



Optimizing the Role of Public Prosecutors in Determining Confiscated Goods Confiscated for the State by Third Parties Who Have Good Faith

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<http://dx.doi.org/10.18415/ijmmu.v11i7.6041>

Abstract

The writing of this article was motivated by the polemic regarding determining the status of confiscated evidence, on the other hand, the confiscated evidence for the state left new arrears for the State Attorney, due to a civil lawsuit from a third party who felt aggrieved by the decision. The Prosecutor's inaccuracy in determining which evidence to confiscate for the state can certainly damage the reputation of the Prosecutor's Office as a state institution. Therefore, the purpose of writing this article is to analyze how to optimize the role of public prosecutors in determining confiscated goods that are confiscated by the state, which belong to third parties who have good intentions. The research method used in this research is normative legal research using a statutory approach. Through this research, it is clear that the consequences of confiscating and confiscating evidence resulting from criminal acts make it difficult to return the evidence once the execution has been carried out. Even if a lawsuit is filed in court, arguing that the prosecutor committed an unlawful act as a result of his inaccuracy in identifying the ownership of evidence belonging to a third party, it is not easy to prove because the prosecutor's action was a statutory order in the context of law enforcement. The role and efforts of prosecutors in optimizing the return of property stolen from criminal acts belonging to third parties can be carried out by carrying out preventive efforts.

Keywords: *Optimization; Public Prosecutor; Confiscated Goods*

Introduction

Globalization has led to the development of civilizational values of life which is based on the increased use of technology which has provided benefits to society, but its implementation cannot be separated from the laws and regulations that regulate it. The law will make human life balanced and harmonious.¹The impacts of globalization include positive impacts and negative impacts. In facing the negative impacts of globalization, namely globalization crime and increasing quantity and quality crime, then the law, especially criminal law, itself plays a role as a means or instrument for regulating public order and restoring balance. Apart from that, criminal law also has a role in ensuring the maintenance of harmony in social, state and national life while maintaining and protecting society.²This is the role of the

¹ Leden Marpaung, *Proses Penanganan Perkara Pidana (Penyelidikan dan Penyidikan)*, (Sinar Grafika, Jakarta, 2009), hlm 2

² Kristian dan Yopi Gunawan, *Tindak Pidana Korupsi*, (Refika Aditama: Bandung, 2015), hlm 9

concept of the rule of law in the material sense, where the state not only carries out the orders of the law (night watchman), but also guarantees the welfare of its people (welfare state).

In the midst of the dynamics of law enforcement in Indonesia, the role of the Public Prosecutor in determining the fate of confiscated goods confiscated for the state often gives rise to legal and ethical polemics. Moreover, when the goods belong to a third party who has good intentions. This lack of clarity and inconsistency in the handling of confiscated goods not only has the potential to harm third parties, but also weakens public trust in the integrity of the justice system. This controversy becomes increasingly relevant considering the increase in criminal cases involving significant assets, which in turn demands procedural clarity and fairness in prosecution.

The concept of the rule of law has had positive implications for the development of law because this concept requires that all actions carried out by the state must be based on law. Apart from having a regulatory function, law also functions to facilitate social relations. Therefore, the role of law in this era of globalization is as a means of facilitating societal change.³In line with what Satjipto Rahardjo said, by enforcing the law, we have tried to make ideas come true and the process of realizing these ideas is the essence of law enforcement.⁴Law enforcement itself is a system of government apparatus that acts in an organized manner to enforce the law by finding, deterring, recovering, or punishing people who violate the law and the legal standards that regulate the existence of law enforcement officers.

Law enforcement is part of an integrated criminal justice system and cannot be separated from one another. In Indonesia, normatively, the criminal justice system is regulated in the Criminal Procedure Code which contains articles on procedural provisions that regulate criminal procedures.⁵Criminal procedural law is always closely related to criminal law. Criminal law is a part of public law that regulates people's relations with the state. As part of public law, in its implementation criminal law does not depend on the consent of the party injured by a criminal act. However, it is left to government agencies, namely law enforcement officials, who are given the power to enforce the law.

The function of the criminal justice system is to "tack crime", in an effort to control the level of crime so that it is below the limits of acceptable acceptance by society. The success of this system is assessed from the achievement of solving cases that have reached the stage of receiving a criminal sentence for the perpetrator of the crime.⁶Why is it called the criminal justice system? Because it consists of various institutions that work together to achieve their goals, namely overcoming and preventing crime.⁷ The components of these institutions consist of the Police, Prosecutor's Office, Courts, Corrections, and Advocates as sub-systems.⁸These institutions are expected to work together to form what is known as an "integrated justice system".

Data on the number of crimes in 2023 recorded that 288,472 crimes occurred in Indonesia. This number has increased by 4.33% compared to 2022.⁹There are several factors that cause crime in an area to increase, including: (1) Increasing economic inequality, social inequality, unemployment rates, social and political instability; (2) involvement in narcotics; (3) lack of supervision and law enforcement; (4) demographic factors; and (5) social change and urbanization.

