



The Role of Prosecutors in The Effort For Assets Recovery From Corruption Crimes

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Abstract

Corruption is an extraordinary crime because the impact of corruption harms the financial condition of a country; corruption is also alleged to violate the social and economic rights of the community or citizens in the country. Since corruption criminal is included as a extraordinary crime, an extraordinary method must be applied to eradicate corruption. For this reason, also steps are needed to provide a deterrent effect to perpetrators of corruption. Punishment of corruption perpetrators is expected to provide a deterrent effect. One of that steps is to return the state losses caused by corruption perpetrators, as well as being one of the anticipatory steps so that later, people will not dare to commit corruption. This research was made to answer how to recover assets from corruption and determine the prosecutor's office's role in recovering assets from corruption crimes. In this research, the author uses a normative legal research method that conducts an inventory of applicable laws and regulations. The results of research regarding efforts to recover assets can be carried out through criminal and civil legal remedies.



Furthermore, the role of the Prosecutor's Office as a law enforcement officer in charge of law enforcement regarding assets recovery through criminal acts recognizes two mechanisms or procedures for recovery assets, the first mechanism or procedure is the seizure of assets without punishment, and the second is the mechanism or procedure for voluntary asset return. The steps that can be carried out in asset recovery are divided into several steps, including asset tracking, blocking or freezing, foreclosure, confiscation, and return.

A. Introduction

Nowadays, almost all over the states, and also the Indonesian state considers corruption cases¹ as *extraordinary crime*),² because of the impact of corruption that causes losses to a country's finances, corruption is also alleged to violate the social and economic rights of the community or citizens in the country.³ Law Number 31 of 1999 concerning the Eradication of Corruption which has been amended by Law Number 20 of 2001 in the general explanation section, states that the occurrence of corruption is carried out in a systematic and widespread manner so that it is a criminal act that is included in a broad crime (extraordinary crime). An extraordinary method also needs to be applied to eradicate corruption.⁴

Legislation as a rule of umbrella regarding eradicating criminal acts of corruption itself is a sign that the government and law enforcement elements have given serious attention to determining and implementing corruption prevention policies.⁵ Indonesia is a country where cases of corruption have widespread growth and penetrated almost all levels of people's lives. Every year in Indonesia, there is an increase in the growth of corruption; this can be seen from the increase in the number of cases of corruption that occur, the increase in the number of losses to the state finances, as well as an increase in the type and quality or ability of the perpetrators in committing corruption.⁶

Educated parties or individuals carry out the majority of corruption in Indonesia, people who incidentally provide much influence in the community to politicians.⁷ In the future, people

¹ The Corruption words in Indonesia is better known as KKN (Corruption, Collusion, and Nepotism). Corruption actions in Indonesia leads to various Illicit and illegal activities or actions, these actions are carried out in order to gain benefits for themselves as well as benefits for the group. This definition then developed into the notion of corruption which emphasizes the abuse of power or public position for personal gain. See Azra, azyumardi. (2002). *Korupsi Dalam Perspektif Good Governance. Jurnal Kriminologi Indonesia*, 2(1), 31-36.

² Initially the term extraordinary crime appeared in cases of gross human rights violations. This can be seen in Article 5 of the 1998 Rome Statute which states that the criteria that can be called extraordinary crimes are war crimes, genocide, crimes against humanity, and crimes of aggression. See Sunarto. (2007). *Kriminalisasi Dalam Tindak Pidana Terorisme. Jurnal Equality*, 12 (2), 1-18.

Claude Pomerleau said that an extraordinary crime is an action, behavior or deed that has been planned, systematized and well-organized. The act is carried out for discriminatory reasons, mainly targeting certain individuals and groups. See Pomerleau, Claude. (2008). *Reviewed Work: Atrocity, Punishment, And International Law by Mark A. Drumbl. International Journal on World Peace*, 25 (2), 118-120.

³ Sibuea, Deypend Tommy., Sularto, R.B. & Wisaksono, Budi. (2016). *Kebijakan Hukum Pidana Dalam Perampasan Aset Hasil Tindak Pidana Korupsi Di Indonesia. Diponegoro Law Journal*, 5 (2), 1-6.

⁴ Siswanto, Heni. (2015). *Pembangunan Penegakan Hukum Pidana Yang Mengefektifkan Korporasi Sebagai Subjek Tindak Pidana Korupsi, Fiat Justisia Jurnal Ilmu Hukum*, 9 (1), 1-16.

