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Eligibility Of Real Estate For Seizing In Order To Pay Compensation For State Losses In Corrupt Practices

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ABSTRACT: *The purpose of this study is to determine how legal protection is provided for the defendant's property used as evidence in corruption trials from the perspective of Pancasila justice. The research method used is normative jurisprudence. The research findings indicate that to support efforts to eradicate corruption, during the investigation process up to the trial, the defendant's assets, including those derived from corruption and other assets not obtained through corruption and unrelated to the crime of corruption, are often seized through the mechanism of confiscation, which will later be used to pay the compensation imposed on the defendant. The conclusion of this study is that the principle of presenting evidence in court is to support the proof of the Defendant's actions, not to serve as a guarantee for the execution of the sentence. Therefore, the Defendant's property that is not related to and is not the result of the corruption offence cannot be used as evidence in the trial process. The Constitution provides guarantees and protection for private property, as stated in the 1945 Constitution Article 28H paragraph (4), which states: "Every person has the right to private property and that property shall not be arbitrarily taken over by anyone." This indicates that the State protects the Defendant's acquisition of property unrelated to the crime of corruption as private property protected by the State. Article 39 of the Criminal Procedure Code itself clearly defines the criteria for the Defendant's property that can be seized. In the future, the government should further and comprehensively regulate this in legislation to provide legal certainty in the effort to combat corruption in Indonesia. And also able to optimise the recovery of state losses due to acts of corruption.*

Keywords: *Eligibility, Seizing, Order to Pay, Compensation, Corrupt Practices*

I.INTRODUCTION

Corruption is a complex and multidimensional problem. In Indonesia, corruption is a crucial and difficult issue to resolve because it is widespread and deeply ingrained. This fact aligns with the opinion on combating corruption as stated by Romli Atmasasmita:

"It is not an easy and immediate matter to overcome because the system of governance makes transparency taboo and prioritises secrecy and closedness, thereby diminishing public accountability...". In addition, the difficulty in eradicating corruption occurs when corruption cases are closely linked to certain political interests".

Article 10 of the Criminal Code (Kitab Undang Undang Hukum Pidana) explains that punishments can be divided into two categories: principal punishments and additional punishments. Principal punishments include the death penalty, imprisonment, confinement, and fines. Additional punishments include the revocation of certain rights, the confiscation of certain goods, and the announcement of the judge's decision. Regulations regarding this additional punishment are also found in several other laws and regulations, and the Criminal Code itself does not limit the additional punishments to only 3 forms, as included in Article 10 of the Criminal Code.

Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which has been amended to Law Number 20 of 2001, also regulates other additional punishments besides the three forms mentioned, such as the payment of compensation equal to the value of the assets that were corrupted, the closure of the company, and others (Article 18 paragraph (1) of Law No. 31 of 1999 concerning Corruption Crimes).

According to Article 17 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, in addition to being sentenced as referred to in Articles 2, 3, 5 to 14, the defendant may be sentenced to additional penalties as referred to in Article 18. Additional penalties contained in Article 18 paragraph (1) of the Anti-Corruption Law:

In addition to the additional penalties referred to in the Criminal Code, the following are considered additional penalties:

a. the seizure of movable or immovable property, whether tangible or intangible, used for or derived from the crime

of corruption, including the convict's company where the crime of corruption was committed, as well as property that replaces such items;

b. payment of compensation money, the amount of which is at most equal to the property obtained from the act of corruption;

c. closure of all or part of the company for a maximum period of 1 (one) year;

d. the revocation of all or part of certain rights or the elimination of all or part of certain benefits that have been or may be granted by the Government to the convict.

In the trial of a corruption case, the most important part is the issue of evidence, because it is from this that it can be determined whether the accused or defendant will be found guilty or acquitted (Magherescu, 2020). The issue of proof is governed by provisions related to the law of evidence, particularly those contained in the Criminal Procedure Code (KUHAP), especially Article 184, and other relevant regulations (Lasaka, 2023). The process of proving or demonstrating implies the intention and effort to establish the truth of an event, so that the mind can accept the truth of that event. Proof means that a criminal event has indeed occurred and that the defendant is guilty of committing it, and therefore must be held accountable. Proof is the provisions containing guidelines and directions on the legally permissible ways to prove the guilt of the accused. Proof is also the provisions that regulate the legally permissible evidence and which the judge may use to prove the alleged guilt.