³Hartiwiningsih dan Lushiana Primasari, *Hukum Pidana Ekonomi, Universitas Terbuka*, (Banten, 2017), hlm. 14

⁴Satjipto Raharjo, *Masalah Penegakan Hukum (Suatu Tinjauan Sosiologis)*, (Jakarta: BPHN, 1983), hlm. 11.

⁵Luhut M.P. Pangaribuan, SH., LL.M., *Hukum Acara Pidana (Surat Resmi Advokat di Pengadilan)*, (Depok: Papas Sinar Sinanti, 2013), hlm. 13.

⁶Mardjono Reksodiputro, *Sistem Peradilan Pidana*, (Depok: Rajawali Press, 2020), hlm. 240.

⁷Effendi T., *Sistem Peradilan Pidana: Perbandingan Komponen Dan Proses Sistem Peradilan Pidana Di Beberapa Negara*, (Yogyakarta: Pustaka Yustisia, 2013), hlm. 19

⁸Luhut M.P. Pangaribuan, *Hukum Acara Pidana: Surat Resmi Advokat di Pengadilan* (Jakarta, Papas Sinar Sinanti, 2013) m hlm. 15

⁹See: Indonesian Data, "Data on the Number of Crimes in Indonesia in 2023", December 28, 2023, accessed March 10, 2024 <https://dataindonesia.id/varia/detail/data-nomor-kejahatan-di-indonesia-pada-2023>

In carrying out his actions, the perpetrator of the crime uses goods or tools as a means to make it easier for him to carry out his actions. For example, the perpetrator of the crime of aggravated theft was committed by two people, namely A and B, where the perpetrator of the crime rode on a motorbike belonging to A's brother-in-law. When he arrived at the location, A played the role of "picker" while B had the role of observing the situation. After successfully taking the motorbike, A rode the stolen bicycle while B rode his brother-in-law's motorbike. The motorbike belonging to the suspect's brother-in-law was confiscated and used as evidence in proving the case. Likewise other criminal acts. Criminal acts such as embezzlement, money laundering are categorized as items obtained from the proceeds of criminal acts (vehicles, amounts of money and other valuable objects) that have economic value.

Evidence itself is defined as the result of a series of actions by investigators in confiscating and/or searching and/or examining documents to take over and/or keep under their control movable or intangible objects for evidentiary purposes in investigations, prosecutions or trials.¹⁰In line with this definition, the provisions of article 40 of the Criminal Procedure Code regulates evidence which reads as follows: "in the event of being caught red-handed, investigators can confiscate objects and tools which are apparently or which are reasonably suspected to have been used to commit a crime or other objects which can be used as evidence. ". On the other hand, according to Andi Hamzah, the definition of evidence is the item on which the offense was committed (the object of the offense) and the item with which the offense was committed, namely the tools used to commit the offense.¹¹There are several articles in the Criminal Procedure Code that include the term evidence, namely:

- 1) Article 5 paragraph (1) letter a point 2;
- 2) Article 8 paragraph (3) letter b;
- 3) Article 18 paragraph (2);
- 4) Article 21 paragraph (1);
- 5) Article 181 paragraph (1);
- 6) Article 194 paragraph (1); And
- 7) Article 203 paragraph (2).

Confiscated goods, as evidence, play a very important role in the criminal case process in Indonesia, namely that they can shed light on the occurrence of a criminal act and are used as evidentiary material to support the judge's belief in the defendant's guilt as charged by the Public Prosecutor in an indictment at the Court. The evidence subject to confiscation includes objects which are the objects of criminal proceeds, proceeds from criminal acts, and other objects which are related to criminal acts.¹²Thus, in order to ensure that the evidence has evidentiary value that is recognized in the evidentiary process, the evidence must be included in the case file, especially in the indictment by the public prosecutor.

The urgency of presenting evidence in an indictment is crucial, considering that this is the basis for case examination at every stage of the trial, including first level, appeal, cassation and judicial review. Moreover, the indictment is also a limitation of prosecution. The defendant cannot be charged or found guilty and punished for acts not stated in the indictment. In order to prepare the indictment, the prosecutor is given the authority to carry out pre-prosecution on the case file he receives from the investigator and provide instructions if there are deficiencies in the case file. In other words, the results of the investigation are the basis for making an indictment. Success in pre-prosecution greatly determines the success of the prosecution.¹³

¹⁰Hari Sangsaka dan Lily Rosita, *Hukum Pembuktian dalam perkara Pidana*, (Bandung; Mandar Maju, 2003), Hlm 99.

¹¹Andi Hamzah, *Pengantar Hukum Acara Pidana Indonesia*, hlm 100

¹²Giant K.Y.Sepang, "Pembuktian Suatu Tindak Pidana Berdasarkan Barang Bukti Menurut Pasal 183 KUHAP", *Lex Crimen* Vol. 4 No. 8 2015, Hlm. 103

¹³Leden Marpaung, *Op.Cit.* hlm. 11-12.

