

Legal Protection of the Defendant's Property as Evidence in the Trial Process of Corruption

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ABSTRACT

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Success in eradicating corruption can not only be judged by simply bringing the perpetrators to justice. This success is deemed insufficient if the state losses due to corruption committed cannot be recovered, so that success is considered sufficient, it must be able to confiscate the assets of the accused perpetrators of corruption in the trial, which will later be used as payment of compensation for state losses charged to the Defendant. With the reason for the payment of compensation for state losses, the Defendant's property was then confiscated, both used and obtained from a criminal act of corruption, as well as on the Defendant's property which was obtained not from a criminal act of corruption and has nothing to do with a criminal act of corruption. Corruption crimes examined in this study include corruption cases in the field of natural resources, there are several court decisions in natural resource corruption regarding replacement money. The purpose of this study was to determine the position of the evidence in the trial process and how the legal protection of the defendant's property was used as evidence in the corruption case. This research is descriptive, normative juridical research type through legislation and conceptual approach, using secondary data obtained through literature study and document study, then analyzed qualitatively. The conclusion of this study are that the principle of presenting evidence in court is to support the evidence of the defendant's actions, not to be used as collateral for the execution of the sentence, so that the defendant's property that is not related and is not the result of a criminal act of corruption cannot be used as evidence in court process.



Introduction

Corruption is a complex and multidimensional problem, in Indonesia corruption is a crucial and difficult problem to solve, because it is *widespread and deep-rooted*.¹ This fact is in line with the opinion regarding the eradication of corruption as stated by Romli Atmasasmita:

"it is not an easy matter and can be immediately overcome because the implementation system that taboos transparency and prioritizes confidentiality and secrecy, and dilutes public accountability ...". In addition, the difficulty of eradicating corruption occurs when corruption cases are closely related to certain political interests".²

The crime of corruption is a form of crime that can hinder the implementation of development, so that its completion and eradication must really be considered and prioritized. However, even though the settlement of criminal acts of corruption has been prioritized, this crime of corruption is a type of case that is difficult to resolve and eradicate,

¹ Suhartoyo, *Arguments for Reversing the Burden of Evidence as a Priority Method in Eradicating Criminal Acts of Corruption and Money Laundering*, Depok: Rajawali Pres, 2019, p. . 2.

² Romli Atmasasmita, *Around the Problem of Corruption: National Aspects and International Aspects*, Bandung: Mandar Maju, 2004, p. 1-2.

especially in the evidentiary process. This is because the crime of corruption is a crime committed by people who have high intellectual ties (*white collar crime*).¹ To uncover corruption cases, one of the aspects is the evidentiary system which rests on the burden of proof which in turn can be used as one of the reasons for recovering state financial losses.

Indonesia is one of the countries with a fairly high corruption rate, which is ranked 102 out of 180 countries studied with a value of 37 based on a scale of 0 to 100. Indonesia's value will increase in 2021 with a value of 38 and is ranked 96 out of 180 countries.³

The problem that occurs now is not only the completeness of the regulations regarding corruption but also related to the return of state financial losses. The law enforcement process related to the study from the point of view of an economic approach to law can be seen in the reality of the low return of state financial losses originating from crime, especially cases of corruption.⁴ There are often strong indications that they have complied with the elements of Articles 2 and 3 of the PTPK Law and failed to recover state losses during the investigation.⁵ It is most complicated to make a return if the proceeds of the crime have been laundered, because it will make the income appear legitimate by hiding its origin.⁶ Thus, law enforcement officers must be smart in carrying out their duties so that the goal of returning state financial losses can be achieved. The problem is that the laws and regulations in Indonesia require every asset or property to be proven in advance between the relationship between assets and a crime so that the process will take up quite a lot of time and money. Not to mention, in its implementation, the punishment for substitute money is not effectively applied because sometimes it is very difficult to trace the assets of the perpetrators or the perpetrators try to hide their assets⁷

