Implementing The Confiscation Of Confiscated Objects For Criminal Acts Of Corruption That Have Impaired Value

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<th>Article’s Information</th>
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<td><strong>keywords:</strong></td>
<td>This research discusses the implementation of the confiscation of the confiscation of criminal acts of corruption that have decreased in value. The author raised this matter because based on data released by Indonesia Corruption Watch (ICW), there were 533 (five hundred and thirty three) cases throughout 2021. Based on this data, it was found that the total potential state losses incurred reached Rp 29.4 trillion. In contrast to the magnitude of the losses incurred, on the other hand, based on the results recorded by the Corruption Eradication Commission (KPK) that the return of state losses was only Rp 2.6 trillion which consisted of payment of fines, compensation for the spoils, and Rp 3 billion in the form of payment of status determination and use of grant funds. From the existing problems, the author examines how to manage the confiscated objects of corruption so as not to experience a decrease in value?. This researches uses a normative juridical writing method, namely the law is conceptualized as what is written in legislation or the law is seen as a gift or norm which is a benchmark for human behavior that is considered appropriate and supported by data found on the internet. After conducting research on the problems discussed in this journal, this can be overcome by holding an auction in advance of confiscated objects that will experience a decline in value so that the recovery of state financial losses can take place optimally which needs to be supported also by a good work ethic from law enforcement officials. the law, namely by taking good care of confiscated objects so that they do not experience a decline in value and integrated data.</td>
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A. Introduction

Extraordinary Crime that have a very large negative impact not only on society but also on social activities to the sustainability of a country's economy. In his statement, Sukardi stated that Extraordinary Crime is a form of crime that has a large and multidimensional impact on social, cultural, ecological, economic and political aspects as seen from the consequences of an action or deed found and researched by various government institutions and non-governmental institutions, nationally, as well as international.¹

Corruption as a type of Extraordinary Crime which has a close relationship with the fate of many people because state finances are caused by being able to put the state into economic problems that are detrimental to state finances. From a legal perspective, the definition of corruption itself has been explained in 13 articles in Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption. Meanwhile, in the language of corruption it is said that "Corruption" comes from the word "Corrumpere", an older Latin language. From the Latin language, the terms "Corruption, Corruptie" (English), "Corruption" (France) and "Corruptie/Korruptie" (Netherlands) became known. It can be interpreted that corruption itself is something that is rotten, evil and destructive which involves immoral actions, relating to a position in an agency or government apparatus, abuse of power in office due to grants.²

Referring to this understanding, it is undeniable that corruption cases that occur in Indonesia are increasing today based on data obtained from the Corruption Eradication Commission showing the level of corruption in Indonesia reaches 98%.³ This is evidenced by the data source released by Indonesia Corruption Watch (ICW), namely there are 533 (five hundred and thirty three) cases throughout the year. 2021. Based on these data, it can be seen that the total potential state losses incurred will reach Rp. 29.4 Trillion.⁴ In contrast to the magnitude of the losses incurred, on the other hand, based on the results recorded by the Corruption Eradication Commission (KPK) that the return of state losses was only Rp. 2.6 trillion which consisted of payment of fines, compensation for spoils, and Rp 630,3 billion in the form of payment of status determination and use of grant funds.⁵ These facts are quite worrying about the condition of the Indonesian economy, where among the many losses caused by the return of state finances there is an imbalance in comparison. One of the factors that cause state losses cannot be fully recovered is due to a decrease in the asset value of goods or objects that have been confiscated or frozen by investigators.⁶

Based on one of the data obtained from the financial statements of the Prosecutor of the Republic of Indonesia in 2020.⁷

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¹ Muhammad Hatta, Kejahatan Luar Biasa (Extra Ordinary Crime) (Aceh: UNIMAL PRESS, 2019).
⁷ Kejaksaan Republik Indonesia, Laporan Kinerja Kejaksaan Republik Indonesia Tahun 2020, Kejaksaan Republik Indonesia, 2020.
It can be seen that based on the data above, the sales revenue from the auction of Money Laundering (TPPU) and Corruption Crimes (TPK) is relatively smaller than the income from the management of confiscated objects and other looted goods. This fact is in line with the sale of TPK and TPPU auction results to the Corruption Eradication Commission (KPK). From 2018 to 2020 sales of TPK and TPPU auction results have decreased relatively, as shown in the following table.

