



JLPH:
**Journal of Law, Politic
and Humanities**

E-ISSN: 2962-2816
P-ISSN: 2747-1985

<https://dinastires.org/JLPH> dinasti.info@gmail.com +62 811 7404 455

DOI: <https://doi.org/10.38035/jlph>
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Optimizing the Role of the Prosecutor's Office in Recovering State Losses Due to Corruption Crimes Based on Prosecutor's Regulation Number 7 of 2020 concerning Guidelines for Asset Recovery

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Abstract: The aim to be achieved in this research is to optimize the role of the prosecutor's office in recovering state losses resulting from criminal acts of corruption. The method used in analyzing this problem is normative juridical where researchers use various secondary materials or library materials. The various steps taken in solving the problems in this research were by drawing on various legal principles, both written and unwritten. Researchers also carry out various interpretations of legislation so that this research can be analyzed thoroughly and in depth. The results of this research show that the objectives of asset recovery are varied. First, asset recovery aims to replenish state finances, thereby providing resources for government initiatives and programs aimed at improving people's welfare and fostering community well-being. Second, asset recovery aims to restore justice in the lives of individuals affected by corruption, ensuring that those who have been harmed receive compensation. Lastly, asset recovery seeks to deter parties or individuals from committing corruption in the future by signaling the severity of the consequences associated with such actions. Therefore, corruption needs to be dealt with, where one of the officers who can deal with this is the prosecutor's office. The Prosecutor's Office of the Republic of Indonesia, to confiscate assets for criminal acts of corruption, can work optimally if it has a basis for confiscating assets.

Keyword: Prosecutor's Office, Corruption Crimes, State Losses.

INTRODUCTION

Forms of state financial irregularities that result in significant state financial losses are usually caused by criminal acts of corruption committed by irresponsible people (Sutanto & Ma'ruf, 2021). Corruption is very detrimental to state finances or the country's economy and hampers national development, so it must be eradicated in order to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Karianga, 2024). In cases of criminal acts of corruption, before being determined as a case that is detrimental to the State, a calculation must be carried out (Ramadhan et al., 2022). Calculating state financial

losses does not only use a recording approach, plus using a calculator or other calculating tools, because it contains the terminology "losses contain elements of unlawful acts that result in losses" (Fauzipaksia et al., 2023). The approach to determining State financial losses must be carried out through audit activities, because this audit contains a manifestation of independence, objectivity and professionalism based on audit standards in carrying out an activity process (Mircheska et al., 2020). The existence of an element of state loss is the entry point and one of the main keys to the success of efforts to confiscate and return assets obtained from criminal acts of corruption in Indonesia (Huda, 2022). The existence of losses to state finances or the state economy is one of the elements of criminal acts of corruption as regulated in Article 2 and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. Article 2 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes which confirms that:

"Any person who unlawfully commits an act of enriching himself or another person or a corporation which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty)) year and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah)."

Based on these rules, it is clear that corruption can result in losses that can be experienced by the country. Therefore, corruption needs to be dealt with, where one of the officers who can deal with this is the prosecutor's office. The Prosecutor's Office of the Republic of Indonesia, to confiscate assets for criminal acts of corruption, can work optimally if it has a basis for confiscating assets. The legal basis for confiscating assets is contained in the Anti-Corruption Law and TPPU Law as well as Perja Number 7 of 2020 concerning Guidelines for Asset Recovery as a discretionary rule that only applies within the scope of the Prosecutor's Office of the Republic of Indonesia. However, in the process of confiscating assets, the regulations of the Anti-Corruption Law and the TPPU Law do not yet have an article that clearly stipulates that criminal acts of corruption must involve confiscation of assets (Susetyo & Supanto, 2023). Several studies related to confiscation of assets for criminal acts of corruption have been carried out by several scientists. First, Trinchera's research emphasizes confiscation of assets for the crime of bribery (Trinchera, 2020). The scientific contribution produced in this research is that confiscation is the main tool for dealing with corruption crimes because it reduces incentives to commit bribery by removing the proceeds of illegal actions from the giver or recipient of the bribe. However, "traditional" confiscation methods, which are limited to property involved in a particular criminal act for which the defendant was convicted, are inadequate to confiscate the proceeds of crime obtained illegally by perpetrators of criminal acts of corruption.

The second research, Hutama, emphasized the auction of assets of defendants in corruption cases (Hutama & Gunawati, 2024). The scientific contribution in this article emphasizes the panel of judges making a decision to confiscate all assets and profits obtained by the convict from the crime. Confiscation of assets and auction of assets is carried out based on applicable legal provisions as determined by the court decision.

Obstacles experienced by the Prosecutor's Office in efforts to recover assets resulting from criminal acts of corruption include: assets resulting from criminal acts of corruption are embezzled or transferred to other parties, assets or assets resulting from criminal acts of corruption are used up, assets resulting from criminal acts of corruption are in the position of collateral to other parties, and assets resulting from criminal acts of corruption have been transferred abroad (Terziev, V., Georgiev, M., & Bankov, 2022).

