Bandung: Alumni, 2007, hlm. 15

Storage House (Rupbasan) is evidence that has obtained permanent legal force, confiscated for the State which is then executed by means of: destroyed, auctioned for the state, submitted to the designated agency for use, and submitted at the General Meeting of Shareholders for evidence in other cases.

With regard to evidence, the Criminal Procedure Code does not explain in detail both the definition and criteria, but is only implied in several articles containing the term evidence including: Article 5 paragraph (1) letter a point 2, Article 8 paragraph (3) letter b, Article 18 paragraph (2), Article 21 paragraph (1), Article 181 paragraph (1), Article 181 paragraph (2), Article 194 paragraph (1), and Article 203 paragraph (2). Regulation of the Head of the National Police of the Republic of Indonesia No. 14 of 2012 concerning Investigation Management (PERKA Polri No. 14 of 2012) formulates a more detailed definition of evidence, namely goods that are either movable or immovable that can be used as evidence and their function is to be shown to the accused or witnesses in court to strengthen the evidence. the judge's confidence in determining the guilt of the defendant (Article 1 point 20).

The authority of Rubpasan is a mandate from Article 44 of the Criminal Procedure Code (confiscated objects stored in the state confiscated object storage house). while for confiscated goods that are not possible to be stored in the warehouse for confiscated goods/confiscation of the prosecutor's office or at the General Meeting of Shareholders, with the approval of the Head of the Asset Recovery Center, may be stored elsewhere or entrusted to the authorized agency, with financing from the DIPA of the Asset Recovery Center or other financing system.⁸

The arrangement for asset maintenance refers to Chapter IV number 7 that confiscated goods are deposited at the Rupbasan, the maintenance is under the responsibility of the Rupbasan. The Head of Sub-Division of Development as the manager of confiscated goods, must periodically at least once a month, together with the technical work unit, check the condition of the confiscated goods deposited by the Rupbasan, and make an official report on the results of checking/research on the condition of the confiscated goods which are marked handled by the Head of Development and Technical Division.

Chapter IV number 8 also stipulates that confiscated goods which because of their nature require special care, such as ships, aircraft and heavy equipment, are

⁸ Paku Utama, *Memahami Asset Recovery dan Gatekeeper*, Cet I, Jakarta: Indonesian Legal Roundtable, 2013, hlm. 32

treated by competent agencies/institutions, which are appointed by the Head of PPA. For confiscated goods and confiscated goods that require high maintenance costs, refer to Chapter IV number 9, which is also regulated in Article 45 of the Criminal Procedure Code for certain confiscated goods which based on the provisions of the law must be confiscated for the state, but require high maintenance costs while the selling value the longer it decreases, for the purpose of asset recovery, with the approval of the Head of PPA, an auction can be made in accordance with the applicable provisions. The proceeds from the sale of the confiscated goods were used as evidence in court.

The criteria for successful performance in the governance of confiscated and confiscated goods include 3 (three) factors, namely: (1) Reducing the burden of maintenance costs for confiscated and confiscated goods resulting from criminal acts of corruption; (2) Streamlining the execution of replacement money; (3) Increased transparency in the management of confiscated goods by the Indonesian National Police and the Attorney General's Office.

Meanwhile, in the process of law enforcement, the confiscation of confiscated goods and state confiscations is aimed at increasing order and legal certainty in society. This is done, among others, by controlling the functions, duties and authorities of the institutions tasked with enforcing the law according to the proportions of their respective scopes, and based on a good cooperation system that supports the goals to be achieved.

Law enforcement can also be seen as an institution, agency or organization with their respective bureaucratic qualities. In this regard, look at law enforcement from an institutional perspective. This perspective needs to be understood comprehensively by looking at their interrelationships with each other and their interrelationships with various factors and elements related to the law itself as a system. This perspective necessitates the harmonization of law and harmonization of law enforcement in a comprehensive, integrated, consistent and principle-compliant manner.