For the purpose of such proof, not only the presence of the perpetrator is considered, but also the objects involved in a criminal act are very necessary (Hart Jr, 1958). The items in question are commonly known as "evidence." In practice, law enforcement officers, during both the investigation and prosecution processes, seize the defendant's assets, which are then used as evidence in court. However, it often happens that the defendant's assets, whether acquired before the tempus delicti (time of the crime) or unrelated to the corruption offence, are seized and used as evidence in court. This is done with the intention that the defendant's assets will be confiscated for the state through a court decision as payment for the state's losses charged to the defendant.

This research is structured based on the problems that have emerged regarding the less-than-optimal implementation of the additional penalty of paying replacement money. This is caused by several factors, one of which is the lack of clarity in the norms governing which assets can be seized and which cannot. This problem was found in several previous studies that examined the effectiveness of implementing compensation fines. For example, in the title of a journal article. The Existence of Additional Penalties as an Effort by Prosecutors to Recover State Losses in Corruption Crimes, in the journal Lex Crimen Vol. X/No.12/Nov/2021, written by Kristian Imanuel Kussoy, examines whether the payment of compensation as an additional penalty is carried out optimally and the process of returning assets in recovering state losses. The article "Obstacles Faced by Prosecutors in Implementing Additional Penalties of Compensation in Corruption Crime Cases" in the Journal Kertha Wicara, Faculty of Law, Udayana University, Vol. 05, No. 02, February 2016, written by Ni Nyoman Santiaridan I Gusti Agung Ayu Dike Widhiyaastuti, examines the obstacles faced by prosecutors in implementing additional penalties of compensation in corruption crime cases and how to resolve these obstacles. The difference between this study and previous studies is that this research will examine what assets can be seized as payment for state losses. This is important to research so that the implementation of additional criminal sentences can be more effective and optimal.

II. METHOD

Research is a scientific activity that has research methods to address the problems in writing this work. Therefore, in this study, the type of normative legal research is used, which is research that refers to the concept of law as a norm whose method is doctrinal-nomological, starting from the rules of teachings that regulate behaviour (Nugraha & Nurmilan, 2024). To support normative legal research, a legislative approach and a legal concept analysis approach were used. All legal materials obtained were then analysed using qualitative descriptive analysis methods, and the analysis results were systematically arranged.

III. RESULTS AND DISCUSSION

The term "replacement money" is known as one of the additional penalties in corruption crimes, alongside the main penalty imposed by the judge. Although it is an additional penalty, in both its normative construction and empirical application, replacement money has the potential to be applied close to or even equal to the main penalty (in this case, the prison sentence) according to the article of

the corruption crime being charged, and such replacement money is explicitly mentioned in the judge's decision. Meanwhile, the definition of substitute money has not been clearly and detailed in the regulations. The phrase "substitute money" in corruption cases is defined as the maximum amount equal to the property obtained from the corruption offence, as stated in Article 18 paragraph (1) letter b of the Anti-Corruption Law.

The penalty of paying compensation is a consequence of the effects of corruption that harm the state's finances or economy (Rose-Ackerman, 1997). Therefore, to restore this loss, legal means are needed, namely in the form of paying compensation (Шайхутдинова, 2016). Criminal policy strategies in crimes with new dimensions must consider the nature of the problems. If they are more closely related to the fields of economic and trade law, then fines or similar penalties should be prioritised.

Furthermore, provisions regarding additional penalties are also regulated separately, for example, in the PTPK Law, which stipulates the payment of compensation as an additional penalty for corruption offences. The existence of such provisions as additional penalties regulated separately does not automatically disregard the general provisions in the Criminal Code. That the imposition of additional punishment on the convict must be preceded by the imposition of the main punishment and can only be imposed by the panel of judges as stated in their decision. The imposition of additional penalties cannot stand alone and is inseparable from the main penalty. This is in accordance with the postulate "ubi non est principalis, non potest esse accessories," which means, if there is no main thing, there cannot be an additional one.