The Public Prosecutor in his indictment and demands, apart from proving the criminal act and the criminal threat, will also make demands regarding the status of the confiscated goods, namely whether the confiscated evidence has been returned to the rightful party; evidence is confiscated for destruction; evidence confiscated for state interests; or the evidence remains in the power of the prosecutor's office because the evidence is still being used in another case.¹⁴

Determining the status of confiscated goods as evidence in a criminal case is very important for the parties. For the public prosecutor, determining the status of this evidence is important in strengthening previous confiscations and is useful as collateral for payment of fines or compensation. Apart from that, public prosecutors also have an interest in ensuring that dangerous evidence, such as firearms, cannot be used again to commit crimes. On the other hand, the defendant or third party whose evidence is confiscated in a criminal case also has an interest in ensuring whether the evidence can be returned to him.

Still remembering that in 2017, the public was shocked by the failure of the congregation's departure by Umrah organizer First Travel in March 2017. The owner of First Travel at that time was suspected of having committed criminal acts of fraud, embezzlement and money laundering using the Umrah method, namely offering cheap Umrah promos so as to attract many potential pilgrims. These Umrah packages are priced at IDR. 14,300,000.00 (fourteen million three hundred thousand rupiah) for the regular package and Rp. 54,000,000.00 (fifty four million rupiah) for the VIP package.¹⁵As a result of the fraud that had been committed, the defendants were sentenced by a panel of judges at the Depok District Court. Even though the defendants have been sentenced, there are still problems for the victims, namely in the first instance decision up to the cassation the confiscated evidence was declared confiscated to the state. The victims asked for justice regarding the decision regarding the status of evidence because in this case no state rights were harmed.¹⁶Based on this decision, the victims also filed a civil lawsuit at the Depok District Court, the main point of which was to ask the prosecutor's office to postpone the execution of the auction and return compensation for the losses suffered by the victims.¹⁷

Similar to the previous case, one of Northcliff's customers, Johannes Theodor Go, reported Erry Sulistio, the Main Director of PT Northcliff Indonesia, to the North Jakarta Metro Police on charges of criminal acts in the form of fraud or embezzlement. Starting on November 9 2018, Johannes invested USD 400,000 in investment products offered by Northcliff Indonesia marketers. However, until the payment due date for the placement of these funds on May 9 2019, it was not paid. At the victim's insistence, Erry Sulistio made a statement to pay the funds worth 400,000 USD on May 16 2019 along with interest for the late payment. However, Erry Sulistio only returned 125,000 USD and the rest has not been returned to date.¹⁸

Previously, the victims had asked the prosecutor as a state representative who could represent the victims to fight for the return of the respective amounts that had been deposited to PT Northcliff Indonesia. The victims were worried because they saw the previous case, namely the first trip, where evidence was confiscated from the state.¹⁹Currently, Erry Sulisty has been sentenced to a crime based on

¹⁴ Pasal 194 KUHAP

¹⁵Kompas, "First Travel, when it was founded, committed fraud until it finally collapsed", 17 March 2019, accessed on 10 March 2024, <https://www.kompas.com/tren/read/2019/11/17/060000565/first-travel-awal-berdiri-laksana-penipuan-besar-akhirnya-tumbang?page=all>.

¹⁶Detik News, "Why were First Travel's assets returned to the congregation? This is the Supreme Court's reason", January 6 2023, accessed March 10 2024, <https://news.detik.com/berita/d-6501352/kenapa-aset-first-travel-dibecek-ke-jemaah-ini-alasan-ma>.

¹⁷Indonesia Judicial Research Society, "*Polemics of First Travel Case's Asset Confiscation by the State: How can victims obtain compensation*", accessed on March 10, 2024, <https://ijrs.or.id/2019/11/22/polemik-perampasan-aset-kas-first-travel-oleh-negara-how-agar-korban-bisa-oleh-ganti-rugi/>.

¹⁸Warta Ekonomi, "*Customer Reports Police, Northcliff Boss is Investigated, 30 January 2020*", accessed on 10 March 2024.

¹⁹Dialogue, "*Victims of PT. Northcliff Indonesia asked by Prosecutor to Fight for Refund of Money*"

a decision that has permanent legal force. Unfortunately, in the judge's decision regarding the status of the confiscated goods/evidence, the state also confiscated them.²⁰ Similar to the First Travel case, customers of PT Northcliff Indonesia also filed a civil lawsuit at the South Jakarta District Court, the principal of the lawsuit asking for a postponement of the auction execution by the prosecutor and the return of losses suffered by the customer due to the defendant's actions.

From this series of cases, it is clear that there is a polemic regarding determining the status of evidence that has been confiscated and is arrears for law enforcement, in this case the prosecutor has the obligation to prove his charges and his demands, including the evidence that was brought to trial. On the other hand, the result of the evidence being confiscated for the state left new arrears for the State Attorney in the Civil and State Administration Sector of the State Prosecutor's Office where the case was located due to a civil lawsuit from a third party who felt aggrieved by the decision.