⁵ Ariawan, I Gusti Ketut. (2008). *Stolen Asset Recovery Initiative, Suatu Harapan Dalam Pengembalian Aset Negara. Kertha Patrika*, 33(1), 1-8.

⁶ Megawati. (2014). *Kebijakan Formulasi Sanksi Pidana Terhadap Pelaku Tindak Pidana Korupsi. Usu Law Journal*, 2 (3), 125-134.

⁷ Deli, Rizi Rizki. (2016). *Implementasi Perampasan Aset Hasil Tindak Pidana Korupsi Menurut Undang-Undang. Lex Administratum*, IV (4), 46-55.

will not dare to commit criminal acts of corruption. For this reason, a considerable step is needed to provide a deterrent effect to corruption perpetrators; punishment for corruption perpetrators is expected to provide a deterrent effect, one of which is to restore state losses caused by their actions, as well as being one of the anticipatory steps to prevent corruption.⁸

The three main issues that must be focused on in efforts to eradicate corruption are aimed at providing an understanding of the perpetrators as well as all members of the community. The eradication of criminal acts of corruption is not only carried out through imposing criminal or sentencing the perpetrators, but also the existence of other efforts and actions that punish the perpetrators but also order the perpetrators to be able to return the financial losses suffered by the State caused by their acts of corruption.⁹ The three main issues that must be focused on eradicating corruption include prevention, eradication, and recovery of corruption assets.¹⁰

The efforts to eradicate corruption by only giving bare punishments are deemed insufficient to provide a deterrent effect and as a preventive measure to potential perpetrators or the community who in the future has the potential to commit corruption, therefore additional penalties for asset recovery¹¹ through the confiscation of the corruption proceeds. So it is hoped that it can give a hard blow to all of society and have a real impact and influence on all elements of society who may become perpetrators of criminal acts in the future. All elements of society who may become perpetrators of these crimes will feel fear and loss if the State confiscates all the proceeds from their profits from corruption.¹²

One of the measures to prevent or take preventive measures to save and prevent the loss of assets resulting from the criminal act of corruption is to recover the assets of the perpetrators of corruption. One of the explanations regarding asset recovery is contained in Article 10 letter b number 2 Criminal Code; that article explains that asset recovery is included in additional crimes, in the form of property crimes, the same as in imposing a fine¹³. Furthermore, in the Regulation of the Attorney General of the Republic of Indonesia Number: 013/A/JA/06/2014 concerning Guidelines for Asset Recovery, it defines assets recovery as a forced act carried out by the State to separate the assets belonging to the perpetrator, the separation of these assets is carried out by a court decision. The court will later decide these assets whether these assets will be taken or confiscated as a step taken to recover state financial losses or become an additional crime in the form of confiscation or retrieval of assets resulting from crimes of corruption so that assets recovery can be said as a form of coercion at the stage of the investigation, and has permanent legal force (*in Kracht*).

Asset recovery is a series of processes and mechanisms, both civil and criminal, to recover or restore state financial losses resulting from corruption crimes by perpetrators. The process carried out and passed in asset recovery is by seizure and eliminating rights of assets resulting from corruption from perpetrators of corruption. Assets from the corruption that have been confiscated and their rights assets removed will later be returned to the state to recover and restore state financial losses that occurred due to corruption. This effort is also carried out as a prevention process so that perpetrators of corruption do not use or take advantage of assets

⁸ Syamsudin, Aziz. (2011). *Tindak Pidana Khusus* (h.155). Jakarta: Sinar Grafika.

⁹ Arifin, Ridwan., Utari, Indah Sri., & Subondo, Herry. (2016). Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (*Asset Recovery*) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia. *Indonesian Journal Of Criminal Law Studies*, I (1), 105-137.

¹⁰ Santos, Ricardo., Firmansyah, Hery. (2021). Prosedur Pelaksanaan Mutual Legal Assistance Terhadap Pemulihan Aset Hasil Korupsi Yang Dilarikan Ke Luar Negeri. *Jurnal Hukum Lex Generalis*, 2 (1), 40-56.

¹¹ Asset recovery is a legal step in the scope of execution or carrying out court decisions that have permanent legal force to confiscate the assets of the corruption and then become state assets.