Based on this, it can be said that the concept of paying compensation money as one type of additional punishment in corruption cases is a continuation of previous provisions. Article 18 of the PTPK Law clearly states that the amount of compensation money that a convicted person proven guilty of corruption must pay is a maximum amount equivalent to the assets obtained from the practice of corruption. These additional criminal provisions are actually regulated and formulated to recover state finances that have been harmed as a result of the act of corruption (Bantekas, 2006). Through an implementative approach, it is understood that the concept of state financial loss, which is terminologically regulated in Law Number 17 of 2003 concerning State Finance (hereinafter referred to as the State Finance Law), defines state financial loss as:

a)Loss or reduction of the State's obligations and rights;

b) Loss or reduction of state finances derived from government service activities;

c)Loss or reduction of state financial revenue and/or expenditure;

d) Loss or reduction of state assets managed by the state itself or other parties, including money, assets, securities, goods, receivables, and other rights that can be valued in money;

e)Loss or reduction of the wealth of other parties managed by the state.

To restore the state's finances to their former state, the additional penalty of compensation, as stated in the court decision, was imposed. As the executor of the court's decision, the Prosecutor can seize and auction the assets of the convicted person that are the result of their corrupt actions (Tenriawaru, 2025). In the event of the seizure of the convicted person's property or assets that are the proceeds of corruption, these can be used as a means of payment for the additional penalty of compensation. When conducting the seizure, the assigned prosecutor no longer needs permission from the local District Court President because the action is an order from a court decision, not the execution of the prosecutor's duties at the investigation stage. This is because the two are judicially different regarding the tasks performed, even if by a prosecutor.

Currently, efforts to eradicate corruption are focused on three aspects: prevention, eradication, and asset recovery from corruption offences, with the aim of recovering financial losses to the state (Trinchera, 2020). The recovery of financial losses to the state through the seizure of assets resulting from acts of corruption has the following objectives:

a. Recovering state assets that have been stolen by corruptors;

b. Preventing corruptors from using the stolen assets to commit other crimes, such as money laundering;

c. Punishing those who wish to engage in corruption.

In relation to the recovery of state financial losses in corruption crimes, during the investigation process, the Anti-Corruption Law has anticipated security measures against the assets resulting from the corruption crime committed by the Defendant. This is regulated in Article 28 of the Anti-Corruption Law, which states the following:

For the purposes of investigation, the suspect is obliged to provide information about all

their assets and the assets of their spouse, children, and any person or corporation known or reasonably suspected of having a connection to the corruption offence.
This provision turns out to be in line with Article 48 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, which states :
For the purpose of investigation, a suspect of corruption is obliged to provide information to the investigator about all their assets and the assets of their spouse, children, and the assets of any person or corporation known or suspected to be related to the corruption committed by the suspect.
In fact, if the suspect in a corruption case does not provide accurate information about all of their assets and the assets of their spouse, or parties known or reasonably suspected of having a connection to the corruption offence, then Article 22 of the Anti-Corruption Law imposes sanctions for this. Article 22 of the Anti-Corruption Law essentially states the following:
Any person as referred to in Article 28, Article 29, Article 35, or Article 36 who intentionally fails to provide information or provides false information shall be punished with a minimum prison sentence of 3 (three) years and a maximum of 12 (twelve) years or a fine of at least Rp 150,000,000,- (one hundred and fifty million rupiah) and a maximum of Rp 600,000,000,- (six hundred million rupiah).
The provisions of Article 22 and Article 28 of the Anti-Corruption Law mean that the Anti-Corruption Law not only covers the actions of the perpetrator but also the perpetrator's assets obtained from the proceeds of corruption. Therefore, the assets of the corruption perpetrator must be identified first regarding their acquisition. Similarly, in the trial process for corruption offences, the provisions regarding the defendant's assets are also a priority, including those stipulated in :
1. Article 37 A paragraph (1)
The defendant is obliged to provide information about all their assets and the assets of their spouse, children, and the assets of any person or corporation suspected of having a connection to the case being charged.