This article aims to conduct an in-depth analysis of the role of the Public Prosecutor in determining confiscated goods confiscated for the state. The main focus is to criticize existing procedures and evaluate how this role can be maximized to ensure justice and legal effectiveness, while protecting the rights of third parties who are not involved in criminal acts.

Apart from all that, the Prosecutor's inaccuracy in determining which evidence to confiscate for the state can certainly damage the reputation of the Prosecutor's Office as a state institution. Therefore, it is necessary to optimize the role of the Public Prosecutor in determining whether evidence of a criminal act will be confiscated to the state in the indictment. Thus, the author then chose to write this article with the title "Optimizing the Role of Public Prosecutors in Determining Confiscated Goods Confiscated for the State by Third Parties Who Have Good Faith".

Formulation of the Problem

Based on the background above, the author draws two problem formulations, namely:

- 1) What are the regulations and legal consequences of confiscation and confiscation of criminal evidence belonging to third parties?
- 2) What is the role and efforts of the prosecutor's office in optimizing the return of property stolen from criminal acts belonging to third parties?

Research Methods

This research uses a doctrinal legal research method using a statutory approach. A statutory approach is used to analyze the arrangements for confiscation and confiscation of criminal evidence and the consequences from a legal perspective. Meanwhile, a conceptual approach is used to analyze the role and efforts of the prosecutor's office in optimizing the return of looted property resulting from criminal acts belonging to third parties by the public prosecutor.

²⁰Directory of Supreme Court Decisions, "Cassation Decision Number 3548K/Pid.Sus/2021 dated 22 December 2021", accessed on 10 March 2024 <https://bangunan3.mahkamahagung.go.id/direktori/angkatan/zaed0277dc7466eeb685313334383534.html>.

Results and Discussion

1. Arrangements for Confiscation and Confiscation of Evidence of Crimes Legal Consequences of Confiscation and Confiscation of Evidence of Crimes Belonging to Third Parties

Criminal law enforcement in Indonesia is regulated through a complex and integrated framework known as the Criminal Justice System (SPP). This SPP is designed to regulate and implement law enforcement mechanisms, which cover both material and formal regulatory aspects. This system is the foundation that ensures the legal process runs fairly and effectively, maintaining a balance between community needs and individual rights.

In the SPP, the provisions governing criminal acts are contained in the Criminal Code (KUHP). The main aim of this provision is to provide a sense of security and legal certainty for the community, including protection for victims of criminal acts, both direct and indirect victims. This reflects the legal system's commitment to ensuring that justice can be accessed and felt by all levels of society.²¹

Confiscation and forfeiture of evidence are crucial legal actions in the criminal law enforcement process. According to the Criminal Procedure Code (KUHP), especially in Article 1 number 16, confiscation is defined as a series of actions by investigators to take over and store movable or immovable objects, tangible or not, which are related to a criminal act. The purpose of confiscation is to ensure that the items can be used as evidence in the investigation, prosecution and trial process.²²

This process is important not only to ensure that justice is served, but also to prevent criminals from using assets obtained from their illegal activities. This shows the importance of the function of confiscation in breaking the chain of crime and returning justice to the victim.

However, the implementation of the confiscation must be carried out carefully to ensure that no innocent third parties are harmed. This requires investigators to act fairly and objectively, by following legally established procedures, ensuring that every legal action is carried out based on strong and accountable evidence.

Therefore, clear arrangements and appropriate procedures for confiscating and confiscating evidence are the main keys in creating a fair and effective criminal justice system, which will ultimately strengthen the integrity and public trust in the criminal legal system in Indonesia.

The legal basis for the confiscation of evidence of criminal acts that are in the process of law enforcement, is outlined in Article 46 paragraph (1) which states that objects subject to confiscation are returned to the person or those from whom the object was confiscated, or to the person or to those most likely to be confiscated. entitled if:

- a) The interests of investigation and prosecution no longer require;
- b) The case was not prosecuted because there was insufficient evidence or it turned out not to be a criminal act;
- c) The case is set aside for the public interest or the case is closed by law, except if the object was obtained in a criminal act or used to commit a criminal act.

In the law enforcement process in Indonesia, provisions regarding the confiscation of evidence are regulated in very detail, especially in the Criminal Procedure Code (KUHP). According to Article 1 paragraph (2) of the Criminal Procedure Code, after a case is decided, all items that have been confiscated

²¹Safaruddin Harefa, "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam", *University of Bengkulu Law Journal* Vol 4, No 1, 2019, hlm 41.

²²Vivi Ariyanti, "Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia." *Jurnal Yuridis* Vol 6, No 2, 2019, hlm. 37

should be returned to their legal owners in accordance with the court's decision. However, there are exceptions if the item is confiscated for state purposes, destroyed, or used as evidence in another ongoing case.

This exception underscores the importance of a judge's decision in determining the ultimate fate of confiscated items. This decision is based on legal principles that aim to ensure that these items can no longer be used to violate the law or that justice can continue to be served in different cases. This process emphasizes the importance of the courts in maintaining order and justice, and shows how the law can prevent the misuse of items involved in criminal acts.