¹² Prakarsa, Aliyth., & Yulia, Rena. (2017). Model Pengembalian Aset (*Asset Recovery*) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi. *Jurnal Hukum Prioris*, 6 (1), 31-45.

¹³ Bayuaji, Rihantoro. (2019). *Prinsip Hukum Perampasan Aset Koruptor Dalam Perspektif Tindak Pidana Pencucian Uang* (h. 86). Surabaya: Laksbang Justisia.

obtained when committing corruption as a tool or means of other criminal acts and provide a deterrent effect to perpetrators or anyone who in the future intends to commit a corruption crime.¹⁴

Some of the goals in implementing asset recovery are to restore state finances to provide funds for government programs and activities that can improve the welfare of the people and all their citizens, fulfill justice in people's lives, and become a deterrent for parties or individuals who will commit corruption in the future.¹⁵ Stolen asset recovery is an effort to return state assets stolen in corruption crimes by perpetrators. These efforts are not easy to implement because the perpetrators of these crimes are primarily people with access to quite a lot, comprehensive and extraordinary. So it is difficult for law enforcement officers to find and reach assets from corruption hidden by the perpetrators.

One of the powers of the Attorney's Office is as a State Attorney (JPN) or can be said to be a State legal adviser (solicitor/barrister/government lawyer) by the Attorney General's Regulation Number: PER-025/A/JA/11/2015. The Prosecutor's Office as a State Attorney (JPN) has the responsibility and duties to provide legal services, legal considerations, and legal assistance, as well as law enforcement to defend the state's civil rights. The duties and responsibilities are carried out on the civil rights of the State, which suffers financial losses or can be calculated materially so that the losses suffered by the State must be returned or restored to their original position; in this case, the original position is the position before the corruption committed.¹⁶ The Prosecutor's Office also has the authority of asset recovery from corruption results so that the Prosecutor's Office can conduct business through court proceedings to return or recover assets or property from corruption as regulated in Law No. 2001 concerning the Eradication of Corruption and the Regulation of the Attorney General of the Republic of Indonesia Number: PER-013/A/JA/06/2014 concerning Asset Recovery.

The prosecutor's authority as a State Attorney in asset recovery meets various obstacles, one of which was that the court had decided several corruption cases. Still, the corruptor's return of state assets could have been more optimal. This is because the convict cannot recover the state losses. After all, the convict's assets have been exhausted or handed to other parties. These obstacles are faced by working as much as possible to carry out the roles and authorities given so they can later be successful in recovering state assets. Therefore, prosecutors have an essential role in returning state assets resulting from corruption.

Based on the background above, this research aims to answer the problem: how to recover assets from corruption crime? And what is the Prosecutor's Office's role in recovering assets from corruption crimes? In this research, the author uses normative legal research,¹⁷ and conducts research by an inventory of the applicable laws and regulations, with an effort to find the philosophical basis or principles of the applicable laws and regulations, or it can be said as research to make legal discoveries in some instances.¹⁸

The novelty of this research is that the author examines the role of crime in efforts to recover assets from corruption. As it is known that the eradication of corruption by only giving the bare

¹⁴ Yanuar, Purwaning M. (2007). *Pengembalian Aset Korupsi Berdasarkan Konvensi Pbb Anti Korupsi 2003 Dalam Sistem Hukum Indonesia*. (h. 104). Bandung: Alumni.

¹⁵ Vlastic, Mark V., & Cooper, Gregory. (2011). Beyond The Duvalier Legacy: What New "Arab Spring" Governments Can Learn From Haiti And The Benefits Of Stolen Asset Recovery. *Northwestern Journal Of International Human Right*, 10 (3), 19-26.

¹⁶ Sofwan, Syifa Vidya., & Sulastri, Titin. (2019). Peran Pusat Pemulihan Aset di Kejaksaan Negeri Bandung. *Jurnal Ilmiah Akuntansi*, 10 (3), 151-165.

¹⁷ Normative legal research is in practice influenced by pure legal doctrine and positivism. See Sonata, Depri Liber. (2014). *Metode Penelitian Hukum Normative Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum. Fiat Justicia jurnal Ilmu Hukum*, 8 (1), 15-35.

¹⁸ Nasution, Bahder Johan. (2008). *Metode Penelitian Ilmu Hukum*. Bandung: Mandar Maju. (p. 86).

punishment alone cannot provide a deterrent effect to the perpetrators of corruption, the need for punishment to provide a deterrent effect for the corruptors in the form of returning assets.