<table>
<thead>
<tr>
<th>Year</th>
<th>Sale of Auction Results TPK</th>
<th>Income Type Sale of Auction Results TPPU</th>
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<tr>
<td>2018</td>
<td>Rp2.405.734.899</td>
<td>Rp43.384.617.965</td>
</tr>
<tr>
<td>2019</td>
<td>Rp3.215.348.688</td>
<td>Rp4.367.347.000</td>
</tr>
<tr>
<td>2020</td>
<td>Rp2.515.769.302</td>
<td>Rp869.275.595</td>
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The problems that occurred so that the value of assets decreased according to the report disclosed by the Supreme Audit Agency (BPK) of the Republic of Indonesia was due to the recording of the management of confiscated objects and inventories of confiscated goods manually using a spreadsheet, there was no use of an integrated application. Physical checks or stock taking of the stolen goods are only carried out periodically in the warehouse or storage area. As a result of these things, it is necessary to make improvements in the management of auctions of confiscated goods or objects so that they can optimize the values of the assets being auctioned off in order to recover state financial losses. In addition, because of this, the decrease in the value of the assets of the criminal act of corruption is also influenced by goods purchased using money from the proceeds of corruption, such as cars, motorcycles, bags, watches and so...
on, as was the case in the Eddies Adelia case. So that it will decrease from new prices to used prices from year to year.

After further review, in order to return or recover the assets of the Attorney General's Office, the Attorney General's Office Regulation Number 7 of 2020 concerning the Second Amendment of the Attorney General's Regulation Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery which regulates the Asset Recovery Center of the Attorney General's Office is issued RI which plays a role in carrying out asset recovery activities, providing assistance as well as coordinating and ensuring that each stage of asset recovery can be integrated. The Asset Recovery Center can make several efforts to recover or increase the value of assets that have decreased or prevent the asset value from decreasing, one of which is by conducting an auction first before a decision with permanent legal force (in kracht van gewijsde) or often known as the execution stage is carried out. regulated in Article 270 to Article 276 of the Criminal Procedure Code.

Based on the description of the background above, the problem that will be studied in this journal is how to manage the confiscated objects of criminal acts of corruption so that they do not experience a decrease in value. This research uses a normative juridical writing method, namely the law is conceptualized as what is written in legislation or the law is seen as a gift or norm which is a benchmark for human behavior that is considered appropriate and supported by data found on the internet. The novelty of this research is to examine the implementation of confiscation of confiscated objects for criminal acts of corruption that are detrimental to value. The decline in the value of assets is influenced by the use of money from criminal acts of corruption, in an effort to minimize the value of assets that have decreased, one of them is by conducting an auction before there is a decision before there is a decision that has permanent legal force.

B. Discussion
1. Procedure for Implementing Confiscation

Confiscation is one of the coercive measures (dwang-middelen) that is important in the settlement of corruption cases because it aims to take goods resulting from the corruption in order to recover the state financial losses that have arisen. The definition of confiscation according to Article 1 number 16 of the Criminal Procedure Code is a series of actions by an investigator to take over and/or keep under his control movable or immovable, tangible or intangible objects for the purpose of proof in investigation, prosecution and trial. Based on the definition contained in Article 1 number 16 of the Criminal Procedure Code, there are several elements, namely:

1) Confiscation is an investigator's action. Investigators according to the Criminal Procedure Code are state police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations. In the case of a corruption crime, the investigator can come from the Indonesian National Police and also investigators at the Corruption Eradication Commission.


11 Amiruddin and Zainal Asikin, Pengantar Metode Penelitian Hukum (Jakarta: Raja Grafindo Persada, 2012).


2) Movable or immovable objects, tangible or intangible. Article 39 of the Criminal Procedure Code states that goods that can be subject to confiscation are:
   a) The object or claim of the suspect or defendant is wholly or partly suspected to have been obtained from a criminal act or as a result of a criminal act;
   b) Objects that have been used directly to commit a crime or to prepare it;
   c) Objects used to hinder the investigation of criminal acts;
   d) Special objects made or intended to commit a crime;
   e) Other objects that have a direct relationship with the crime committed.