The management of evidence by the justice system plays a critical role in upholding transparency and accountability. This ensures that all parties, including victims and innocent bystanders, receive fair treatment and that the items are used lawfully within a legal context. Thus, decisions regarding confiscated goods not only help in resolving cases, but also in strengthening the integrity of the legal system.²³

Regarding the confiscation of evidence in the form of assets or property used in criminal acts, the Criminal Code provides a clear legal basis. The provisions of Article 39 of the Criminal Code state that "(1) The convict's property which was obtained from a crime or which was intentionally used to commit a crime, may be confiscated; (2) In the event of a conviction for a crime that was not committed intentionally or because of a violation, a decision of confiscation may also be imposed based on the matters specified in the law; (3) Confiscation can be carried out against guilty people who are handed over to the government, but only for the goods that have been confiscated."²⁴

However, confiscation and confiscation of goods used in committing criminal acts belonging to third parties also fall into the category as stated in Article 39 of the Criminal Code. On the basis of this clear law, often goods resulting from criminal acts and/or goods used as tools or used by perpetrators when committing criminal acts are also confiscated and confiscated.²⁵In fact, the request for confiscation was also included in the public prosecutor's demand letter which was submitted to the panel of judges when the evidentiary process in the trial was complete.

This means that decisions granting confiscation of goods used in criminal acts confiscated by the state will occur frequently. This is due to the existence of a clear legal basis. However, the legal problem that often arises is the presence of a third party as the owner of the confiscated goods, which has been decided by the court and has been executed.

Third parties who are often harmed by prosecutors' actions are legally ambiguous, because they are victims who do not have clear legal certainty. If a third party who feels disadvantaged takes legal action in the form of filing a lawsuit on the basis of the Public Prosecutor's inaccuracy, the third party will meet with the prosecutor's office again as a state attorney appointed by the superior of the prosecutor's office.

This gray area and full of uncertainty causes a lot of losses for third parties, because if you file a lawsuit against the law against the actions of the public prosecutor, there is a big potential that the lawsuit will be rejected. This is based on the role of prosecutors in carrying out statutory orders to enforce the law and implement court decisions.

In Indonesia, the process of confiscating evidence in criminal cases is regulated explicitly in the Criminal Procedure Code (KUHAP). Article 39 of the Criminal Code states that items obtained from

²³Pasal 46 KUHAP

²⁴Pasal 39 KUHAP

²⁵Shalsabilla, Azuri. *Pelaksanaan Perampasan Barang Bukti Mobil Pihak Ketiga Dalam Tindak Pidana Narkotika (Studi di Wilayah Hukum Pengadilan Negeri Lubuk Sikaping)*. Skripsi, Universitas Andalas, 2024, hlm 5

crime or used to commit crimes can be confiscated by the state. This confiscation is intended as a tool to prevent criminals from using profits from criminal acts to continue or support their criminal activities. However, this arrangement becomes problematic when it touches the rights of well-meaning third parties, who are often not directly involved in the crime but whose goods are confiscated because of their association with the perpetrator.

Existing confiscation and forfeiture policies have significant legal and social impacts. From a legal perspective, even though the evidence is crucial for the investigation and prosecution process, there is often uncertainty regarding the ownership status of the goods which causes prolonged legal conflicts. The social impact is that third parties with good intentions can suffer material and reputational losses without any fault. This often creates social stigma and undue financial loss, raising public concerns about the effectiveness and fairness of the justice system.

The main criticism of confiscation policies is that their implementation is often inconsistent and tends to ignore the rights of third parties. Although the goal of forfeiture is to promote justice and prevent crime, practice often proves otherwise. This is mainly due to the lack of a clear mechanism for quick and accurate verification of the ownership of confiscated assets. In addition, the process of returning goods to their rightful owners often takes a long time and involves complicated bureaucracy, which is contrary to the principles of efficiency and fairness of the legal process.

Current legal arrangements also do not provide adequate protection for third parties with good intentions, so there is a need for legislative revision that guarantees legal certainty and justice. Such efforts could include the development of a centralized database for asset registration and verification, as well as specialized courts focused on resolving disputes over ownership of evidence, which could speed up the process of returning assets to their rightful owners.

Therefore, it is certainly necessary to provide clarity regarding supporting legal instruments, so that third parties whose property has been confiscated by the state and executed, can be returned in the form of replacement money or goods of the same and similar type.

2. The Role and Efforts of the Prosecutor's Office in Optimizing the Return of Assets Confiscated from Criminal Acts Belonging to Third Parties

The Prosecutor's Office of the Republic of Indonesia is regulated in Indonesian Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. This rule is a basis or legal basis for carrying out duties as an investigator and public prosecutor.²⁶ By definition, the Public Prosecutor is a prosecutor who is given the authority to carry out prosecutions and carry out the judge's decisions. Meanwhile, the Prosecutor is a functional official who is given the authority to act as a public prosecutor and implementer of court decisions that have obtained permanent legal force and other authorities based on law.