B. Discussion

1. The Efforts of Asset Recovery from Corruption Crimes

Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption, 2003 stipulates that asset recovery can be pursued criminally and civilly. This United Nations Convention stipulates that the mechanism of asset recovery by perpetrators as the result of their corrupt acts can be carried out by court process. This is done by returning property or assets directly and through a confiscation mechanism based on a court decision to return property or assets indirectly.

Article 32 paragraph (1), Article 38B paragraph (2) and (3) of the Corruption Eradication Law (UU PTPK) stipulates that asset recovery resulting from corruption can be carried out through civil way. This law stipulates that if an investigator has an opinion, there is insufficient evidence to prove one or more elements of a suspected corruption crime. According to the investigator, the perpetrator's act has caused state losses, so the investigator can immediately submit the related case file as the investigation results to the State Attorney (JPN), see Article 32 paragraph (1). Furthermore, the case file related to the investigation results will be filed in court. The JPN files the lawsuit. In this case, JPN as the representative of the legal advisor representing the State has the authority to file a lawsuit in court.

Furthermore, in the trial process, the defendant must prove their assets, whether sourced or obtained through corruption. The public prosecutor submits a claim to confiscate the property or assets as referred to in paragraph (2) carried out at the time of prosecution reading in the main case. See Article 38 B paragraph (3). Then based on the prosecution, if the property or assets of the defendant cannot be proven by the defendant that the assets are not sourced or obtained by the defendant from the corruption, then based on the authority he has, the judge can decide to confiscate all or part of the property for the State. The punishment is carried out to recover or return state assets that have been taken or have been harmed by corruption defendant, see Article 38 B paragraph (2).

Civil lawsuits filed in the asset recovery process from corruption have their distinctive character. The character is a statement that a civil lawsuit can only be filed if it is no longer possible to use criminal legal remedies in the process to recover losses by the State. Circumstances when the criminal efforts are no longer possible, include the suspect, the defendant, the convict of death; not finding sufficient evidence to fulfill the elements; the defendant is acquitted; there is an allegation that even though the court has determined a decision has permanent legal force, there are still assets that have not been confiscated for the State,¹⁹ In contrast, the assets believed that have been obtained and sourced from corruption crimes committed by the perpetrators.

Asset recovery through criminal proceedings in the trial depends on the ability of the public prosecutor in terms of evidence. The evidence referred to here is proof of a mistake made by the defendant, as well as proof that the defendant has committed corruption which resulted in the State suffering a severe loss of material, by what the public prosecutor in the trial put forward the indictment. This concept is called Conviction Based Assets Forfeiture, which means the seizure of assets is carried out based on a mistake made by the defendant; the regulation regarding this concept is contained in Article 39 and Article 46 Paragraph (2) of the Criminal Procedure Code, which the two articles explain how the limitations related to assets

¹⁹ Latifah, Marfuatul. (2015). Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia. *Jurnal Negara Hukum*. 6 (1), 17-30.

are objects or assets that can be confiscated.²⁰ The asset recovery through criminal proceedings in the trial process may be subject to additional criminal penalties, which means that the judge in a criminal trial can not only impose an essential criminal decision but also, based on his belief in the evidence at trial, the judge can impose additional penalties that one of them is to confiscate the property or assets belonging to the defendant.

Procedures that judges can carry out to recover assets by imposing or giving additional penalties in the form of confiscation of property or assets are as follows:²¹

