

Problematics of Execution of Assets of Convictions in Efforts Recovery of State Losses

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Abstract

The management of State Property originating from State-Confiscated Goods and Gratification Goods normally differentiates the position and criteria of Execution Confiscated Goods originating from State-Confiscated Goods from Execution Confiscated Goods which are assets or belongings of the convict or the convict's family, assets related to the convict, including related corporations convicts, which are confiscated by the Executing Attorney or Asset Recovery Attorney to be sold or auctioned in order to implement the fine decision. This becomes a problem for the executing prosecutor in implementing the Judge's Decision which has permanent legal force to carry out the execution of the Additional Replacement Money Crime in article 18 paragraph 2 of the Non-Corruption Crime Law. This research focuses on the problems of implementing and reformulating Article 18 paragraph 2 of Law No. 31 of 1999 concerning Corruption Crimes in an effort to recover state losses. The normative juridical research method in this research is carried out by analyzing theories, concepts, legislation and court decisions which have a correlation with asset execution problems. Methodologically, the constructivism paradigm applies the hermeneutic method in the process of reaching the truth. The results of this research are: The principle of asset execution as a criminal implementation of additional compensation money in settling state losses is the confiscation of assets resulting from crime which is actually rooted in a very fundamental principle of justice, where a crime should not provide benefits for the perpetrator (crime should not pay). This means that a person must not profit from the illegal activities he carries out. In rem confiscation is an action by the state to take over assets through a court decision in a civil case based on stronger evidence that the assets are suspected to have originated from a criminal act or were used for a criminal act. Confiscation of assets in personam, which is an action directed at an individual person, therefore requires proof of the defendant's guilt first before seizing assets from the defendant. Assets confiscated from court executions under Article 18 paragraph (2) of the Corruption Crime Law cannot yet be made into state property, because it is not concretely stated that the confiscated goods are state confiscated goods.

Keywords: Problems, Asset Execution, State Losses.

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INTRODUCTION

In the Attorney General's regulation no 027/A/JA/10 /2014 concerning guidelines for asset recovery, it is stated that the terminology of Execution Confiscated Goods is state confiscated goods originating from the proceeds of confiscation in order to implement a court decision which has permanent legal force. Meanwhile, state confiscated goods are goods belonging to the state originating from evidence determined to be confiscated for the state based on a court decision which has permanent legal force, or goods which based on a judge's determination are declared confiscated for the state and/or other goods used to pay fines or replacement money. in criminal cases.

Based on data from May 2023, the Asset Recovery Center of the Indonesian Attorney General's Office has managed confiscated assets which are calculated as compensation money and confiscated assets from convicts to pay replacement money for convicts based on article 18 paragraph 2 of Law No. 31 of 1999 concerning criminal acts of corruption, less more than IDR 4 Trillion, from arrears of replacement money amounting to 19 T, and from the data currently managed by PPA, not a single one has been sold at auction as a recovery for state losses.

The Indonesian Prosecutor's Office has made efforts to optimize the recovery of state losses through the management of State Confiscated Property which takes into account replacement money and confiscated

assets from the convict's assets to pay replacement money for the convict based on article 18 paragraph 2 of Law No. 31 of 1999 concerning criminal acts of corruption, by issuing Prosecutor's Guidelines Agung no. 2 of 2022 concerning governance, Asset Recovery Guidelines and precautionary guidelines (Due Diligent) for executing prosecutors in carrying out optimization of recovery of state losses resulting from criminal acts of Corruption and despicable acts of TPK convicts which have permanent legal force.¹

However, this is not enough, the prosecutor's office is considered to be still far behind the Corruption Eradication Commission in optimizing the recovery of state losses resulting from the actions of those convicted of criminal acts of corruption through the auction process as Non-Tax State Revenue (PNBP) and the use of assets as state property if the assets do not sell. In the auction process, the Corruption Eradication Commission (KPK) at the LABUKSI Directorate has now made a breakthrough in resolving confiscated goods which are calculated as compensation money for convicts through the instrument of Minister of Finance Regulation no. 145/PMK.06/2021 concerning Management of State Property originating from confiscated state goods and gratuities.²

The efforts made have not been maximal in resolving the management of state confiscated assets and goods confiscated from execution/execution of confiscated assets which are counted as replacement money, because there are differences in perception and opinion between the Indonesian Attorney General's Office and the Ministry of Finance and the Financial Audit Agency (BPK).) which indicates that confiscated goods from executions/execution confiscated assets of convicts which are calculated as replacement money as regulated in Article 18 paragraph 2 of Law No. 31 of 1999, cannot be carried out in the process of determining

BMN user status (PSP) as is the status of state confiscated goods. counted as replacement money.