The role of the prosecutor's office as an implementing agency for law enforcement in the executive branch is quite large. The prosecutor's office must be able to work neutrally without any political pressure or interference from any party. The prosecutor's office as a law enforcer is required to further uphold the supremacy of the law, protect public interests, uphold human rights (HAM), and eradicate corruption.²⁷ In criminal cases, handling of corruption is carried out by investigators, public

²⁶Yohana Eirene Aprilita Aritonang, July Esther, & Herlina Manullang. "Peranan Kejaksaan dan Upaya Melakukan Pengelolaan Hasil Eksekusi Barang Bukti Tindak Pidana Korupsi (Studi di Kejaksaan Negeri Binjai)." *Nommensen Law Review* Vol 1 Nomor 1, 2022, hlm 19

²⁷Simamora, Janpatar., Kepastian Hukum Pengajuan Kasasi oleh Jaksa Penuntut Umum Terhadap Vonis Bebas, *Jurnal Yudisial, Komisi Yudisial RI*, Vol. 7 No. 1 April 2014, hlm. 1-17

prosecutors and judges who are connected in what is called SPP. However, from a legal perspective, criminal procedure has certain specificities.²⁸

The management of evidence obtained by investigators, whether police investigators or prosecutor investigators, and other investigators who are given authority by the Criminal Procedure Code cannot necessarily be managed by the prosecutor's office but rather has a process so that it can ultimately be confiscated for the state and managed by the prosecutor's office. These processes are important for the internal bureaucracy of the Prosecutor's Office as well as the transparency and efficiency of the work carried out by the Prosecutor's Office. Regulations regarding the flow of changes in the status of evidence are generally regulated in the Criminal Procedure Code as well as in other laws that regulate procedures for managing evidence and also confiscated items.

For example, in carrying out confiscations and searches, the legal provisions are regulated in Article 1 paragraph (6) of the Criminal Procedure Code which basically states that confiscation is a series of actions by investigators to take over and/or keep under their control movable or immovable objects, tangible or intangible for evidentiary purposes in investigations, prosecutions and trials.²⁹

This series becomes a series of processes that cannot actually be separated in the criminal justice process. Everything is a series of legal efforts to seek material truth and uphold justice. However, what is an obstacle is that in several criminal acts that when they were confiscated and brought through the trial process, no clear identification of ownership was found so they were confiscated by the state.

This obstacle is a legal problem which should be a focal point for prosecutors' accuracy and caution in carrying out the prosecution process in court. Not all confiscated items resulting from crimes or criminal acts are the legal ownership of the convict. Optimization that can be carried out in prosecution efforts by public prosecutors includes carrying out detailed checks and retaining evidence as well as ownership of confiscated and confiscated evidence for the state.³⁰

In many cases, ownership of evidence belonging to third parties is only identified when the judge's decision has been handed down. This means that the prosecutor's office is only tasked with implementing or executing the judge's decision, in accordance with the judge's own decision. This loss is actually a loss borne by a third party. In fact, the output of the criminal justice process is expected to be able to provide legal certainty and justice, both to the perpetrators, victims and society at large.

In the Indonesian criminal justice system, the Public Prosecutor has a crucial role in handling evidence, starting from identification, confiscation, to determining the final status of the goods. However, this process often creates legal dilemmas, especially when the evidence involves third parties who have good intentions. Prosecutors must carry out their duties within a legal framework that often does not provide sufficient clear guidance for complex situations involving third party rights. Mistakes in identification can lead to misguided lawsuits, and failures in the processing of evidence can hinder or even thwart the process of justice.³¹

One of the biggest challenges faced by prosecutors is the process of returning evidence to its rightful owner. Deficiencies in systems and procedures often make it difficult for prosecutors to quickly and accurately determine who is entitled to receive the evidence. In many cases, evidence can be caught up in lengthy judicial processes, during which the rights of the legal owners hang in the balance without a clear resolution.

²⁸Yudah Mustajabdan Muliadu A. Tajuddin, 2018 "Uang Pengangganti Sebaai Pengembalian Kerugian Negara Dalam Tindak Pidana Korupsi" *Journal Restorative Justice*, Vol 2, No. 1, Hlm 55.

²⁹Pasal 1 ayat (6) KUHAP

³⁰Marpaung, Leden. (2009). *Proses Penanganan Perkara Pidana (Penyelidikan dan Penyidikan)*. Jakarta: Sinar Grafika.

³¹Kristian, & Yopi Gunawan. (2015). *Tindak Pidana Korupsi*. Bandung: Refika Aditama. Hal. 78-79

Optimal practices in handling evidence should involve more efficient verification systems that can speed up the identification of legal owners and ensure that evidence is not misused or damaged during the legal process. Prosecutors also need to work more synergistically with other institutions such as the police and courts to ensure that every aspect of the handling of evidence is carried out in accordance with strict legal standards.

Adoption of advanced technology, such as integrated database systems for registration and tracking of evidence, can significantly improve this process. This kind of system not only speeds up the ownership identification process, but also increases transparency and accountability in the handling of evidence.