- a. The confiscation of property produced by the defendant through his corrupt act, the property can be in the form of tangible and intangible objects, movable objects, and immovable objects, see Article 18 paragraph (1) letter an of the PTPK Law;
- b. Payment of replacement money (UP) is determined and carried out with a total nominal amount of money, the same as the assets obtained by the perpetrator through corruption. Suppose later the convict or the perpetrator of corruption does not pay the replacement money (UP) within a maximum period of 1 (one) month after the decision that has permanent legal force (*Eintracht*). In that case, the executing prosecutor can confiscate the corrupt defendant's assets. Then the prosecutor will be conducted to pay the replacement money (UP). Suppose on another day; the defendant does not have assets that can be confiscated and auctioned to pay replacement money (UP). In that case, the defendant of the crime will be imprisoned for a period that does not exceed the maximum threat of the principal crime. dropped;²²
- c. The formulation of criminal sanctions (*strafsoort*) in eradicating corruption has several characteristics, including cumulative and cumulative alternatives. Meanwhile, in terms of the formulation of the time length for criminal sanctions (*strafmaat*), it has several characteristics, including: *determinate sentences* and *indefinite sentences*;
- d. Suppose the defendant is found dead in the future, even though the trial process is still ongoing, and the judge has not yet rendered a decision on the criminal case committed by the defendant. In contrast, convincing evidence is found where the defendant has become the perpetrator of corruption. In that case, an appeal cannot be filed against the judge's determination to confiscate the defendant's assets. Within 30 (thirty) days from the date of the stipulation's announcement, any person with interest in the property or assets may file an objection to the court that issued the stipulation. See Article 38 paragraphs (5), (6), and (7) of the PTPK Law;
- e. If it is found in the trial process that the defendant is unable to prove that his assets were not obtained from the proceeds of corruption, as in the case in the previous trial by the Public Prosecutor which the prosecution was read out in the leading case by the public prosecutor, the decision on the seizure of assets shall be rendered the property or assets belonging to the defendant, to recover or restore the losses suffered by the state can be carried out by the judge through his decision, see Article 38B paragraph (2) and (3) of the PTPK Law.

The investigation prosecutor with the authority, duty and responsibility, is required to confiscate the assets or property of the defendant, the defendant's husband or wife, the defendant's child and any person or entity suspected of having a relationship with the defendant. The investigator prosecutor can confiscate assets belonging to the defendant since the

²⁰ Kusnadi. (2020). Kebijakan Formulasi Ketentuan Pengembalian Aset Hasil Tindak Pidana Korupsi. *Corruptio*, 1 (2), 105-116.

²¹ Hayati, Nur., & Reynaido, Andrea. (2009). Pengembalian Kerugian Keuangan Negara Yang Dilakukan Secara Tidak Sukarela Berdasarkan Undang-Undang No. 31 Tahun 1999 Jo. Undang-Undang No. 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi (Studi Kasus Putusan Mahkamah Agung No. 2257 K/Pid/ 2006). *Lex Jurnalica*, 7 (1), 50-92.

²² Article 18 paragraph (1) letter b, paragraph (2), (3) of the Corruption Eradication Law

investigation has just begun. This is done to save the losses suffered by the State, which are caused by the defendant's corruption.

Circular Letter of the Attorney General of the Republic of Indonesia Number: SE-04/JA/8/1998 concerning the Implementation of the Additional Criminal Payment of Compensation Money states that in the case of the execution of the judge's decision by the executing prosecutor if the replacement money (UP) has not been paid, and or has been paid. Still, If the total nominal amount to be paid is insufficient, then the Executing Prosecutor confiscates assets in the form of property or other assets from the defendant. This can be done without requiring approval from the court, either in the form of a confiscation permit by the Chairperson of the Court or in other forms. Assets in the form of property or assets that can be confiscated include:

- a. Assets or property belonging to the defendant who is wholly or partly from the defendant committing a criminal act, in this case, corruption;
- b. Assets or property used by the defendant directly in terms of carrying out or to prepare for the corruption act that he has committed;
- c. Assets or property used by the suspect or defendant to obstruct the investigation process of the criminal act that he has committed;
- d. Assets or property that is deliberately submitted to launch a criminal act they have committed;
- e. Assets or property are directly related to the criminal act committed by the suspect or defendant.

Furthermore, suppose the public prosecutor can prove that the defendant has made a mistake that harms the State materially and proves that the assets have been confiscated and obtained by the defendant of corruption. In that case, it is possible to confiscate the assets resulting from criminal acts by the defendant. The confiscation is carried out by taking the criminal route, by filing a prosecution in court if the public prosecutor can prove that the defendant was wrong in committing the crime.²³

2. The Role of the Prosecutors in the Effort for Assets Recovery from Corruption Crimes

Purwaning M. Yanuar states that the procedures or efforts undertaken in asset recovery resulting from corruption committed by the defendant can be carried out through the application of mechanisms or procedures in the form of; asset recovery in a civil manner, criminal asset recovery, and administrative asset recovery. The Prosecutor's Office as a law enforcement officer authorized to enforce law related to asset recovery resulting from criminal acts recognizes two mechanisms or procedures for asset recovery, the first mechanism or procedure is the seizure of assets without punishment, and the second is the mechanism for or voluntary asset recovery procedures.²⁴ In Indonesia, the stages that can be carried out in asset recovery are divided into several steps as follows:

a. Asset Tracing

The asset tracing stage is the initial stage to collect and evaluate evidence relating to property or assets resulting from corruption by investigators. Investigators collect and evaluate the evidence to find out what assets are hidden by the perpetrators of corruption so that later it can be known how many there are, freezing and confiscating property or assets can be carried out. This freeze and confiscation are carried out to restore the state's financial condition which has suffered losses due to corruption committed by the perpetrators. Furthermore, the Academic