. Principal and additional penalties. The main punishments are the death penalty, imprisonment, confinement, fines. And that includes additional penalties such as the revocation of certain rights, the confiscation of certain goods and the announcement of the judge's decision.³ The provisions regarding this additional penalty are also contained in several other laws and regulations, and the Criminal Code itself does not limit that additional punishment There are only 3 forms as included in Article 10 of the Criminal Code.⁸

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been amended to Law Number 20 of 2001 also regulates other additional punishments apart from these 3 forms, such as payment of compensation in the amount equal to the property being corrupted, closing companies and others (Article 18 paragraph (1) of Law No. 31 of 1999 concerning Criminal Acts of Corruption). According to Article 17 of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of corruption, apart from being subject to criminal penalties as referred to in Article 2 , Article 3, Article 5 to Article 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 Corruption Eradication Law:

³Transparency International, "Corruption Perceptions Index," 2021, <https://www.transparency.org/en/cpi/2021/index/idn>.

⁴ Irwansyah, *Legal Studies*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020).

⁵ Juandra, Mohd Din, and Darmawan, "The Judge's Authority to Impress Substitution Money in Corrupt Cases Not Charged with Article 18 of the Anti-Corruption Law," *Ius Constituendum* 6, no. 2 (2021): 442-60,

⁶ Filep Wamafma et al., "Bank Indonesia's Efforts to Address Money Laundering in Online Banking," *USM Law Review* 5, no. 1 (2022): 357-76

⁷ Diding Rahmat, "Corruption in Indonesia Formulation of Fine Criminal Policies and Replacement Money in Criminal Enforcement," *IUS Journal of Law and Justice Studies* 8, no. 1 (2020): 11.

⁸ AZAbidin Farid & A. Hamzah, *Special Forms of Embodiment of Offenses (Trial, Participation, and Combined Offenses) and Penitentiary Law*, PT RajaGrafindo Persada, Jakarta, 2006, pp., 279-280.

"In addition to additional penalties as referred to in the Criminal Code , as additional penalties are:

- a. confiscation of tangible or intangible movable goods or immovable goods k used for or obtained from a criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as from goods that replace the goods;
- b. payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
- c. closure of all or part of the company for a maximum period of 1 (one) year;
- d. revocation of all or part of certain rights or the abolition of all or part of certain benefits, which have been or may be granted by the Government to the convict."

The penalty for paying replacement money is a consequence of the consequences of a criminal act of corruption that "can harm the state's finances or the state's economy", so that to recover the loss, a juridical means is needed, namely in the form of payment of replacement money. The concept of paying compensation is to retaliate so that the perpetrators of corruption do not enjoy the results of their crimes and the State can get a refund for the money suffered. State losses according to Article 1 number 22 of Law Number 1 of 2004 concerning State Treasury are real and definite reductions in money, securities, and goods as a result of unlawful acts, either intentionally or negligently.

In the trial of corruption cases, the most important part is the issue of proof, because from this it can be known whether the accused or defendant will be found guilty or acquitted. The issue of proof is regulated by provisions relating to the law of evidence, especially those contained in the Criminal Procedure Code, especially Article 184 and other related regulations. The process of proving or proving contains the intention and effort to state the truth of an event, so that it can be accepted by reason for the truth of the event.⁹ Proof means that it is true that a criminal event has occurred and the defendant is guilty of doing it, so he must be held accountable for it.¹⁰ Evidence is provisions that contain guidelines and guidelines on ways that are justified by law to prove the guilt that has been charged to the defendant. Proof is also a provision that regulates the evidence that is justified by law and may be used by judges to prove the guilt of the accused.¹¹

For the sake of proof, it is not only the presence of the perpetrator that is considered, but the objects involved in a criminal act are very necessary. These objects are commonly known as "evidence". In practice, law enforcement officers in the investigation and investigation process confiscate the defendant's property which will also be used as evidence in the trial process, it turns out that the defendant's property is often obtained before the *tempus delictie* (time of the incident) of the crime, as well as property that has nothing to do with the criminal act of corruption being confiscated and used as evidence in the trial process, this is done with the intention of the defendant's property being confiscated for the state as payment of money to compensate for state losses imposed on the defendant. What is the position of the evidence in the trial process ? How is the legal protection of the Defendant's property which is used as evidence in the case of a criminal act of corruption?

