Confiscation of Assets for the Crime Corruption Used as Guarantee Mortgage

Tri Yatmoko

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<td><strong>keywords:</strong> Asset Confiscation, Corruption, Mortgage</td>
<td>Asset confiscation is one of the government's efforts to compensate for state losses. One institution that is given the authority to carry out asset confiscation based on court decisions is the Prosecutor's Office. In carrying out judicial decisions on corruption crimes, the Prosecutor's Office experiences various obstacles in practicing the value of justice, one of which is the seizure of assets attached to mortgages. The problem of this research is how is the practice of confiscating assets resulting from corruption in recovering state finances and how is the mechanism for confiscating assets resulting from corruption with mortgages attached. The assessment of confiscating assets burdened with mortgages uses empirical juridical methods through library research and field research. The study results show that in practice, the seizure of assets resulting from corrupt criminal acts takes a very long time because the time required for a case to obtain a binding court decision can take months, maybe even years. Next, the mechanism for confiscation of assets by prosecutors can confiscate assets resulting from corruption crimes that are pledged in the Bank with mortgage rights attached, as long as the court can prove that the assets are indeed the result of corruption crimes and have permanent legal force (Eintracht) because the criminal law position (public) is higher than civil law (private)</td>
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A. Introduction

Corruption is a wrong crime which not only harmful to formal will but harmful to the material. Factor main in criminal Corruption (Tipikor) is an opportunity used as an instrument by irresponsible people. Corruption, in general, is not only detrimental to the State's losses, but the most significant impact is the detrimental economic and even people's daily lives. Corruption Perpetrators must be responsible for all actions. Therefore, law enforcement must take action by pursuing each criminal's assets. Things The main thing that must do must do against the perpetrators of corruption is to return the lost Country, which next, through the decision judge must conduct recovery asset to the perpetrator held with the plunder asset defendant.

Assets originating from various criminal acts are generally not directly used by criminals because if they are directly used, it will be easy to track down law enforcers regarding the source of the assets obtained, so usually, the perpetrators of the crime first try to get the assets obtained from the crime. Enter into the financial system

Deprivation asset results act criminal corruption set in Chapter 18 paragraph- the verse is good in the Anti-Corruption Law, explicitly regulating the seizure of assets obtained from criminal acts of corruption, but these provisions only criminal addition, no forbidden tree. Should related Thing, the confiscation of the assets of the perpetrators of corruption can be used as an additional crime, will but become a principal crime. This means that corruption could guarantee every asset in confiscating the defendant's assets, especially if the defendant runs. The provisions contained in Article 28H paragraph (4) of the 1945 Constitution that "Every" citizen has the right to have private property rights, and these property rights may not be taken over arbitrarily by anyone. Therefore although the correct defendant is protected by the constitution 1945, will but in its implementation, must take into account the aspects of the loss suffered by the State. State losses must be sought to be returned, so there must be plunder assets against the perpetrators of corruption.

In handling cases, the defendant or convict is not always a party that monopolizes in "get" and enjoys" results corruption. Results act criminal corruption no seldom flow to party other like participant actors or third parties, namely witnesses or other parties who do not Becomes witness like Institution Finance. Even often, defendants obtain and enjoy the results of corruption smaller than those obtained and enjoyed by third parties. Article 18 paragraph (1) letter b of the Anti-Corruption Law, assets proceeds of crime obtained by other parties may not be charged obligation the return to the defendant, however, obligation attached to the parties who receive it. Consequently, treatment ( treatment ) to restore state finances enjoyed by the parties other than the accused is not the same as those who have been accused.

The country harmed consequence of an act of criminal corruption, not yet, of course, could restore with existence return to plunder treasure owned by the defendant as a substitute for state

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finances, the value of which is only limited to property obtained by a defendant. For restore loss finance country entirely, only could conducted if treasure which obtained and/or enjoyed by other parties is taken back by the state. With Thus, the success rate of saving state losses in settlements corruption cases, it is not always the same as all state financial losses that occur. Prosecutor general doing his authority in skeleton recovering state losses through confiscation of assets, is regulated in Article 18 paragraph (1) letters a and b of the Corruption Law and Article 38 paragraph (5) of the Anti-Corruption Law, judge on base demands prosecutor could decide for did plunderto goods previously confiscated.