The implementation of Article 18 paragraph 2 of Law No. 31 of 1999 regarding the convict's assets which are then confiscated is not and is not yet state confiscation because the decision of the panel of judges only orders the prosecutor to confiscate the convict's assets and the decision does not necessarily clearly state the assets. -which assets will be confiscated³ The juridical analysis of the confiscated assets/items has met the qualifications of Article 39 of the Criminal Procedure Code and has been tested in court evidence by the Public Prosecutor, regarding the status of the confiscated evidence which is the proceeds of crime, used by crime, and has a direct relationship with the crime committed, as well as expanding the purpose of confiscation to recover losses from the state itself. This means that the process has gone through due process of law.⁴

The implementation of Article 18 paragraph 2 of Law 31 of 1999 is considered as the implementation of the judge's order for the prosecutor to be able to confiscate the convict's assets, but if comprehensive due diligence has been carried out, correct due process is required, so that it does not become a tool of arbitrariness by law enforcement officials. namely the executing attorney in preventing fraud and abuse of power in carrying out executions. This research focuses on the problems of implementing and reformulating Article 18 paragraph 2 of Law No. 31 of 1999 concerning Corruption Crimes in an effort to recover state losses.

METHOD OF RESEARCH

A paradigm is a set of beliefs, values, a view of the world around us, according to George Ritze.⁵ Likewise with the views of Guba and Lincoln,⁶ Paradigm is a basic system that concerns fundamental beliefs or views (a set of basic beliefs) towards the world of the object under study (worldview) as the main philosophical

¹ Rudi Hendra Pakpahan. Renewal of Asset Recovery Legal Policy between Ius Constitutum and Ius Constituendum. Indonesian Legislation Journal. Vol. 16.No. 3. 2019. DOI: <https://doi.org/10.54629/jli.v16i3.514>; July Wiarty, "Non-Conviction Based Asset Forfeiture as a Step to Recover State Losses (Economic Analysis Perspective on Law)", UIR Law Review, Vol 1 No. April 1, 2017, p. 105.

² Ahmad Sanusi, Optimizing the Management of State Confiscated Objects in State Confiscated Object Storage Houses, Scientific Journal of Legal Policy, Vol. 12 No. 2 (2018), p. 203.

³ Rifai, Eddy. 2014. "Perspective on Corporate Criminal Responsibility as Perpetrators of Crime". FH Lampung University, Bandar Lampung, Mimbar Hukum Vol. 26, no. 1; Radha Ivory, Corruption, Asset Recovery, And The Protection Of Property In Public International Law, Corruption (Cambridge University Press, 2014), p. 228.

⁴ Article 39 paragraph (1) of the Criminal Procedure Code, which may be subject to confiscation are: a. objects or bills of the suspect or defendant which in whole or in part are suspected to have been obtained from a criminal act or as proceeds from a criminal act; b. objects that have been used directly to commit a criminal act or to prepare it; c. objects used to obstruct the investigation of criminal acts; d. objects specifically made or intended to commit criminal acts; e. other objects that have a direct relationship with the criminal act committed as intended in Article 18 paragraph (1) point a of Law 31/1999.

⁵ George Ritzer, Sociology of Science with a Dual Paradigm, Jakarta: Rajawali Press, 1992, p. 8.

⁶ Guba and Lincoln, Handbooks of Qualitative Research, London: Sage Publications, 1994, p. 105. see also in Norman K. Denzim, Yvonna S Lincoln, translation by Dariyanto, et al, Yogyakarta: Student Library, 2009, p.124.

system, parent or umbrella which is a human construction which is a guide for researchers in scientific research to arrive at the truth of reality. in scientific disciplines. This dissertation research uses a statutory approach, an analytical approach and a conceptual approach.⁷ The legislative approach is carried out to examine legislation relating to problems, especially related to asset execution problems. In terms of studying these problems, of course it cannot be separated from legislation. Next, the collected data is studied using an analytical approach. Meanwhile, a conceptual approach is taken to study and analyze legislation relating to problems, especially those related to asset execution.