⁹ Martiman Prodjoamidjojo, *Commentary on the Criminal Procedure Code: The Criminal Procedure Code*, Jakarta: Pradnya Paramitha, 1984, p.11.

¹⁰ Darwan Prinst, *Criminal Procedure Law in Practice*, Jakarta: Djambatan, 1998, p.133

¹¹ M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code: Examination of Court Trials, Appeals, Cassation, and Review: Second Edition*, Jakarta: Sinar Graphic, 2006 , p.273

Research Methods

This research is descriptive, normative juridical research through legislation and conceptual approaches, using secondary data obtained through literature study and document study, then analyzed qualitatively.

Results and Discussion

A. The Position of Evidence in the Trial Process

In handling cases, the most important part of any criminal process is the issue of proof, because from this it can be known whether the accused or defendant will be found guilty or acquitted. The issue of proof is regulated by provisions relating to the law of evidence, especially those contained in the Criminal Procedure Code, especially Article 184 and other related regulations. For the sake of proof, it is not only the presence of the perpetrator that is considered, but the objects involved in a criminal act are very necessary. The objects in question are commonly known as "evidence."¹²

According to Prof. Andi Hamzah "Evidence is something to confirm the truth of a proposition, stance or indictment. Evidence is an effort to prove through tools that are allowed to be used to prove the arguments or in criminal cases of indictment in court, for example, the defendant's testimony, testimony, expert testimony, letters and instructions while in criminal cases including suspicions and oaths."¹³ Meanwhile, Prof. Koesparmono Irsan quoted Prof. Sudikno Mertokusumo's opinion on the meaning of proof in a juridical sense as follows: "There is no other means to provide sufficient grounds for the judge who gave the case in question in order to provide certainty about the truth of the events proposed. According to him, proving contains three meanings, namely proving in a logical sense, proving in a conventional sense and proving in procedural law has a juridical meaning."¹⁴

Within the Criminal Procedure Code itself there are several articles in the Criminal Procedure Code that include the term evidence, namely:

1. Article 5 paragraph (1) letter a point 2: One of the investigators' powers is to look for evidence;
2. Article 8 paragraph (3) letter b: In the event that the investigation is considered completed, the investigator shall hand over responsibility for the suspect and evidence to the public prosecutor;
3. Article 18 paragraph (2): In the case of being caught red-handed, the arrest is carried out without a warrant, provided that the catcher must immediately hand over the caught and the available evidence to the nearest investigator or assistant investigator;
4. Article 21 paragraph (1): One of the reasons for the need for detention is in the event of a situation that raises concerns that the suspect or defendant will damage or destroy evidence;
5. Article 181 paragraph (1): The presiding judge at trial shows the defendant all the evidence and asks him whether he knows the objects; which is followed by Article 181 paragraph (2): If necessary the object is also shown by the judge at the trial chair to the witness;

¹² Marcelino Imanuel Makalew, Ruddy R. Watulingas, Diana R. *Security, Substance of evidence in the law of evidence in criminal justice*, journal Lex Privatum Vol. IX/No. 8/Jul/2021.

¹³ Andi Hamzah, 2006, *Indonesian Criminal Procedure Code*, Jakarta: Sinar Graphic, p. 254.

¹⁴ Koesparmono Irsan, 2007, *Criminal Procedure Code*, Jakarta, p. 91.