According to R. Sugandhi that animals are included in confiscated objects as well as some items obtained by crime and which are intentionally used to commit crimes.\(^{14}\) Goods that have been confiscated can be returned to the owner or party who has the right to the goods as long as they fulfill the provisions of Article 46 paragraph (1) of the Criminal Procedure Code which explains as follows:

"the object subject to confiscation is returned to the person or to those from whom the object was confiscated, or to the person or to those who are entitled if:

a) The interests of investigators and prosecution no longer require;
   b) The case is not prosecuted because there is not enough evidence or it turns out that it is not a crime;
   c) The case is set aside for the public interest or the case is closed for the sake of law, unless the object is obtained from a criminal act or is used to commit a criminal act."

However, the goods can also not be returned to the person concerned if according to the judge's decision the object is confiscated for the state, destroyed or damaged until it can no longer be used or if the object is still used as evidence in other cases (Article 46 paragraph (2) of the Criminal Procedure Code).

3) Confiscation is carried out for the purpose of proof in investigation, prosecution and trial. The evidence obtained in the confiscation process is a source of evidence but the strength of the evidence is different from the evidence. Evidence is used as one of the ingredients to form evidence of instructions and can be used to strengthen the formation of judges' beliefs.

There are several procedures that must be followed in carrying out the confiscation by investigators. Procedures are mandatory to be obeyed because of orders from the Act. The confiscation procedure is based on Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), namely:

1) Confiscation must be accompanied by administrative documents
   Investigators carrying out seizures other than based on a warrant also require a letter for administrative needs such as a confiscation implementation permit issued by the local District Court in accordance with Article 38 paragraph 1 which explains that "confiscation can only be carried out by investigators with a permit from the head of the local district court" means that if the investigator is going to confiscate, he must have an administrative document in the form of a local court permit because confiscation as a coercive measure can violate human rights. However, in article 38 paragraph (2) of the Criminal Code, it stipulates the exception of confiscation without having to wait for a letter of permission from the court if in an urgent situation so that it is not possible to obtain a permit first, but after the confiscation is completed, it is mandatory to immediately report to the Chairperson of the Court.\(^{15}\) local country for approval.


\(^{15}\) MARIANA, Dina; SARAGIH, Bintang Olga Natalia; MAULANA, Qemal Candra. Penyitaan Aset sebagai upaya Pemulihan Aset (Asset Recovery) dalam Rangka Pemulihan Kerugian Keuangan Negara. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, 2022, 5.8: 2930 https://doi.org/10.54371/jiip.v5i8.772
Confiscation carried out without a permit from the local district court can only confiscate movable objects. In practice, it is very difficult for law enforcement officers to seize assets resulting from criminal acts that have been controlled by the perpetrators, such as the lack of instruments in an effort to confiscate assets originating from criminal acts by law enforcement officers, as well as the time it takes very long to carry out confiscations which must obtain permission from the law enforcement officers District Court. The steps for obtaining a certificate of approval for evidence are as follows:

a. Investigators bring an application for a permit for the approval of the confiscation of evidence in the form of documents.

b. The staff examines the permit application based on the complete requirements for making the permit, namely the Confiscation Application Letter, Investigation Order, Investigation Commencement Warrant, Confiscation Warrant, Confiscation Minutes, Resume.

c. If the application does not meet the requirements, the application is returned to the investigator, and if the application meets the requirements, the application will be accepted.

d. The staff makes a permit based on the request requested by the investigator.

e. The staff asked for the initials of the Junior Criminal Registrar and the Registrar, then asked for the signature of the Head of the Tanjung Karang District Court Class IA

f. The permit letter that has been initialed by the Junior Criminal Registrar, the Registrar, and has been signed by the Head of the Tanjung Karang District Court Class IA is stamped with the Tanjungkarang District Court Class IA.

g. The finished permit will be taken by the investigator.