This critical evaluation reveals that there is significant room for improvement in how prosecutors identify and process evidence. Procedural and technological reforms can provide effective solutions to ensure that property can be returned to the rightful parties in a fair and efficient manner. More than that, it will strengthen the integrity of the criminal justice system and build public trust in justice and legal fairness in Indonesia.³²

In the United States, the "civil forfeiture" process allows the government to seize assets without requiring a conviction of the owner of those assets, which sometimes raises concerns about human rights violations. In response to this, some US states have introduced reforms that require more evidence or even a court decision before a confiscation can take place. These reforms aim to ensure that individual rights are protected and only assets that are legitimate proceeds of crime are confiscated. This model offers important lessons regarding the importance of striking a balance between the effectiveness of law enforcement and the protection of human rights.³³

In Germany, asset confiscation is highly regulated and can only be carried out with court approval. This demonstrates a strong commitment to the principles of justice and compliance with the law, ensuring that the confiscation process is carried out with transparency and accountability. Clarity and strictness of these procedures can reduce confiscation errors and provide better protection for innocent third parties. Germany also provides opportunities for third parties to defend or reclaim their assets through a fair legal process.³⁴

Australia uses funds from confiscated assets to fund initiatives aimed at preventing crime, demonstrating a more restorative approach to handling assets resulting from crime. This creates a positive cycle where confiscated assets are not only taken from criminals but also used to strengthen communities and help prevent future crime. This approach could be particularly relevant for Indonesia, where the use of assets resulting from crime could be better directed at strengthening the criminal justice system and social initiatives.³⁵

Losses experienced by third parties, in the law enforcement process in Indonesia, must be a form of evaluation material. There needs to be an update to the rules regarding the return of evidence that has been confiscated by the state, whose status has been successfully executed. This is based on the responsibility of a legal state that wants to achieve the supremacy of law with its ideals of justice.

Optimizing the prosecutor's role in returning evidence also needs to be done by using methods to anticipate confiscation errors. One of them is by making maximum efforts to announce the results of

³²Sangsaka, Hari & Lily Rosita. (2003). *Hukum Pembuktian dalam Perkara Pidana*. Bandung: Mandar Maju. Hal. 167-170

³³Septiana, P. T., & Afifah, W. (2022). Civil Forfeiture Sebagai Upaya Pengembalian Kerugian Negara Pada Tindak Pidana Korupsi. *Bureaucracy Journal: Indonesian Journal of Law and Social-Political Governance*, 2(3), hlm 612-623.

³⁴Sigalingging, B. (2021). Bantuan Hukum Timbal Balik Dalam Perampasan Aset Korupsi Antar Lintas Batas Negara. *Iuris Studia: Jurnal Kajian Hukum*, 2(3), hlm 387-398.

³⁵Simser, J., & Young, S. N. (2009). Perspectives on civil forfeiture. *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime*, hlm. 13-20.

confiscated items in the form of evidence in a criminal case so that if there are parties who feel disadvantaged, they can immediately report them and process their return and not include the confiscated items in the claim for confiscation by the state.³⁶

In facing the legal complexities associated with confiscation and confiscation of evidence, especially those involving third parties with good intentions, the author expresses a critical position towards current practices. Existing practices often do not provide adequate guarantees of justice for third parties who are not directly involved in a crime, but who lose their property due to their connection to the perpetrator of the crime. These practices not only cause financial harm to innocent individuals, but can also damage the public's reputation and confidence in the effectiveness and fairness of the criminal justice system.³⁷

Given the shortcomings that exist in current practice, the authors propose several new approaches and policy modifications to improve existing problems, consisting of:

- a. Development of an Integrated Information System: Implementation of an integrated information system that can be used to track and manage evidence in real-time. This system must be integrated between the police, prosecutors and courts to ensure that all information regarding the ownership and status of evidence can be accessed quickly and accurately.
- b. Clear Ownership Assessment Protocol: Develop a clear protocol for assessing ownership of evidence involving third parties. This protocol should include verification steps for ownership documents, witnesses, and digital evidence that can assist in determining legal ownership without prolonging the legal process.
- c. Streamlined Evidence Return Policy: Formulate a policy that streamlines the process of returning evidence to their rightful owners as soon as it is determined that they are not involved in a crime. This policy must also take into account compensation for third parties who have suffered losses due to illegal or mistaken confiscation.
- d. Routine Monitoring and Reporting: Provide a routine monitoring and reporting mechanism on how evidence is managed and processed. This will increase transparency and allow continuous evaluation of the effectiveness of the procedures implemented.
- e. Education and Training for Law Enforcement: Conduct ongoing education and training sessions for law enforcement on ethics, laws, and procedures related to the seizure and return of evidence. This training is important to ensure that all parties concerned understand third party rights and how to protect them.³⁸