RESEARCH RESULT AND DISCUSSION

Problems with the Implementation of Article 18 Paragraph (2) of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

Management of confiscated goods as assets with the Property Manager results in limited authority of the Property Manager in carrying out management. The role of Property Manager tends to be limited to administrator and authorization functions. Management of confiscated goods is limited to management proposals submitted by the Property Manager. Property Managers cannot determine other management alternatives that can provide greater benefits so that the management of looted goods cannot be carried out optimally. Second, the granting of management authority to the Corruption Eradication Committee, the Prosecutor's Office and the Prosecutor's Office in the management of confiscated goods does not have sufficient legal basis.⁸

Article 18 paragraph 1 regarding confiscation of state property, is given space to process the law in Article 19 by carrying out the process in good faith. Confiscation of the proceeds of crime in article 18 paragraph 1, the prosecutor confiscates property which is the result of other crimes of the convicted person. At the beginning, article 18 paragraph 2 confiscates property which is carried out to cover replacement money for which there is no court process. Confiscated objects, evidence and state confiscated goods are elements that cannot be separated from criminal acts. In the judicial process for interests.⁹

To maintain the integrity, quality, quantity and authenticity of evidence, including maintaining the economic value and use value of confiscated objects and state confiscated goods as well as supporting the

recovery of criminal assets, reliable management of confiscated objects, evidence and state confiscated goods is needed in the environment. Republic of Indonesia Prosecutor's Office. Moreover, the Prosecutor's Office of the Republic of Indonesia, in exercising state power in the field of prosecution, plays a very strategic and central role in the integrated criminal justice system from the investigation stage to the implementation of court decisions that have permanent legal force.

The process that is currently taking place is that the prosecutor carries out an investigation into the convict's assets, also involving related parties through coordination, for example BPN, regional government and banking to ensure that the assets are related to the convict, the executor's prosecutor confiscates the assets, there is no auction to hold them. court filing or court process after the prosecutor suspects that the assets belong to the convict and then asset blocking is carried out, the prosecutor carries out article 18 paragraph 2 to search for the convict's assets. The asset reccing process carried out by the prosecutor is an investigation process to find out whether the assets really belong to the convict, the prosecutor should then carry out a Due Deligent test to ensure that the convict belongs to it and then determine through due process that the object of the asset is clear and is determined through the determination of the judge who hears the case. to determine whether the confiscated goods are confiscated by the state to be determined to be replacement money before the auction process and/or proposed to become state property.¹⁰

A progressive concept of returning state financial losses is needed, for example by harmonizing the 2003 United Nations Convention Against Corruption (UNCAC),¹¹ it seems that the provisions contained in Law no. 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (UU TIPIKOR) is not sufficient, in this case regarding the application of sanctions to return losses (replacement money) or fines.

Policy on Confiscation of Assets Proceeding from Corruption Crimes as Recovery of State Losses

Problems in Asset Recovery have issued regulations for optimizing the recovery of state assets through the Regulation of the Attorney General of the Republic of Indonesia Number: Per-027/A/Ja/10/2014 concerning guidelines for Asset Recovery, the Prosecutor's Office as a universal law enforcement agency is the central institution in the law enforcement

⁷ *Ibid.*, p. 300.

⁸ Muhammad Yunus, *Seizing Corruptors' Assets, Solutions to Eradicating Corruption in Indonesia*, Kompas, Jakarta, 2013, p. 162.

⁹ Eddy O.S. Hiariej, *Theory and Law of Evidence*, Erlangga, Jakarta, 2012, p 35.