In the context of corruption, the confiscation and confiscation of assets is part of the process of the asset recovery mechanism. Fleming in Purwaning M. Yunira, states that, asset retrieval is a process in which the rights of criminals are revoked, confiscated, removed, either from the proceeds of crime or from the means of criminal acts to support law enforcement.⁹

⁹ Purwaning M. Yunira, *Pengambilan Aset Hasil Korupsi*, Jakarta: Alumni, 2007, hlm. 103.

Criminal confiscation is used on the basis of an in personam mechanism, namely an action directed at a person's personal self personally (individually). The act of confiscation can be carried out based on a criminal decision and/or the need for a criminal trial. Criminal confiscation is a system based on objective elements, which means that the prosecutor's authority must prove that the assets in question are the proceeds or means of crime. In addition to the in personam basis, it can also be based on the values of benefits for the perpetrator from the crime, without proving the relationship between the crime and the object¹⁰

In this case, Marjono Reksodiputro stated that the legal concept of confiscation of assets is an additional crime that can be imposed by a judge along with the main crime. He added that the confiscation of criminal acts was based on the aim of punishing the perpetrator as part of the punishment of the court's decision. Meanwhile, on the other hand, non-criminal confiscation, which is also known as civil confiscation or objective confiscation, is an act aimed at the asset itself and not against the individual. This action is separate and not part of the criminal justice process and in its mechanism requires evidence that the asset/property is tainted; property is the proceeds or means of crime.¹¹

IndividuIn this regard, in criminal acts of corruption, criminals must be determined by the balance of probability evidence standards. This will ease the burden on the government to be able to carry out confiscation if there is sufficient evidence to support the belief that a criminal act has occurred. This is because the act of deprivation was not imposed on the defendant (individual).¹²

This criminal confiscation is the result of the running of the mechanism of the criminal justice system that has been determined based on the Criminal Procedure Code and the Anti-Corruption Law, which begins with the pre-adjudication process, namely investigations and investigations into cases of criminal acts of corruption that occur, this is related to evidence to obtain sufficient evidence. and has strong evidence that a criminal act of corruption has occurred. After being strong and complete enough to prove that a criminal act of corruption has occurred, it will proceed to the adjudication stage in the form of

¹⁰ *Ibid*

¹¹ Nanda Sahputra Umara, "Pemisahan Pertanggungjawaban Perampasan Barang Dalam Penguasaan Pihak Ketiga Yang Beritikad Baik Dalam Putusan Tindak Pidana Korupsi", jurnal hukum Novelty, Vol. 8 No. 2 Agustus 2017, hlm. 247.

¹² Marjono Reksodiputro, "Masukan Terhadap RUU tentang Perampasan Aset, Legal Opinion", Makalah Disampaikan Sebagai Narasumber dalam Sosialisasi RUU oleh Ditjen PP, Dep Hukum Ham, Jakarta selatan, 28 Desember 2009, hlm. 60-61.

prosecution, which is the delegation of the case to the court of corruption to be examined and decided by the judge at the trial court for the crime of corruption. The delegation of this case is accompanied by an indictment to the perpetrators of corruption suspects.

Based on the above-mentioned corruption criminal justice mechanism, confiscation of assets resulting from a criminal act of corruption can be carried out, by including it in the prosecution clause by the public prosecutor in a criminal court trial that is currently running outside or simultaneously with the indictment submitted to the panel of judges for a decision. and set. So based on the decision by the judge stating that the defendant is proven to have committed a criminal act of corruption based on the evidence set forth in the criminal prosecution by the public prosecutor, the act of confiscation can be carried out to take back the proceeds of the criminal act of corruption and hand it over to the state.

4. Conclusion

The procedure for confiscation of confiscated goods and state confiscations resulting from criminal acts of corruption is carried out and involves various agencies, namely the Attorney General's Office, the Corruption Eradication Commission (KPK), the Ministry and Rupbasan in accordance with the legislation that has been set. However, in practice there are various obstacles that must be improved and minimized by the various agencies. With regard to confiscated and confiscated goods, criminal acts of corruption use the in personam principle.

5. Suggestion

A new approach is needed in terms of confiscation of confiscated goods and confiscation of criminal acts of corruption, this is because the existing laws and regulations have not been maximized.

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