²³ Yunus, Muhammad. (2013). *Merampas Aset Koruptor Solusi Pemberantasan Korupsi Di Indonesia*. Jakarta: Kompas. p. 162.

²⁴ Romansah, Fauzul. (2017). Pelaksanaan Penyitaan Aset Terpidana Korupsi Sebagai Upaya Pengembalian Kerugian Negara. *Jurnal Poenale*, 5 (4), 1-12.

research (NA) of the Draft Law (RUU) on Asset Confiscation provides an understanding of asset tracking as a series of actions carried out to search, request, obtain, and analyze relevant information to obtain information related to the source and location of assets as a result by perpetrators corruption. The Asset Tracking process is divided into 3 (three) stages; the first stage is the planning stage, the implementation stage, and the reporting stage. Asset Tracking is the initial stage in returning assets that can be carried out even when there is no case. The Asset Tracking stage can also be carried out. At the same time, the investigation process is ongoing while looking for elements of a criminal act presumably carried out by the perpetrator, then during the investigation to find out who the suspect is and what assets the suspect has.

b. Blocking Stage

The second stage in asset recovery is the freezing stage of the perpetrator's property or assets, commonly referred to as the blocking stage. This asset-freezing stage is often referred to as an effort or preventive measure taken to avoid the transfer of assets resulting from corruption. Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters defines blocking as freezing the property or assets of the perpetrator, which is carried out temporarily for the investigation, prosecution, and examination in the trial process. This is done to prevent the transfer of property or assets belonging to the perpetrator and so that no person or entity has any business or interest in the property assets from corruption.

Investigators or public prosecutors in this case can only give orders to block authorized institutions or agencies. The order to block can be done if the asset search results are obtained by obtaining sufficient evidence. It is also reasonable to suspect the results of the assets from corruption committed by the perpetrators. In this case, the investigator or prosecutor may submit a request to the Bank that the perpetrator's assets are contained. This request contains a request to block the customer's account at the bank, which in this case is the perpetrator who commits corruption. Then if it is found that the assets to be blocked are not located in the country or abroad, there is a need for cooperation between law enforcement officers (APH) in the country. In this case are the State of Indonesia and other countries where the assets are located and kept. This is done to make it easier for law enforcement officers to block or return assets abroad to be returned to Indonesia. Steps that can be taken in terms of facilitating the handling of assets present abroad is to enter into an agreement regarding mutual assistance in criminal matters (*Mutual Legal Assistance*)²⁵ between Indonesia and other countries.

c. Foreclosure Stage

The Criminal Procedure Code defines confiscation as a form of action by investigators in terms of taking over or storing objects, both movable objects and immovable objects, tangible objects and intangible objects, which were previously under the control of the perpetrators changing their control to be under control by the investigator. This is done for purposes of evidence in the investigation process, prosecution process, and judicial process.²⁶

The definition of foreclosure is also contained in the Bill of Assets Foreclosure, which this Bill defines a foreclosure as a form of action taken by investigators or prosecutors as public prosecutors in the case of expropriation and storage of assets, property or assets resulting from criminal acts. The control is under the investigator or the public prosecutor. This is done for purposes of evidence in the investigation process, prosecution process, and judicial process or the purpose of foreclosure assets.

²⁵ MLA is a form of agreement between countries whose focus is on the eradication of well-organized transnational crime. See Lutfi, Khoirur Rizal., & Putri, Retno Anggoro. (2020). Optimalisasi Peran Bantuan Hukum Timbal Balik dalam Pengembalian Aset Hasil Tindak Pidana Korupsi. *Undang: Jurnal Hukum*, 3 (1), 34-57.

²⁶ Article 1 paragraph (16) of the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code.