The third research, Latif, emphasizes the obstacles in confiscating assets for criminal acts of corruption (Latif & Ramadani, 2022). The contribution in this research emphasizes that recovery of state losses can be done through criminal and civil law procedures. However,

existing policies still face several obstacles, both in terms of unclear legal substance, the ability and commitment of law enforcement officials, and limited facilities and infrastructure. Several studies that have been put forward provide a basis for researchers in analyzing more deeply regarding optimizing the role of prosecutors in confiscating assets in order to recover state losses.

METHOD

The method used in analyzing this problem is normative juridical where researchers use various secondary materials or library materials (Soekamto, 2008:14). The various steps taken to solve the problems in this research were by drawing on various legal principles, both written and unwritten. Researchers also carry out various interpretations of legislation so that this research can be analyzed thoroughly and in depth. The various methods of data collection carried out are liberal research where researchers use journals, books and various research studies, both theses and theses, which are in accordance with the problems in this research. After that, data analysis was used using a qualitative approach which was carried out by conducting data observations and drawing conclusions.

RESULTS AND DISCUSSION

The Urgency of Confiscating and Returning Corruption Crime Assets

Returning assets plays an important role in preventing loss of assets due to criminal acts of corruption. According to Article 10 letter b number 2 of the Criminal Code, returning assets is classified as an additional crime which is equivalent to a property crime, as is the imposition of a fine. Republic of Indonesia Attorney General Regulation Number: 013/A/JA/06/2014 further explains the return of assets as a coercive action carried out by the State to separate assets belonging to criminal perpetrators, provided that the assets have been confiscated based on a court decision. In addition, the Attorney General of the Republic of Indonesia Regulation Number: 013/A/JA/06/2014 provides comprehensive guidelines regarding asset recovery. This regulation defines asset recovery as a coercive action taken by the State to separate the perpetrator's assets, with the separation of these assets determined through a court decision. In the investigation stage, asset recovery acts as a coercive tool that has permanent legal force, which guarantees the return of the proceeds of corruption obtained unlawfully. Next, the court determines the fate of the assets, whether they will be confiscated to cover state losses or used as additional sanctions in the form of returning the assets. This process confirms that asset recovery is a coercive action that has permanent legal force, which is a crucial component in anti-corruption efforts and upholding state integrity (Herusantoso et al., 2024).

Asset recovery includes a series of civil and criminal processes and mechanisms that aim to recover or restore state financial losses that occurred as a result of criminal acts of corruption committed by the perpetrator (Saputri, 2023). This involves the confiscation and revocation of rights to assets obtained through criminal acts of corruption from the perpetrators (Aini, 2022). The confiscated assets and related rights are then returned to the state to repair and compensate for financial losses caused by criminal acts of corruption (Maulana & Waluyo, 2023). In addition, asset recovery serves as a preventive measure to prevent perpetrators from using or exploiting illegally obtained assets for further criminal activities, thereby acting as a deterrent for current criminals and potential future criminals (Wardani, 2024).

The objectives of asset recovery are varied. First, asset recovery aims to replenish state finances, thereby providing resources for government initiatives and programs aimed at improving people's welfare and fostering community well-being. Second, asset recovery aims to restore justice in the lives of individuals affected by corruption, ensuring that those who have been harmed receive compensation. Finally, asset recovery seeks to prevent parties or

individuals from committing corruption in the future by signaling the severity of the consequences associated with such actions (Justicia, 2022).

The return of stolen state assets (stolen asset recovery) is very important for the development of developing countries because the return of stolen assets does not merely restore state assets but also aims to uphold the supremacy of law where no one is immune from the law. The principle of asset recovery is regulated explicitly in the Anti-Corruption Convention. The provisions of Article 51 of the Anti-Corruption Convention technically allow for demands, both civil and criminal, for the return of state assets that have been obtained by someone through acts of corruption (Nasution et al., 2023).

The Anti-Corruption Convention also allows for acts of confiscation of wealth without punishment in the event that the perpetrator cannot be prosecuted on the grounds that he died, ran away or was absent in other similar cases (Darmadi Djufri, Derry Angling Kesuma, 2020).

The Role of Prosecutors in the Recovery of Corruption Crime Assets

Law Number 5 of 1991 concerning the Attorney General of the Republic of Indonesia as amended by Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia explains that the Attorney General's Office is an institution that has a central position and a strategic role in strengthening the nation's resilience. Therefore, as a law enforcement agency, it is universally a central institution in enforcing criminal law and controlling case processes (*dominus litis*), which is tasked and responsible for coordinating or controlling investigations, carrying out prosecutions, and implementing judge's decisions that have obtained permanent legal force (Hariansah, 2021). (*inkracht van gewijsde*), and is responsible and authorized for all evidence confiscated, both at the prosecution stage for case proof purposes, and for execution purposes. Based on the description above, the Prosecutor's Office has *pro justitia* authority (for the purposes of justice) which operates at three levels, namely investigation, prosecution (including the submission of evidence and control of assets at the time of execution (execution authority) and management authority (Suud, 2020).