¹⁰ Anthony Kennedy, *Designing a Civil Forfeiture System: An Issues List for Policymakers and*

Legislators, 13 (2) (Journal of Financial Crime, 2006), p. 140; Anthony Kennedy, *An Evaluation of the Recovery of Criminal Proceeds in the United Kingdom*, p. 38;

¹¹ Ade Mahmud, *Problems of Asset Recovery in Recovering State Losses Due to Corruption Crimes*, Judicial Journal, Vol. 11 No. 3 of 2018, p. 351.

system criminal justice system (center of criminal justice system) which has the duty and responsibility to coordinate/control investigations, carry out prosecutions and implement judge decisions/decisions which have permanent legal force (*inkracht van gewijsde*), and has responsibility and authority over all evidence confiscated either during the prosecution stage for the purposes of proving the case, or for execution purposes.¹²

The *dominus litis* authority for asset recovery by the prosecutor's office is still carried out specifically by each prosecutor's work unit, it has not been integrated into one system and has not been implemented optimally, so it needs to be integrated into one integrated system. Likewise, asset recovery activities at requests from other countries, both formally and informally, have not been carried out well by the prosecutor's office, so improvements need to be made.¹³ Based on the Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/3/2014 dated 20 March 2014, the Asset Recovery Center has been established as a prosecutorial work unit responsible for ensuring the implementation of asset recovery in Indonesia optimally using an integrated asset recovery system. (integrated asset recovery system) effectively, efficiently, transparently and accountably.

The Asset Recovery Center as the Center of Integrated Asset Recovery System which has the main tasks and functions in the field of asset recovery with the ability to "follow the asset", is the coordinator of the prosecutor's work unit related to asset recovery, and has the authority/ability to liaise directly with various ministries/ formal and informal institutions, institutions and networks/agencies, within and outside the country. In carrying out its duties as the Center of Integrated Asset Recovery System, the Asset Recovery Center must collect and manage data bases reliably, safely, be able to operate properly, and be connected to all prosecutor's

work units and institutional ministries related to asset recovery activities such as the Ministry of Finance, Ministry of BUMN, BPN and PPATK according to their needs, in the form of an Asset Recovery Secured-data System (ARSSYS).

Guideline Number 2 of 2022 concerning Management of Confiscated Objects, Evidence and State-Confiscated Goods within the Prosecutor's Office of the Republic of Indonesia. Confiscated objects, evidence and state-spoiled goods are elements that cannot be separated from criminal acts. In the judicial process for the purposes of prosecution and evidence at trial, confiscated objects are required for examination as evidence, either in relation to *instrumenta delictie* or *corpora delictie*.

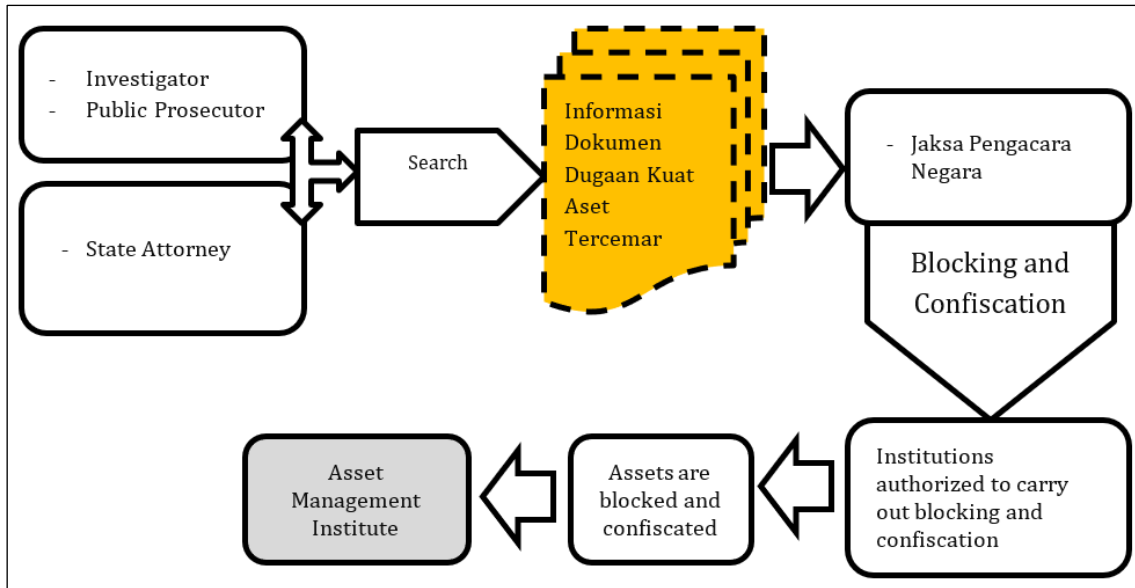
To maintain the integrity, quality, quantity and authenticity of evidence, including maintaining the economic value and use value of confiscated objects and state confiscated goods as well as supporting the recovery of criminal assets, reliable management of confiscated objects, evidence and state confiscated goods is needed in the environment. Republic of Indonesia Prosecutor's Office. Moreover, the Prosecutor's Office of the Republic of Indonesia, in exercising state power in the field of prosecution, plays a very strategic and central role in the integrated criminal justice system from the investigation stage to the implementation of court decisions which have obtained permanent legal force. Juridical responsibility for confiscated objects, evidence and state confiscated goods lies with officials according to the level of inspection, while physical responsibility lies with officials who carry out storage functions.