Chapter 19 Constitution Corruption give means allow judge drop decision plunder results corruption no belongs to defendant. According to Chapter 19 paragraph (1) Corruption Act, third party get treasure, goods or profit results corruption with method faith no good so could robbed for country. In practice, attorneys experience constraints for To do plunder to asset results from the corruption pledged in the Bank installed with APHT. Provisions of Article 14 of the Law on Rights Dependent states that the Mortgage Certificate has power Executive the same one by a court decision which has final power law and applies instead of the Grosse Acte Hypoteek. Irah-irah, which be included on the certificate Right Dependent mean confirm strength executive on SHT, if debtor default, an asset which collateral can be executed without going through a court trial, with how to and use the separate executive institution following the rule of law program civil.

Cases against assets resulting from the corruption confiscated by the court related to criminal acts criminal corruption are Decision PN Manado Register Case Number 18/Pid-Sus-TPK/2014/PN.Mdo, with Defendant Mr. Subchan SE, dated 10 July 2014, in his decision, he was sentenced to 5 (five) years in prison and a plot of land and buildings having the address at the Green Housing Complex Sure No. 13, Jalan Ahmad Yani KM-10, 200 Banjar Masin according to SHM No.: 01347/Sungai Lakum registered An. Mohammad Hasan Rahmat robbed the country for auction and money results auction goods proof the taken into account with money payment replacement.

PT. Bank Panin, TbK Banjarmasin branch, as holder of Certificate of Rights Dependent (the creditor), submit an objection to the decision and has filed a civil lawsuit to the Attorney General of the Republic of Indonesia cq. North Sulawesi Attorney General's Office cq. Prosecutor Bitung, as Challenged I, and Mohammad Hasan Grace, as Challenged II. Amar's decision his until with level cassation is granting the Contestants' Resistance (PT. Bank Panin Tbk) with the Register.

Based on problem which has outlined on, writer next interested lift theme this for conducted study with title “Criminal Law Enforcement Against Confiscation of Proceeds of Assets Criminal act Corruption which guaranteed in Bank Installed As Right Dependent”. The novelty of this research is about confiscation of assets resulting from criminal acts of corruption that are guaranteed as mortgages carried out to restore state finances Formulas.

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11 Putusan.Mahkamahagung.go.id.pada tanggal 28 Maret 2021, Pukul 08.00 WIB.
problem is how practice plunder asset results corruption in recovering state finances and what is the mechanism of confiscation asset results corruption installed right dependents?. In answer formula this problem, this study uses normative legal research methodsempirical, based on data primary and tertiary.12

B. Discussion
1. The Practice of Confiscation of Assets Proceeds from Corruption in Recovering Losses Country

In the legal system in Indonesia, the seizure of assets is part of the criminal addion in the form of plunder goods certain results act criminal.13 This generally applies to every criminal act that occurs in realm law criminal in Indonesia with destination harmful convict which proven through decision court which tie has To do act so that they cannot enjoy the proceeds of the crime.14 Asset confiscation proceeds of crime, in the legal system in Indonesia is not a thing the new one. Several criminal provisions have regulated the possibility of for To do foreclosure and plunder results and tool which used in a crime. These provisions are contained in the Book of the Criminal Code (KUHP) on additional penalties. In addition to being set in The Criminal Code, provisions regarding the confiscation of assets resulting from criminal acts are also regulated in each provision law criminal which spread in Constitution which specifically set it up.

In the provisions contained in the criminal law in Indonesia, the confiscation of certain goods can only be done with a court decision that have binding legal force. Thus, during the enforcement process For a criminal act, other actions can be taken, namely confiscation. Foreclosure is effort force which conducted by investigator fortake over and save object (asset) for interest proof in the law enforcement process both at the stages of investigation, prosecution, and the judge.15 Thing the character temporary which only could conducted with permission from chairman court country local, however in state urgency can be confiscated first and then confiscation which has occur reported on chairman court country local To use get agreement.

In practice apparatus enforcer law very difficult for To do confiscation of assets resulting from criminal acts of corruption that have been controlled by the perpetrators. The difficulties encountered in efforts to confiscate assets resulting from criminal acts are very difficult many, such as the lack of instruments in efforts to confiscate assets resulting from acts of criminal law, and lack of understanding of the mechanism for confiscation of proceeds criminal acts by law enforcement officers, as well as the length of time required until the assets resulting from criminal acts can be confiscated by the State in this case given authority to the prosecutor as the public prosecutor in the casewhich based on sentence permanent legal force.16