6. Article 194 paragraph (1): In the case of a sentence of imprisonment or acquittal or acquittal of all legal charges, the court stipulates that the confiscated evidence be handed over to the party most entitled to receive it back whose name is listed in the decision unless according to the provisions of the law the evidence must be confiscated for the benefit of the state or destroyed or damaged so that it can no longer be used;
7. Article 203 paragraph (2): In the Brief Examination Procedure, the public prosecutor confronts the accused along with witnesses, experts, interpreters and the necessary evidence; The term 'evidence is not clearly regulated in the Criminal Procedure Code. In KUHP the term 'confiscated objects' is used (see Articles 38 to 46 of the Criminal Procedure Code).

In judicial practice, 'evidence' is an object submitted by the public prosecutor before a trial that has been confiscated by investigators. However, even though the term evidence is mentioned in a number of articles of the Criminal Procedure Code, the court's decision must always be determined firmly about what will be done with the evidence, because in the articles of the Criminal Procedure Code there is nothing that confirms the position of an item of evidence. Unlike the case with evidence, which is explicitly stated in:

- a. Article 183 of the Criminal Procedure Code, a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty. do it.
- b. Article 184 paragraph (1) of the Criminal Procedure Code, valid evidence are:
 - a. witness statements;
 - b. expert testimony;
 - c. letter;
 - d. instruction;
 - e. statement of the defendant,

If it is linked between Article 184 paragraph (1) and Article 181 paragraph (3) of the Criminal Procedure Code, the evidence will be:

- a. Witness testimony, if information on evidence is requested from the Witness.
- b. Defendant's statement, if information on evidence is requested from the Defendant;
- c. Expert testimony, if an expert provides information orally related to evidence in court.
- d. Instructions, substitute evidence is a guide for the judge to declare the defendant guilty of a criminal act, if there is a correlation with the evidence or with other evidence.
- e. Letter, if an expert provides written information outside the court regarding the evidence for which information is requested. Thus, evidence has an important role in supporting evidence in the trial, as well as strengthening the indictment of the Public Prosecutor against a criminal act committed by the Defendant, and can form and strengthen the judge's belief in the guilt of the Defendant. That is why the Public Prosecutor as much as possible must seek or present evidence as completely as possible in court hearings¹⁵

The Criminal Procedure Code does not clearly state the definition of evidence. However, evidence can be said to have the same meaning as confiscated objects, this can be seen from the provisions of Article 1 point 16 of the Criminal Procedure Code which reads as follows: intangible for the sake of evidence in the investigation, prosecution and trial.”

¹⁵ Ratna Nurul Afish, *Evidence in Criminal Process*, Sinar Graphic, Jakarta, 1989, p. 22

Regarding anything that can be confiscated, it is stated in Article 39 paragraph (1) that those that can be subject to confiscation are:

- a. Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as a result of a criminal act;
- b. Objects that have been used directly to commit a crime or to prepare it;
- c. Objects used to hinder criminal investigations;
- d. Objects specially made or intended to commit a crime;
- e. Other objects that have a direct relationship with the crime committed.

To support and strengthen valid evidence as referred to in Article 184 paragraph (1) of the Criminal Procedure Code, and to obtain the judge's confidence in the guilt that the public prosecutor has indicted against the defendant, herein lies the importance of goods the evidence. Thus, it is not only the suspect (the perpetrator of the crime) who must be sought or found by the investigator, but the evidence material must also be found. This is considering that the main function of criminal procedural law is none other than reconstructing the events of an actor and his prohibited actions, while the complementary tools of this effort are evidence. The perpetrator, his actions and the evidence are one unit that is the focus of efforts to seek and find material

B. Legal protection of the Defendant's property which is used as evidence in the corruption case

The word protection in english is called protection, while according to the big Indonesian Dictionary (KBBI) it can be equated with the term protection, which means the process or act of protecting while according to the Blacks law dictionary protection is *the act of protecting*¹⁶. Protection means protecting something from dangerous things, something that can be in the form of interests or property or goods. Muchsin¹⁷ legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are manifested in attitudes and actions in creating order in the social life between fellow human beings.¹⁸ Meanwhile, according to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a human rights power to him to act in the context of his interests.¹⁹