The foreclosure process can only be carried out if there is a written foreclosure permit from the competent Head of the Court. The investigator submitted the permit with an application for approval of the goods/assets foreclosure in question to the Head of the District Court who is authorized to adjudicate. There are exceptions in carrying out foreclosure in urgent circumstances. At the same time, investigators in such conditions must take immediate action, and it is impossible to obtain a written foreclosure permit from the Chairperson of the Court in advance. So in the case of an urgent condition, the investigator can immediately confiscate movable objects, which furthermore the investigator is obliged to make and submit a report related to the confiscation to the Chairman of the Court who is authorized to judge and then obtain a written confiscation approval letter from the Chairman of the Court.

d. Confiscation Stages

Article 2 letter g of the United Nations Convention against Corruption (UNCAC) defines confiscation as the imposition of a fine which, if enforced, means the permanent revocation of property assets or property belonging to the perpetrator. It is carried out based on an order from the court or other bodies and agencies with authority to carry out the confiscation.

The legal concept in Indonesian criminal law provides an understanding of confiscation as a form of action to take over property or assets owned by perpetrators of corruption. The judge does this as a form of imposing additional punishments accompanied by the imposition of the leading crime against the perpetrators of corruption.²⁷ Furthermore, confiscation of assets is also referred to as a form of coercion by the State which is carried out in terms of confiscation of assets resulting from criminal acts committed. The confiscation can be carried out based on a decision from the court.²⁸

e. Return Stage

The return stage is included in the process or the last stage in the efforts made to return assets (asset recovery). The return stage includes activities regarding managing assets or assets resulting from criminal acts committed by perpetrators, in this case corruption. Furthermore, in terms of its management, there are activities which include activities for storing property and or assets resulting from criminal acts, activities for securing property, activities for maintaining the property, activities for evaluating assets, activities for transferring assets, activities for using assets, activities for utilizing assets or property, distribution and utilization of property.

Suppose at any time it is found that the assets in the form of property are not in Indonesia but are in another country. This return stage can also be said to be the stage of repatriating assets from other countries back to Indonesia. The stages of returning property assets and assets resulting from this crime can be carried out by the parties mentioned directly in the court decision.²⁹

The novelty of this research is about efforts to provide a deterrent effect to the perpetrators of corruption by recovering assets from criminal acts of corruption. Seizure of property, payment of replacement money. In realizing the confiscation of assets, the role of the prosecutor's office is vital; besides that, the prosecutor's office can make it happen with two mechanisms, namely the procedure for confiscation of assets without criminal and temporary asset recovery. In terms of eradicating corruption, this research is expected to contribute to policies to provide a deterrent effect for perpetrators of criminal acts.

²⁷ Santosa, Bima Priya., Sitepu, Tedyjiwantara., Maharani, Anita., Sodiq, Nur., & Junaidi. (2010). *Lembaga Pengelola Aset Tindak Pidana*. Jakarta: Paramadina Public Policy Institute. p. 15.

²⁸ Article 1 paragraph (5) of Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters.

²⁹ Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling Assets in the Crime of Money Laundering or Other Crimes

C. Conclusions

Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption regulates that asset recovery resulting from corruption can be carried out through civil ways. At the same time, asset recovery through criminal proceedings in the trial process may be subject to additional criminal penalties. It means the judge in a criminal trial can impose an essential criminal decision based on his belief in the evidence at trial. The judge can impose additional penalties, one of which is confiscation of the property or assets of the defendant. Asset recovery efforts in Indonesia are contained in several laws and regulations, including the Criminal Procedure Code; Law Number 31 of 1999; Law Number 20 of 2001; Law Number 7 of 2006; and Law Number 1 of 2006.

The Prosecutor's Office as a law enforcement officer authorized to enforce law related to asset recovery due to criminal acts recognizes two mechanisms or procedures for asset recovery. The first mechanism or procedure is the seizure of assets without punishment, and the second is the mechanism or procedure of asset recovery voluntarily. The stages that can be carried out in asset recovery are divided into several steps, including the asset tracing stage, blocking or freezing stage, foreclosure, confiscation, and return stages.

Recommendations

Based on the authors' conclusions above, the authors would like to give recommendations that asset recovery efforts are expected to be a more serious concern for the Indonesian government. This attention can be shown by ratifying the Bill of Assets Confiscation, which was proclaimed several years ago in the past year. The Indonesian government hopes to raise more cooperation agreements with other countries regarding Mutual Legal Assistance to assist and facilitate law enforcement officers in asset recovery in other countries.

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