2. Article 38 B paragraph (1)
Every person accused of committing one of the acts of corruption as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and Articles 5 through 12 of this law, is obliged to prove the contrary regarding their property that has not yet been charged, but is also suspected of originating from corruption crimes.
This is certainly for the purpose of recovering the state's financial losses, as mandated by Article 18 paragraph (1) of the Law on the Eradication of Corruption:
(1) In addition to the additional penalties referred to in the Criminal Code, the additional penalties are:
a. the seizure of movable or immovable property, whether tangible or intangible, used for or derived from the crime of corruption, including the convict's company where the crime of corruption was committed, as well as property that replaces such items;
b. payment of compensation money, the amount of which is at most equal to the property obtained from the act of corruption;
(2) If the convict does not pay the compensation money as referred to in paragraph (1) letter b within a maximum of 1 (one) month after the court decision has become final and binding, then their assets may be seized by the prosecutor and auctioned to cover the compensation money.
(3) If the Convict does not have sufficient assets to pay the compensation money as referred to in paragraph (1) letter b, then he shall be sentenced to imprisonment not exceeding the maximum penalty for the principal offence in accordance with the provisions of the law.
Article 18 of the Anti-Corruption Law essentially aims at the return of assets that are the result of corruption. Therefore, asset recovery must be based on several reasons. As stated by Michael Levi, asset recovery must contain at least 3 (three) reasons, namely:
a. The preventive reason is to prevent the perpetrator of the criminal act from having control over the assets obtained illegally in order to commit other criminal acts in the future;

b. The reason of propriety is that the perpetrator of the crime does not have a legitimate right to the assets obtained illegally;
c. The reason for priority/precedence is that criminal law prioritises the state's right to prosecute assets obtained illegally over the rights of the perpetrator of the crime;
d. The reason for ownership is that since the asset was obtained illegally, the state has an interest in it as the owner.

As stated in Article 18 paragraph (2) of the TPPK Law: If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum of 1 (one) month after the court decision has become final and binding, then their assets may be seized by the prosecutor and auctioned to cover the replacement money. The meaning of the phrase "then their assets may be seized by the prosecutor and auctioned to cover the replacement money" according to the author indicates that all of the defendant's assets not related to the corruption crime can be confiscated as payment for the state's losses, but in reality, the efforts to seize and confiscate cannot be carried out against all of the convict's assets found through the implementation of these two articles. This is due to the provisions of Article 39 of the Criminal Procedure Code (KUHAP), which states that items subject to seizure are:

1. The suspect's or defendant's property or bills, all or part of which are alleged to have been obtained from a criminal act or are partially the result of a criminal act;
2. Objects that have been used directly to commit a crime or to prepare for it;
3. An object used to obstruct a criminal investigation process;
4. An object specifically made or intended for committing a crime;
5. Other items that have a direct connection to the crime committed.

Seizure is the act of taking possession of an item for safekeeping or storage under the control of the investigator (Spektora et al., 2019). Items that can be seized under the law are those related to a criminal offence. If an item has no connection whatsoever to the criminal offence, it cannot be seized. Therefore, seizing an item that has no legal relevance to the criminal event being investigated can be considered an unlawful and illegal seizure.

According to Andi Hamzah, objects that can usually be seized are "those used to commit the crime," known by the phrase "with which the crime was committed," and "objects that are the subject of the crime," also known by the phrase "concerning which the crime was committed." Generally, objects that can be seized are divided into (White & Greenspan, 1969):

1. The object used as an instrument to commit a crime (in legal science, this is called "Instrumental Delicti");
2. Objects obtained or resulting from a criminal act (also called "corpus delicti");
3. Other items that do not have a direct connection to the criminal act, but have strong grounds for use as evidence.
4. Substitute evidence, for example, if the stolen item is money, and then with that money, a radio is purchased. In this case, the radio is seized to be used as substitute evidence.

Andi Sofyan stated that in the HIR, Articles 63 to 67 mention that goods that can be used as evidence can be divided into:

1. The item that is the object of a criminal event, for example, in a case of money theft, then the money is used as evidence. Additionally, a distinction is made between inanimate (lifeless) objects and living objects. Goods that are the product of criminal events, such as counterfeit money or drugs, etc;
2. Goods used as instruments for committing criminal acts, such as firearms or machetes used for assaulting or killing people, and so on;
3. Items related to a criminal event, such as bloodstains on clothing, fingerprints, and so on.