15 Marfuatul Latifah, Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia, Negara Hukum: Vol. 6, No. 1, Juni 2015, hlm. 19.
The Criminal Procedure Code also limits the objects that can be confiscated, namely only objects that can be confiscated which has a direct connection with criminal acts, objects, that are not directly related to the occurrence of a criminal event cannot be confiscated by investigators. According to the provisions of Article 18 paragraph 2 of the Criminal Procedure Code which reads that in the event of being caught red-handed the arrest is carried out without a warrant, provided that the arrest must immediately hand over the caught along with the available evidence to the nearest investigator or assistant investigator. Object confiscation could returned to person which most entitled when investigation and prosecution does not require the confiscated object. Apart from that, confiscated items could returned when incident which occur no so sued because declared insufficient evidence and declared not a crime. Other conditions where the confiscated goods can be returned is when there is a waiver cases in the public interest or case is closed by law, except if object that obtained from something act criminal or which used to do an action criminal.

Efforts to expropriate assets in a country certainly require desire political country good from parliament, government, nor institution judicial. Desire political from parliament related with desire parliament in prepare legal instruments in an effort to confiscate assets from the beginning to the end assets originating from criminal acts can be returned to the rightful party. Rule law which meant related with tracking asset, management asset, delivery of assets up to the utilization and supervision of assets that have been submitted. Besides that need also prepared device law related with reciprocal relations between countries. This political will can realized through Constitution which arrange special about plunder yield assets act criminal in legal system in Indonesia.

The act of confiscation of assets in the legal system in Indonesia is contained in Chapter 10 (b) KUHP, as wrong one form from criminal addition. Based on these provisions, the confiscation is carried out on the basis of a decision court or determination from judge, to goods certain. The confiscation is carried out in a limited manner in accordance with the provisions stipulated in the law there is in the KUHP, that is goods which owned by convict which obtained from crime or intentional used in To do crime. Deprivation the could replaced with criminal confinement If the confiscated goods are returned to the convict, the length of time confinement that's the least 1 day and at most 6 months old.

When the case in question has been decided by the judge, the object subject to confiscation is returned to the person or party mentioned in the the decision, unless according to the judge's decision, the object is confiscated for country, good for destroyed or for tampered with until no could reused, or auctioned for the benefit of the state treasury and can also be used used for interest proof in case other. With using this mechanism, the confiscation of assets resulting from criminal acts does not maximum because object which could confiscated and robbed only object which directly related to a crime. It becomes obstacles for law enforcement

19 Marwan Effendy, Kapita Selektak Hukum Pidana. Perkembangan dan Isu-Isu Aktual dalam Kejahatan Finansial dan Korupsi, Referensi, Cetakan Pertama, Jakarta, 2012, hal. 136
officers who confiscate or confiscate because sorting out which items are directly related or which items which is not directly related to the crime takes time while the nature of foreclosure and seizure of assets requires speed so that asset which there is don't move hand.

With use mechanism which there is in KUHAP, practice confiscation of assets resulting from criminal acts takes time very long time, because time which needed for a case until get decision court which powerful tie can use up time months, maybe even years. The length of time needed, make it easy defendant for hide asset which obtained and used in criminal acts so that the initial purpose of confiscation of assets, namely seizing the proceeds of crime so that the perpetrator cannot enjoying wealth that is not their right is not achieved because the perpetrator already made efforts to dispose of the asset. Deprivation mechanism assets as stated in the Criminal Procedure Code as described above, drip weight on disclosure act criminal, which in inside there is elements of finding the perpetrator and placing the perpetrator in prison and only placing asset confiscation as an additional crime is not enough effective to reduce crime rates.21

With no make plunder asset as focus from enforcement law for criminal acts that have an economic element, there will be omission to perpetrator act criminal for dominate and enjoy results act criminal even To do repetition on act criminal which one did even with mode operandi which more advanced. Existence a subsidiary mechanism (replacement) for the obligation to pay assets resulting from actions criminal law also causes efforts to confiscate assets resulting from criminal acts not enough effective. Because part big convict will more choose for state his incompetence return asset which generated from the crime he has committed so that his inability will be rewarded with corporal confinement as a substitute. There is a mechanism subsidiary which long no exceed threat punishment criminal the main thing is in exchange for the amount of assets that must be paid to the state of course become a very promising alternative for convicts, compared to must return asset which generated from action criminal.