The prosecutor's office, as a part of the government structure that enforces the law, is tasked with carrying out additional obligations in addition to its main duties as a public prosecutor, such as representing the government in civil cases (Iswara, 2020). Regarding the duties and authority of prosecutors in the civil and state administration sector, this is stated in Law of the Republic of Indonesia Number 11 of 2021 concerning the Prosecutor's Office, where Article 30 paragraph (2) regulates the duties and authority in the civil and state administration sector. Currently, asset recovery, prevention and deterrence are the three main areas of concern in efforts to eradicate corruption. This suggests that efforts to eradicate corruption include compensation for state losses resulting from criminal acts of corruption and efforts to prevent and deter officials who commit criminal acts of corruption by making their actions unlawful. State compensation is intended to cover state losses resulting from the return of funds resulting from criminal acts of corruption so that greater losses do not occur (Prakoso & Borobudur, 2024).

Efforts to recover state financial losses resulting from criminal acts of corruption can be started legally from the investigation stage, prosecution stage, and execution stage or implementation of court decisions. The explanation is as follows (Cahyani & Puspitasari Wardoyo, 2022): The investigation stage is related to the investigation process, if the investigator finds and believes there are one or more elements of a criminal act of corruption, but there is not enough evidence, but in reality there is a state financial loss, the investigator can hand over the files cases resulting from investigations to the Public Prosecutor, Public Prosecutor to file a civil lawsuit or submitted to the agency that suffered the loss to file a lawsuit (Laku, 2021). Investigators can request assistance and/or involve the Financial Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP) as agencies that have the competence to calculate

the amount of state losses incurred as a result of the suspect's actions (Situmeang & Susanto, 2024).

In addition to summoning and examining witnesses as well as arresting and detaining suspects, investigators can also confiscate items belonging to suspects related to criminal acts of corruption, including items belonging to suspects that are suspected of being used or obtained from the proceeds of criminal acts of corruption (Mahmud et al., 2022). The confiscation is intended to prevent the suspect from selling or transferring ownership to someone else. Apart from that, the confiscation can make it easier for the executing prosecutor to conduct an auction to recover state financial losses if during the trial process the suspect is proven to have committed a criminal act of corruption (Busol, 2020). Optimizing the authority of the Public Prosecutor in court can be implemented by asking the judge through a criminal indictment to impose an additional penalty in the form of punishing the defendant to return compensation for state losses for criminal acts of corruption committed based on the provisions of Article 18 paragraph (1) letter b of the law (Agus & Susanto, 2021). Eradication of Corruption Crimes. Apart from that, the Public Prosecutor can also ask the judge to determine that the items that have been confiscated during the investigation process be confiscated for auction to cover the state losses suffered (Amir et al., 2022). Proven state financial losses amounting to the amount demanded by the Public Prosecutor are used as the basis for punishing the defendant to pay compensation equal to the value of the state losses suffered (Uli, 2024).

Furthermore, in order to confiscate the assets of corruptors, the prosecutor's office, both when acting as an investigator and when implementing the judge's decision (executor), can confiscate them (Abadi, 2022). In the Criminal Procedure Code, it has been explicitly and limitedly determined in Article 39 Paragraph (1) which can be subject to confiscation are objects or bills of suspects or defendants which in whole or in part are suspected to have been obtained from criminal acts or as proceeds from criminal acts, objects which have been used directly for committing a criminal act or to prepare it, objects used to obstruct the investigation of a criminal act, objects specifically made or intended to commit a criminal act and other objects that have a direct connection with the criminal act committed (Saragih et al., 2024). This provision is expanded in the PTPK Law in terms of the implementation of additional criminal compensation money, namely if the convict does not pay the replacement money as intended in paragraph (1) letter b within 1 (one) month after the court decision which has obtained permanent legal force, then the prosecutor's property can be confiscated and auctioned off to cover the replacement money (Rahayu & Santoso, 2024). Efforts to trace, block and confiscate are carried out in addition to preventing the assets in question from being transferred to third parties or transferred so that efforts to recover state financial losses can be carried out optimally.

CONCLUSION

Asset recovery includes a series of civil and criminal processes and mechanisms that aim to recover or restore state financial losses that occurred as a result of criminal acts of corruption committed by the perpetrator. The objectives of asset recovery are varied. First, asset recovery aims to replenish state finances, thereby providing resources for government initiatives and programs aimed at improving people's welfare and fostering community well-being. Second, asset recovery aims to restore justice in the lives of individuals affected by corruption, ensuring that those who have been harmed receive compensation. Lastly, asset recovery seeks to deter parties or individuals from committing corruption in the future by signaling the severity of the consequences associated with such actions. Therefore, corruption needs to be dealt with, where one of the officers who can deal with this is the prosecutor's office. The Prosecutor's Office of the Republic of Indonesia, to confiscate assets for criminal acts of corruption, can work optimally if it has a basis for confiscating assets. The legal basis for confiscating assets is contained in the Anti-Corruption Law and TPPU Law as well as Perja Number 7 of 2020

concerning Guidelines for Asset Recovery as a discretionary rule that only applies within the scope of the Prosecutor's Office of the Republic of Indonesia.

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