Blocked or confiscated assets are handed over to the Asset Management Institution to be managed in order to prevent a decline in asset value. The following is the flow of blocking and confiscation:

¹² Andrie W. Setiawan, Problems of Execution Cases Additional Compensation Money for State Losses in Corruption Crimes (Bandar Lampung: Anugrah Utama Raharja, 2020), p. 28.

¹³ Linnea Gray, Larissa; Hansen, Kjetil; Recica-Kirkbride Pranvera; Mills, Few and Far The Hard Facts

On Stolen Asset Recovery (H Street NW, Washington DC: International Bank for Reconstruction and Development / The World Bank and the OECD, 2014), p. 6–9 <https://www.oecd.org/dac/governance-peace/governance/docs/Hard_Facts_Stolen_Asset_Recovery.pdf>.



The management of confiscated objects, evidence and state confiscated goods within the Prosecutor's Office of the Republic of Indonesia is carried out in a professional, accountable and transparent manner by paying attention to the chain of custody principles, preventing misuse and maintaining the economic value of confiscated objects, evidence and state confiscated goods. This governance is also supported by adequate facilities, infrastructure and budget, competent human resources, as well as harmonious inter-sector work procedures and an integrated Asset Recovery Secured-data System application so that it is effective and efficient in the context of resolving case handling, including complete settlement of confiscated objects, evidence and state confiscated goods and optimizing the recovery of criminal assets. To realize this, it is necessary to establish guidelines regarding the management of confiscated objects, evidence and confiscated goods within the Prosecutor's Office of the Republic of Indonesia.¹⁴

CONCLUSION

1. The principle of asset execution as an additional criminal implementation of compensation money in settling state losses is the confiscation of assets resulting from crime which is rooted in a very fundamental principle of justice, where a crime should not provide benefits for the perpetrator (crime should not pay). Confiscation of assets in personam, which is an action directed at an individual person, therefore requires proof of the defendant's guilt first before seizing assets from the defendant. The public prosecutor must first prove the criminal act committed by the defendant and the

relationship between the criminal act committed by the defendant and the assets which are the proceeds or instruments of a criminal act controlled by the defendant.

2. The mechanism for asset execution as a criminal implementation of additional compensation money in the context of optimizing settlement of state losses is the settlement and recovery of state losses through confiscation of assets based on a court decision that has obtained permanent legal force, with a determination by the court regarding the goods confiscated for execution so that the assets can be auctioned off and It is also used as state property through the determination of BMN use status (PSP). Article 18 paragraph (2) of the Corruption Crime Law cannot yet be made into state property, because it is not concretely stated that the confiscated goods are state-owned assets. The KHUP clearly explains that confiscation when the due process is destroyed and returned or becomes state property, must be equated with the executorial confiscation of the convict's assets so that there is no arbitrariness by the prosecutor in carrying out the act of confiscating the auction and replacement money. The due diligence test should be carried out to ensure that the convict belongs to it and then determine through due process that the object of the asset is clear and determined through the determination of the judge who hears the case. to determine whether the confiscated goods are confiscated by the state to be determined to be replacement money before

¹⁴ David Scott Romantz, *Civil Forfeiture and The Constitution: A legislative Abrogation of right and The Judicial Response: The Gift of the Res*, ed. by 28 *suffolk University Law Review*, 1994, p. 390. Damanhuri Fattah,

"Theory of Justice According to John Rawls", available at <http://ejournal.radenintan.ac.id/index.php/TAPIs/article/view/1589>

the auction process and/or proposed to become state property.

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