2. Mechanism Deprivation Asset Results Corruption Installed Right Dependent

Crime corruption if linked with system law so by substance that the government already has policies or regulations that can made as instrument for eradicate corruption. 20 Will but in the fact that there are still many perpetrators of corruption The Corruption Law is detrimental to the State and must be enforced by law. Furthermore, in the legal structure that law enforcers are judges, prosecutors, police and lawyers. One of those structures is the Prosecutor's Office which have role strategic in enforcement law to corruption, so In an effort to recover state losses, assets are confiscated from corruption the. By culture law in enforcement law corruption against the confiscation of assets that every criminal who has harmed Country, then return and asset confiscation will be difficult, when the perpetrator run self even perpetrator already replace name every asset which it has.22 Will but in the fact that there are still many perpetrators of corruption The Corruption Law is detrimental to the State and must be enforced by law. Furthermore, in the legal structure that law enforcers are judges, prosecutors, police and lawyers. One of those structures is the Prosecutor's Office which have role strategic in enforcement law to corruption, so In an effort to recover state losses, assets are confiscated from corruption the. By culture law in enforcement law corruption against the confiscation of assets

that every criminal who has harmed Country, then return and asset confiscation will be difficult, when the perpetrator run self even perpetrator already replace name every asset which it has.\(^{23}\) Even how much case occur asset which is owned perpetrator corruption mortgage is attached, meaning that the asset has indirectly been quasi by the other party.\(^{24}\)

Chapter 18 paragraph (2) law Corruption is known that there is sentence "treasure the object can be confiscated and auctioned off, according to the author of property which meant in chapter the is asset owned by Defendant which of course nois income from criminal acts of corruption or is not an asset which used for doing act criminal corruption, because if based on the judge proven that treasure object which robbed is is property resulting from a criminal act of corruption, the provisions apply Article 18 paragraph (1) letter a of the Corruption Law so that the Prosecutor does not have to confiscation and auction as regulated in Article 18 paragraph (2) of the Anti-Corruption Law. Based on Article 18 paragraph (3) of the Anti-Corruption Law, it is determined "in the event that the convict does not have treasure object which sufficient for pay money replacement as referred to in paragraph (1) letter b, shall be punished with a criminal imprisonment whose length does not exceed the maximum threat of the principal sentence in accordance under the condition in court decisions.\(^{25}\)

Return loss country with use instrument law civil law through filing a civil lawsuit that can be carried out by prosecutor as Lawyer Country on happening loss finance country against the perpetrator or his heirs. This is in accordance with the provisions of Article 32 paragraph (1) of the Anti-Corruption Law, if there is not enough evidence while there is already a loss the country suffered, the Prosecutor can file a civil lawsuit. Article 38 The Corruption Eradication Law stipulates that, if after the court's decision has obtained permanent legal force, it is known that there is property belonging to the convict which is suspected or reasonably suspected to have come from from act criminal corruption which not yet worn plunder for countryas referred to in Article 38 b paragraph (2), the state can carry outlawsuit civil against convict or expert his inheritance.\(^{26}\)

According to Farid\(^{27}\) confiscated assets/goods from the proceeds of corruption that were used as Bank collateral installed as Mortgage can be implemented as long as The court can prove that the asset is real result of corruption. Based on the results of interviews with Dr. Eddy Rifai, SH, MH\(^{28}\) as a Criminal Lecturer at the Faculty of Law, University of Lampung which states: It is possible to confiscate assets resulting from acts of criminal corruption which guaranteed in Bank and installed as Right Dependents, because the position of criminal law (public) is higher than on civil law (private). So if there is a court decision that permanent legal force (\textit{inkrat}) against the confiscation of assets resulting from a criminal act corruption which guaranteed in Bank and installed as Right Dependent position criminal law takes precedence than civil law.


\(^{26}\) Hinawan Ahmed Sanusi, “Mekanisme Pengambalian Hasil Tindak Pidana Korupsi”, \textit{Juris Data}, Vol.12 No. 2 Tahun 201

\(^{27}\) Wawancara dengan Farid selaku kasi Uheksi Pada Kejakasanaan Tinggi Lampung, 14 Desember 2021, Jam 14.00 Wib.

\(^{28}\) Wawancara dengan Dr. Eddy Rifai, S.H., M.H. selaku Dosen Pidana Pada Fakultas Hukum Universitas Lampung, 13 April 2021, Jam 10.00 Wib.
This is in accordance with the asset return theory which is based on the basic principle of "give the state what is due." In right country contained obligation which becomes right individual inhabitant Country, so that the principle is equivalent to the principle of "give the people what be entitled." In essence, fair means placing something on the place and give to who just what which be his right.29

Thus, the mechanism for confiscation of assets resulting from corruption is installed right not quite enough, attorney could execute along there is validity assetthe could proven as results corruption and strengthened with memo court. Therefore, the confiscation of these assets also needs to be done mapping of assets owned by corruption defendants, because most assets owned has changed the name of someone else. Thus, in tracing assets assets owned by the defendant must have more prudence so that all assets can confiscated and returned to the State.