2) Investigators are required to show administrative documents

Investigators who carry out confiscations are required to do the following:

a. Show identification to the party at the confiscation location (Article 128 of the Criminal Procedure Code)

b. Read the minutes containing the course of the confiscation as well as any items that were confiscated and then signed by the investigator, the owner of the goods or those who control the goods and/or the signature of the head of the neighborhood with two witnesses (Article 129 (2) of the Criminal Procedure Code)

c. If the owner of the goods or the person in control does not want to put his signature, it must be recorded in the official report along with the reasons (Article 129 paragraph (3) of the Criminal Procedure Code)


Management of confiscated objects is a step that must be taken by investigators after confiscation. Based on Article 44 of the Criminal Procedure Code, confiscated objects are stored in the State Confiscated Objects Storage House (RUPBASAN) which will be carried out as well as possible and the responsibility for it is given to the competent authority in accordance with the law.
with the level of examination in the judicial process\textsuperscript{18}. In order to avoid any damage to confiscated objects, it is prohibited to be used by anyone in accordance with the main task of RUPBASAN, namely to store confiscated objects and state confiscated goods. The purpose of the existence of RUPBASAN is to avoid misuse of confiscated objects and state confiscations through efforts to separate functions between officials who are physically and administratively responsible for these objects.

To carry out its duties, RUPBASAN has the following functions:

- Administering confiscated objects and state confiscated goods.
- Carry out maintenance and mutation of confiscated objects and state confiscations.
- Conduct security and management of RUPBASAN.
- Doing correspondence and archiving.\textsuperscript{19}

The storage of confiscated objects is carried out properly and in an orderly manner in accordance with the implementation instructions and technical instructions for the management of state confiscated fines and state confiscated goods so that there is no loss, damage or reduction of said objects and goods, if at any time they are needed by interested parties, it is easy and fast to obtain. Maintenance of confiscated objects means taking care of the said objects and goods so that they are not damaged and their quality or quantity does not change from the time they are received until the objects or goods are removed from the RUPBASAN.

The series of activities for the management of confiscated objects from the receipt to the disposal process includes:\textsuperscript{20}

a. Reception
   Receipt of confiscated objects is given to RUPBASAN with valid documents to the receiving officer, then the confiscated objects are given to the research officer.

b. Research and assessment
   At this stage the research officer conducts research and assessments on the condition, type, quality, type and number of confiscated objects carried out in a special room then after the research and assessment is complete, they sign the Minutes of Handover.

c. Registration
   At this stage, the registration officer who receives the confiscated objects and their documents from the receiving officer re-examines the validity of the confiscation documents or delivery letters along with the official report on the examination of the confiscated objects and checks them with the relevant evidence. At this stage, the registration officer records and registers the confiscated objects according to the level of inspection after the confiscated objects are handed over to the storage officer.

d. Storage of State confiscated goods (Basan) and State confiscated goods (Baran);
   The confiscated goods and the newly received state confiscated goods are stored based on the level of inspection, the place of storage and their type. Seized objects that are not stored by the RUPBASAN can be deposited with the authorized agency or organizational body by the head of the RUPBASAN.

e. Maintenance of confiscated objects
   The integrity of the type, quality, type and number of confiscated objects shall be responsible to the head of the RUPBASAN. Maintenance officers perform daily tasks in the form of:
   a. Carry out regular supervision and inspection of confiscated objects;


\textsuperscript{20} Ditama Binbangkum, “Pengelolaan Barang Sitaan, Temuan Dan Rampasan,” Sie Infokum, 2016, 1–16.
b. Pay attention to confiscated objects that require special care;  
c. Record and report in case of damage or depreciation of confiscated objects.

Maintenance duties include maintaining the integrity of confiscated objects for the benefit of the judicial process, efforts to maintain the quality, quantity and condition of confiscated items and periodically holding stock taking of all confiscated items.

f. Mutation  
Transfer of confiscated objects can be done administratively or physically. The transfer of confiscated objects must be based on letters from the responsible official according to the level of criminal examination, namely:  
a. Request letter or order for retrieval from the confiscation agency  
b. Prosecutor's request letter  
c. Letter of determination or judge's decision that has obtained permanent legal force or inkracht.

g. Releasing and Elimination of Confiscated Items  
The issuance and removal of confiscated objects is based on a Court Decision/Stipulation, an Investigator/Public Prosecutor's Order, and a Request Letter from a judicially responsible agency. There are three types of release of confiscated objects based on the inspection stage and based on the recommendation of the head of RUPBASAN after the deletion process due to the discovery of damage, depreciation, fire, natural disaster, theft, and evidence was not taken.