The current policy of confiscation and confiscation of evidence, if continued without modification or improvement, has the potential to have a number of detrimental long-term implications. First, continued practices that do not take into account the rights of well-meaning third parties can seriously erode public trust in the criminal justice system. This loss of trust not only affects perceptions of justice but also the effectiveness of the law as a tool for enforcing order and security.³⁹

Additionally, without improvements, the current system may have a negative impact on human rights, in particular the right to own and enjoy property without unjust interference. This could result in an increase in cases where innocent individuals or entities are entangled in lengthy and expensive legal proceedings to recover their property.⁴⁰

³⁶Effendi, T. (2013). *Sistem Peradilan Pidana: Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*. Yogyakarta: Pustaka Yustisia. Hal. 187-189

³⁷Hartiwiningsih, & Lushiana Primasari. (2017). *Hukum Pidana Ekonomi*. Banten: Universitas Terbuka. Hal. 113-115

³⁸Rahardjo, Satjipto. (2015). *Masalah Penegakan Hukum (Suatu Tinjauan Sosiologis)*. Jakarta: BPHN. Hal. 226-227

³⁹Hamzah, Andi. (2018). *Pengantar Hukum Acara Pidana Indonesia*. Jakarta: Ghalia Indonesia. Hal. 183-187

⁴⁰Reksodiputro, Mardjono. (2020). *Sistem Peradilan Pidana*. Depok: Rajawali Press. Hal. 178-182

Based on analysis and criticism of current policies, several policy recommendations that can be adopted are as follows:

- a. **Implementation of More Selective Seizure Policies:** Policies must be reformed to ensure that only evidence that has a direct and significant link to a crime can be seized and forfeited. The use of advanced technology and integrated data systems can help ensure accuracy and fairness in the confiscation process.
- b. **Strong Legal Protection for Third Parties:** There needs to be a stronger legal mechanism to protect third parties who have good intentions. This may include laws that require more substantive evidence before a third party's property can be confiscated or confiscated.
- c. **Fast and Efficient Return Process:** Develop clear and efficient procedures for the return of properties to their legal owners as soon as it is determined that they are not involved in criminal activity. This can reduce the negative impact of forfeiture on innocent individuals and entities.
- d. **Transparency and Accountability:** Increase transparency in the confiscation and forfeiture process by ensuring that all actions can be tracked and audited. Implementing regular reports on confiscation and confiscation activities can help increase accountability.
- e. **Education and Training for Law Enforcement:** Invest in ongoing training and education for law enforcement on ethics and best practices in the seizure and forfeiture of evidence. This will help reduce errors and abuse of authority in handling confiscated goods.⁴¹

By implementing this approach and policy modifications, it is hoped that the practice of confiscating and confiscating evidence can become fairer and more efficient. These steps will not only protect the rights of good-faith third parties, but will also help restore and enhance public confidence in the integrity of the criminal justice system.

Conclusion

Based on the discussion in the previous chapter, the author draws the following conclusions:

- 1) Legal regulations regarding the confiscation and forfeiture of evidence involved in a series of criminal acts are regulated in the provisions of the Criminal Code and Criminal Procedure Code. Provisions regarding the confiscation of evidence are regulated in article 39 paragraph (1), paragraph (2) and paragraph (3) of the Criminal Code and 46 of the Criminal Procedure Code in the provisions of paragraph (1) and paragraph (2). The consequence of confiscating and confiscating evidence resulting from a criminal act or used as a tool for committing a criminal act is that it is difficult to return the evidence once the execution has been carried out. Even though a lawsuit was filed in court, the argument that the prosecutor committed an unlawful act as a result of his inaccuracy in identifying the ownership of evidence belonging to a third party was not easy to prove. This is because the prosecutor's actions in carrying out prosecution efforts and carrying out executions are statutory orders and within the framework of law enforcement.
- 2) The role and efforts of the prosecutor's office in optimizing the return of property stolen from criminal acts belonging to third parties can be carried out by carrying out preventive measures, namely being careful in carrying out prosecutions, and carefully identifying the ownership status of evidence so that no party is harmed. In addition, there is a need for more detailed regulations regarding efforts to return evidence that has been executed so that justice and legal certainty for third parties, who are indirect victims, can be achieved.

⁴¹Pangaribuan, Luhut M.P. (2013). *Hukum Acara Pidana (Surat Resmi Advokat di Pengadilan)*. Depok: Papas Sinar Sinanti. Hal. 154-156

Suggestion

The suggestions that the author can give as recommendations in this writing are:

- 1) Law makers need to prepare more complete regulations, both with alternative updates to the Criminal Procedure Code and regulations in other statutory provisions, so that confiscated criminal acts that have been executed can be returned to their owners. The author suggests that there be a firm step in the form of disciplinary punishment for public prosecutors who are not careful in carrying out prosecutions, resulting in confiscation and confiscation of evidence belonging to third parties and causing losses to third parties. This negligence certainly needs to be proven, so that legal certainty and justice can be properly guaranteed.
- 2) The author suggests that the prosecutor's office be able to optimize efforts to prevent prosecutorial errors, which result in the confiscation and confiscation of evidence for the state that belongs to third parties.

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