Based on results Interview with Bi Pujo Prayitno, SH, MH,30 Lecturer Civil Faculty Law University Lampung which state The Prosecutor's Office may confiscate goods resulting from corruption installed as Right Dependents, During in To do plunder The prosecutor's office may only carry out confiscation of equality / confiscation of adjustments to object guarantee right dependents the. It means that attorney no is the creditor's preference in paying off debtors' receivables, so that the rights privileges to take precedence in paying off the debtor's receivables dependents are in the hands of creditors holding mortgage rights as creditors preferences. If bank as creditor preferences has get settlement of the receivables, then if there is still a remainder from the settlement of receivables then the prosecutor's office is given the right to take a replacement loss finance country.

According to Kurniawan Manullang, SH, as Legal Officer at PT Bank National Nobu, Tbk. Cab. Lampung (LLM)31 which stated that the Bank/Institution Finance as holder Right Dependent could To do legal remedies against forfeited collateral because it is proven to be a proceeds asset of corruption. This is based on many legal sources Indonesia, including Law no. 4 of 1996 concerning Mortgage Rights, Law no. 31 of 1999 as amended by Law no. 20 of 2001 About Eradication Corruption and Decision MA No. 1731/K/Pdt./2011 that on The point is, in this guarantee, which mortgage holder is the matter? At this time, Banks/Financial Institutions remain the priority/priority creditors to obtain appropriate compensation/payment of debt. Bank/Institution Finance also get protection law for resolve problem the. By preventive, Bank/Institution Finance could submit object to foreclosure the and by Repressive, Bank/Institution Finance can file a civil suit (through litigation) against treasure other assets belonging to the debtor.

Responding to Thing the that in enforcement law to plunder asset which conducted by enforcer law held with preventive and repressive measures.32 Thus it should have been can be used as evidence that the prosecutor's office in carrying out its duties and function already through procedure which clear and in accordance with provision legislation. So that the seizure of assets carried out does not only limited to plunder, but it is done to return all state losses whose consequences are not only felt by the state willbut society by general affected.

Based on the description above, the prosecutor as the executor of the decision can To do plunder to asset results act criminal corruption which pledged in the Bank installed as

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mortgage, as long as the court can prove that the asset is the result of a crime of corruption and already has permanent legal force (\textit{inkracht}), due to the position law criminal (public) more tall from on law civil (private). Interest Country for confiscate goods goods which suspected from results crime must take precedence over private or civil interests. However, if the mortgage holder objected to the decision within the time most slow 2 (two) month after decision, could submit petition for objection to the court that decided the case and if the objection application is rejected, the Bank/Financial Institution as the holder of Mortgage rights can take legal action, namely by filing a civil lawsuit to other assets belonging to the debtor\textsuperscript{33}.

The novelty of this research is about the confiscation of assets resulting from criminal acts of corruption to recover state losses which in practice are very difficult to carry out asset confiscation using the mechanisms regulated in the Criminal Procedure Code.

C. Conclusion

Based on the explanation in the discussion, the research can be concluded:

1. Practice plunder asset results act criminal corrupt needa very long time, because the time it takes for a case until get decision court which powerful tie can use up time months even possible in a matter of years. The length of time it takes, makes it easy the defendant to hide the assets obtained and used in a criminal act so that the initial purpose of the seizure of assets, namely rob results crime so that perpetrator no could enjoy wealth that is not their right is not achieved because the perpetrator has To do effort to dispose of the asset.

2. Deprivation against assets/goods resulting from corruption that are guaranteed in The bank is installed as mortgage, the prosecutor is the executor of the decision The court can confiscate assets/goods from the proceeds crime corruption which guaranteed in Bank installed Certificate Right Dependent, as long as the court can prove that the asset obtained from corruption and has have strength law permanent (\textit{inkracht}), because position law criminal (public) more tall than civil law (private). State interest to do foreclosure to assets/goods which suspected obtained from crime must take precedence from interest private or civil. However, if holder right dependents object with decision the in a maximum period of 2 (two) months after the court's decision, may file an objection to the court that decided case the.

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