At present, efforts to eradicate corruption are focused on 3 aspects, namely, prevention, eradication and *asset recovery*, with the aim of recovering state financial losses²⁰. The return of state financial losses through the confiscation of assets resulting from criminal acts of corruption has the following objectives:²¹

- a. Returning 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. Giving punishment to parties who want to commit corruption

In relation to recovering state financial losses in corruption crimes, during the investigation process the Anti-Corruption Law has anticipated security measures against

¹⁶ Brayan A Garner Blacks law dictionary, Eight edition, united states, West group, p. 1343

¹⁷ Republika, Patent holders need legal protection, 24 may 2004,

¹⁸ Legal Protection and Certainty for Investors in Indonesia, Surakarta, Master's thesis at the Faculty of Law, University of Eleven March 2003, page 14

¹⁹ Satjipto Rahardo, Other Sides of Law in Indonesia, Jakarta, Kompas Publisher 2003, page 121

²⁰ Abd Razak Musahib, "Return of State Finances Proceeds from Corruption Crimes", *E Journal Catalog*, Vol. 3 No. 1, (2015), p. 2.

²¹ Mahrus Ali, *Theory and Practice of Corruption Criminal Law*, Yogyakarta: UII Press, (2013), p. 84.

assets resulting from corruption crimes committed by the Defendant. This is regulated in Article 28 of the Anti-Corruption Law, which states as follows:

For the purpose of investigation, the suspect is obliged to provide information about all his property and the property of his wife or husband, children and property of any person or corporation known and or reasonably suspected of having relationship with corruption.

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 in a corruption crime is obliged to provide information to investigators regarding all of his property and property of his wife, or husband, children and property. property of any person on a corporation that is known and or suspected of having a relationship with a criminal act of corruption committed by a suspect

In Fact, if the suspect in a corruption case does not provide correct information regarding all his asset and the property of his wife or husband, or parties who are known and or reasonably suspected to have a relationship with a criminal act of corruption, then Article 22 of the Anti-Corruption Law imposes sanctions on this matter. Article 22 of the Anti-Corruption Law basically states as follows:

Any person as referred to in Article 28, Article 29, Article 35, or Article 36 who intentionally does not provide information or gives incorrect information, shall be sentenced to imprisonment for a minimum 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 have the meaning that the Anti-Corruption Law does not only cover the actions of the perpetrators, but also the property of the perpetrators obtained from the proceeds of criminal acts of corruption. Thus, the assets of the perpetrators of corruption must be identified in advance regarding their acquisition. Likewise, in the trial process for criminal acts of corruption, provisions regarding the existence of the defendant's property are also a priority, including regulated in:

1. Article 37 A paragraph (1)

The defendant is obliged to provide information about all of his property and the property of his wife, or husband, children and property every time. person or corporation suspected of having a relationship with the case

2. Article 38 B paragraph (1)

Any person accused of committing one of the criminal 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 Criminal Acts of Corruption and Articles 5 to 12 of this Law, are required to prove otherwise against his property which has not been indicted, but is also suspected of originating from a criminal act of corruption

This is of course for the purpose of recovering state financial losses, as mandated by Article 18 paragraph (1) of the law on the Eradication of Corruption crimes

(1) : The additions as referred to in the Criminal Code, as additional penalties are:

- a. confiscation of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption, including companies owned by the convict

- where the corruption crime was committed , as well as from the goods that replace the goods;
- b. payment of replacement money in the maximum amount equal to the assets obtained from the criminal act of corruption;
- (2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b no later than 1 (one) month after the court's decision which has obtained permanent legal force, his assets can be confiscated by the prosecutor and auctioned to cover the replacement money.
- (3) In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be punished with imprisonment which does not exceed the maximum threat of the principal punishment in accordance with the provisions of the law.