According to Article 1, paragraph 16 of the Criminal Procedure Code (KUHAP), objects that can be seized are movable and immovable property, tangible and intangible assets. The items that can be seized are diverse in nature, as follows:

1) items that are the target of criminal acts, such as stolen or embezzled goods or those obtained through fraud.
2) items created as a result of criminal acts, such as coins or banknotes made by the defendant with the intention of circulating them as genuine money, or a false writing.

3) items used as tools to commit criminal acts, such as a knife, firearm, or stick used to kill or injure someone; an iron bar used to make a hole in the wall of a house where a theft is then committed; or tools used to make counterfeit money.
4) Items that generally can serve as evidence to either incriminate or exonerate the accused, such as clothing worn by the criminal at the time of the illegal act, or an item that shows signs of having been handled by the criminal with their fingers (fingerprints).
According to Bahder Johan Nasution, property other than the proceeds of corruption that can be confiscated includes property that a person or entity intentionally did not declare, property whose ownership is unclear, and property of a person whose wealth, after investigation, is deemed disproportionate to their income.
Regarding the payment of compensation for financial losses to the state, in practice, the defendant's assets, whether acquired before the tempus delicti (time of the offence), or assets unrelated to the corruption crime, and/or assets not obtained from the corruption crime, are often used as evidence in court proceedings (Domingo, 2017). This is done with the expectation that they will be used to pay compensation for state losses, as seen in the corruption case against the defendant (Hadjar & Matompo, 2022), Inspector General (Police) Joko Susilo, in the first instance case number: 20/Pid.sus/Tpk/2013/PN Jkt.Pst, in the appellate case number: 36/Pid/TPK/2013/PT.DKI, and in the cassation case number: 537K/Pid.Sus/2014. Initially, based on the decisions of these three levels of court, the defendant's assets that had been seized were confiscated for the payment of state losses. However, through the Decision of the Supreme Court of the Republic of Indonesia for Review Number 97 PK/Pid.Sus/2021 dated May 6, 2021, it was declared that existing items used as evidence before the time (tempus) of the act committed were unlawful and must be returned to the rightful owner or from where the items were seized. As per the following legal considerations.
Therefore, existing items used as evidence before the time (tempus) of the actions committed by the Applicant, whether in the case of Corruption Crimes or Money Laundering Crimes (TPPU), are unlawful and must be returned to the rightful owner, or from where the items were seized, because the seizure carried out by the Investigator in the case at hand contradicts the principle that evidence is intended to support the proof of the Defendant's actions, not to be used as collateral for the execution of punishment, as is the case in civil matters.
That from the legal considerations of the Review, it becomes clear that the qualification of the defendant's property that can be seized as payment for compensation in the corruption criminal case refers to the provisions of Article 39 of the Criminal Procedure Code, namely:
1. The suspect's or defendant's property or bills, all or part of which are suspected to have been obtained from criminal activity or as a result of criminal activity;
2. Objects that have been used directly to commit a criminal act or to prepare for a criminal act;
3. An object used to obstruct the investigation of a criminal act;
4. Objects specifically made or intended for committing a crime;
5. Other items that have a direct connection to the crime committed;
6. Property under seizure due to a civil case or bankruptcy can also be seized for the purposes of investigation, prosecution, and trial of a criminal case, provided it meets the provisions of Paragraph (1) and Paragraph (2).

IV. CONCLUSION

That the qualifications of the Defendant's property that can be seized in the corruption criminal case are the Defendant's assets that meet the qualifications under Article 39 of the Criminal Procedure Code, namely:
a. Items or bills of the suspect or Defendant that are suspected to have been obtained in whole or in part from criminal acts or as a result of criminal acts;
b. Objects that have been used directly to commit a crime or to prepare for it;
c. Objects used to obstruct the investigation of criminal acts;
d. An object specifically made or intended for committing a crime;
e. Other items that have a direct connection to the crime committed.
f. Property under seizure due to a civil case or bankruptcy can also be seized for the purposes of investigation, prosecution, and trial of a criminal case, provided it meets the provisions of Paragraph (1) and Paragraph (2).

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