h. Rescue and Safeguard Confiscated Items  
At this stage, RUPBASAN has the following main tasks:  
a. Take care to prevent theft or damage caused by fire, flood, or other natural disasters.  
b. Protect against safety and security disturbances  
c. Maintain, supervise and maintain RUPBASAN inventory items  
d. Carry out safety and security administration of RUPBASAN.

i. Reporting  
In the interest of monitoring and controlling the activities of managing confiscated objects and state confiscations, it is obligatory to report in writing to the regional head of the Ministry of Law and Human Rights and a copy to the Director General of Corrections.

j. Final expenses  
The final release of confiscated objects and state confiscations must be reported to the relevant agencies and copied to the Regional Head of the Ministry of Law and Human Rights and to the Director General of Corrections.

3. Problems in the Management of Confiscated Goods  
The length of the process of resolving cases of criminal acts of corruption so that the process of managing confiscated objects will also take longer because the release of confiscated objects must be based on court decisions, the interests of investigation and prosecution do not require the confiscated objects or the elimination of confiscated objects at the suggestion of the head of RUPBASAN. The problems in the management of confiscated objects which took a long time, based on the LHP of the KPK, were revealed by BPK RI, namely as follows:21  
a. The recording and management of confiscated objects and inventories of confiscated goods have not yet utilized an integrated application but are still using manually using a spreadsheet. The use of applications that have the ability to be integrated with the data base of confiscated objects and inventories of confiscated or confiscated items can be

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identified and data on inventory changes can automatically change. This problem is a recurring problem in the LHP which was published on May 20, 2020, but there has been no follow-up and no application has been executed. Then in the Performance LHP issued on December 30, 2020, a synergy application has been formed, namely the Integrated Case Handling System (SINERGI). However, in terms of utilization, the application has not been fully utilized. This can be seen in the utilization of the SINERGI application for data migration, which is only 40% and the implementation of the SINERGI application is only 25%. In addition, based on the results of the questionnaire, it was found that only 18% of the Task Force had utilized SINERGI and all admins had not utilized SINERGI.

b. The implementation of physical checking activities or stock taking of the spoiled goods inventory is only carried out periodically in the warehouse/storage area. In this case, there are no rules regarding the period of stock taking. It should be noted that in practice stock taking is carried out by adjusting the calculation records with the stock of goods or inventories stored by the company.

c. 3. The occurrence of problems in the accountability of security for the spoils. As it is known that this administrative security is another authority that is owned by the administration of the management of the State booty which in its implementation carries out the security of the state administration in the form of bookkeeping, inventory, and reporting. Physical security and legal protection of the State's booty under its supervision. The findings of these problems, such as the authorization of access to the physical storage of booty stored in the evidence storage warehouse, is not optimal. In addition, there is a separation of functions between recording, managing, and storing evidence where problems are repeated in the LHP Performance on the Effectiveness of the Management of the Prevention and Management of Confiscated Objects and Confiscated Goods Functions in 2015 s.d. Semester I of 2020 dated December 30, 2020, in which the LHP explains that there are no standard standards for the maintenance, care or storage of confiscated objects and looted items that can be used as guidelines by authorized personnel. The absence of adequate evidence storage facilities, this is due to limited space so that evidence is not separated by type such as documents, electronic devices, precious metals, and luxury goods. The electronic information system that supports the storage of evidence is also not adequate, such as there are no administrative officers devoted to recording, storing, and administering evidence. Another thing that is also found in this LHP is that the evidence room does not yet have an integrated and single computerized system to manage BB storage, and does not have a layout division in the storage of evidence. Availability in the use of booty that is not yet ideal. This is necessary because of the need for security of State Property (BMN) so that it can be protected from potential legal problems such as disputes, lawsuits, or transferring ownership to other parties illegally or illegally.