Article 18 of the Corruption Law basically leads to the return of assets that are the result of corruption. Therefore, the return of assets must be based on several reasons. As stated by Michael Levi, that the return of assets contains at least 3 (three) reasons, namely:

- a. The reason for prevention (*prohylatic*) is to prevent criminals from having control over assets obtained illegally to commit other crimes infuture;
- b. The reason for propriety is that the perpetrators of the crime do not have proper rights over the illegally acquired assets;
- c. The reason for priority/preceding is that a criminal act gives priority to the state to claim assets obtained illegally rather than the rights possessed by the perpetrators of the crime;
- d. The reason for ownership (proprietary) is that because the asset was obtained illegally, the state has an interest as the owner of the asset."²²

Success in efforts to eradicate corruption can not only be judged by simply bringing the perpetrators to justice. This success is deemed insufficient if the state losses due to corruption committed cannot be recovered, so that success is considered sufficient, it must be able to confiscate the assets of the corruptor.

The definition of an asset according to the Big Indonesian Dictionary means something that has an exchange value, capital, wealth²³. Assets can be interpreted as property, both tangible and intangible, in Article 499 of the Civil Code explains the meaning of objects (*zaak*) are anything that can be an object of property rights. Objects that can become property rights can be in the form of goods and can also be in the form of rights, such as copyrights, patents, and others. The definition of objects referred to by the Civil Code are tangible objects such as motor vehicles, land, and others, while intangible objects such as copyrights, patents, are not regulated in the Civil Code, but are regulated in the Civil Code. The law itself is the Law on the Protection of Intellectual Property Rights²⁴ Meanwhile, the definition of assets as regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, that is, assets are all movable or immovable objects, both tangible and intangible..

The definition of confiscation is stated in Article 1 point 16 of the Criminal Procedure Code, as follows: "Confiscation is a series of actions by an investigator to take over and or

²² Michael Levi, *Tracing and Recovering the Proceeds of Crime*, Cardiff University, Wales UK., Tbilisi, Georgia, 2014, p. 17

²³ "Assets", *Big Indonesian Dictionary* (Jakarta; Language Center Ministry of National Education, 2008, p. 4

²⁴ Djaja S, 2015, *Intellectual Property Rights*, Jakarta, Sinar Graphic, p. 4

keep under his control movable or immovable objects, tangible or intangible in the form of evidence in the investigation, prosecution and trial²⁵.

According to Andi Hamzah, evidence or objects that can be confiscated are: Items belonging to the suspect obtained due to a crime and items that have been intentionally used to commit a crime²⁶ In addition, in detail regarding objects that can be confiscated in the context of an investigation and prosecution. It is regulated in Article 39 of the Criminal Procedure Code, it is determined that the fines that can be subject to confiscation are:

- a. Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or part of the proceeds of a criminal act;
- b. Objects that have been used directly to commit a crime or to prepare it;
- c. Objects used to hinder a criminal investigation process;
- d. Objects specially made or intended to commit a crime;
- e. Other objects that have a direct relationship with the crime committed.

In a criminal case process, especially in cases of corruption, the act of confiscation of assets suspected of being the result of a criminal act of corruption becomes very urgent, considering that in addition to the purposes of proof at trial, the confiscation of evidence is also intended to recover state financial losses. resulting from corruption. Thus, confiscation becomes an important beginning in the stages of the corruption case process from the level of investigation, investigation, prosecution and trial in court. Care must be taken in confiscating goods or objects used in a criminal case. It must be ensured that there is a really accurate correlation between the confiscated objects and the perpetrators of the crime.