4. Efforts to Recover State Losses Through Optimizing the Value of Auctioned Assets

Legal efforts that have been carried out by law enforcers have serious problems that revealing criminal acts of corruption by finding the perpetrators and then placing the perpetrators in prison have not been effective and optimal to reduce the number of crimes committed by corruptors if no other efforts are made. One of the countermeasures made by the government in recovering state financial losses as a result of the proceeds of criminal acts of corruption is by conducting asset auctions for confiscated objects. Recovery of assets or asset recovery is

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carried out with the aim of minimizing state losses in addition to giving punishment to the perpetrators in accordance with the applicable laws and regulations. Therefore, the recovery of state losses through asset auctions has an equally important role in being able to recover state losses. Based on Article 47A of Law Number 19 of 2019, it is explained that objects confiscated by investigators can be sold in public through auctions, even though the case is in a condition that has not been decided by inkkracht but is still in the sentencing process. The confiscated objects that can be sold at auction “basically” include all types of objects, both tangible and intangible, movable or immovable, which legally and socially can be traded, used, used or exploited by legal subjects, which meet the criteria as following:

1) Perishable, and/or
2) Harm, and/or
3) The storage cost will be too high.23

The auction process itself is as follows:

a. Application
   At this stage, the application for an auction of confiscated and confiscated goods is carried out.

b. Scheduling
   At this stage, the goods for which the application has been registered are then determined for the auction schedule.

c. Announcement of First Auction
   At this stage, the auction schedule provided is divided into two, namely the auction of movable goods and the auction of immovable goods. This first auction announcement is scheduled for a movable goods auction.

d. Announcement of Second Auction
   This stage is a continuation of the announcement of the first auction where the announcement of the second auction is scheduled for the auction of immovable goods.

e. Giving Explanation
   At this stage, it is also known as Aanwijzing or giving an optional explanation that can be done and/or may not be done.

f. Deposit of Auction Security Deposit
   At this stage, money is deposited as collateral for the auction goods.

g. Auction Implementation
   At this stage, an auction is held.

h. Repayment
   At this stage, if the auction has been accepted, then it is mandatory to pay off the auction goods that have been obtained.

In terms of its implementation, it should be understood that the asset auction itself has economic value conditions that can change over time. As with confiscated objects that are easily damaged and have been around for a long time, their economic value will certainly be at risk of decreasing. Impairment losses on assets occur when there is a difference in value when you first acquire an object, but the value of the sale proceeds is inversely proportional.24

This is evidenced by the discovery of a case that ensnared the convict of the North Lampung Regent, Agung Ilmu Mangkunegara based on decision Number: 6/Pid.Sus-TPK/2020/PN Tjk that witness Desyadi was ordered by the convict to buy a built-up HARIER car for Rp. 23


765,000,000,- in 2017 for his personal use,\(^{25}\) if the car is confiscated and an auction is currently held in 2022, it will experience a decrease in economic value, which is Rp. 470,000,000,-. It can be concluded that if there is an asset resulting from a criminal act of corruption, but in the process it takes quite a long time to cause the asset to decline in value, then efforts to recover state financial losses will certainly experience obstacles because the money from the crime of corruption that has been spent is inversely proportional to proceeds from the auction. Auction efforts can run optimally if it is supported by other things as stated by Soerjono Soekanto that in law enforcement it is influenced by five factors, namely, legal factors, law enforcement factors, facilities factors, community factors and cultural factors.\(^{26}\)

The novelty of this research is to examine the procedures for implementing confiscation carried out by investigators, the process of managing confiscated objects in criminal acts of corruption, errors in the management of confiscated goods and efforts to recover state losses through optimizing the value of auctioned assets which have an important role in recovering state losses.

C. Conclusion
Confiscation as a forced effort \((dwaang-middelen)\) as a way to recover state financial losses caused by corruption. But on the other hand, this confiscation process has a negative impact on confiscated objects, namely a decrease in the value of assets due to the length of the criminal case settlement process due to removing confiscated objects from RUPBASAN, one way is by a judge's decision. This can be overcome by holding an auction in advance of confiscated objects that will experience a decline in value so that the recovery of state financial losses can take place optimally which needs to be supported also by a good work ethic from law enforcement officers, namely by taking care of confiscated objects properly so that they are not decreased value as well as integrated data collection so that confiscated objects are not lost or not recorded.


Implementing the Confiscation ...
Agung Abadi

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