Seizure is basically a form of additional punishment regulated in the Criminal Code (KUHP). In general, according to Eddy OS Hiariej, confiscation of certain goods is:

1. confiscation in the sense of confiscation of goods used to commit criminal acts or *instrumentum sceleris*;
2. confiscation in the sense of confiscation of objects related to criminal acts or *objectum sceleris*;
3. Seizure in the sense of confiscation of the proceeds of a criminal act or *fructum sceleris*.²⁷

Even though the rules regarding the defendant's property as evidence are explicitly regulated in the Criminal Procedure Code, at the level of law enforcement it is often ignored by investigators and public prosecutors, by confiscating the defendant's property which has nothing to do with corruption and is not the result of corruption. this is the basis for the spirit to pursue the return of state financial losses, given the assumption that success in efforts to eradicate corruption can not only be judged by simply bringing the perpetrators to court. This success is deemed insufficient if the state losses due to corruption committed cannot be recovered, so that success is considered sufficient, it must be able to confiscate the assets of the accused perpetrators of corruption in the trial, which will later be used as payment of compensation for state losses charged to the Defendant. With the reason for the payment of compensation for state losses, the Defendant's property was then confiscated, both used and obtained from a criminal act of corruption, as well as the Defendant's property which was obtained not from a criminal act of corruption and has nothing to do with corruption, one of which is in the case of corruption. case of corruption on behalf of the

²⁵ KUHP and KUHP, Sinar Graphic, Jakarta, 2013, p. 201.

²⁶ Andi Hamzah, *Indonesian Criminal Procedure Code*, Arikha Media Cipta, Jakarta, 2014, p. 112

²⁷ Eddy OS Hiariej, *Reverse Evidence in Returning Assets for Corruption Crimes*, Speech on the Inauguration of Professorship at the Faculty of Law, Gadjah Mada University, Yogyakarta, January 30, 2012, p. 6-7.

defendant Inspector General (Pol) Joko Susilo, in the case of the first instance Number: 20/Pid.sus/Tpk/2013/PN Jkt.Pst, in the case of Appeal Number: 36/Pid/TPK/2013/PT DKI, in Cassation Case Number: 537K/Pid.Sus/2014, which was originally based on the three levels of judicial decisions, the defendant's property which had been confiscated was confiscated for payment of state compensation money, through the Judicial Review Decision of the Supreme Court of the Republic of Indonesia Number 97 PK/Pid.Sus/2021 dated May 6, 2021, it was stated that existing objects were used as evidence before the time (te. mpus) the act committed is against the law and must be returned to the rightful person, or from where the goods were confiscated. As the following legal considerations: Thus, existing objects that are used as evidence before the time (tempus) of the actions carried out by the Petitioners, both in cases of Corruption Crimes and Money Laundering Crimes (TPPU) are against the law and must be returned to those who has the right, or from where the goods were confiscated, because the confiscation carried out by the investigator in the *a quo* is contrary to the principle that evidence is to support the evidence of the defendant's actions, not to be used as collateral for the execution of the sentence, as is the case in civil cases.

Meanwhile, in relation to the criminal act of corruption in natural resources, we can find Defendant Nur Alama, the former Governor of Southeast Sulawesi, in the case of the first instance Number: 123/Pid.Sus/Tpk/2018/PN Jkt.Pst, in the case of Appeal Number: 16/Pid/TPK/2018/PT.DKI, in the Cassation Case Number: 2633K/Pid.Sus/2018, and in the Judicial Review Case Number: 132PK/Pid.Sus/2020. In the perspective of human rights, the protection of property which includes property rights, is stated in Article 29 Paragraph (1) of Law Number 39 of 1999 concerning Human Rights which reads:

"Everyone has the right to On the protection of personal self, family, honor, dignity, and property rights,

Jimly Asshiddiqie argues that when the 1945 Constitution of the Republic of Indonesia was amended by adding Chapter XA entitled Human Rights (HAM), all Indonesian people constitutionally accepted the concept of human rights (HAM) as concept in accordance with the Pancasila ideology. As a result, all debates about the concept of human rights (HAM) that occurred during the struggle for independence have disappeared, and there is no longer a dispute about whether human rights (HAM) should be included in the 1945 Constitution of the Republic of Indonesia.²⁸ When compared with the constitutions of other countries, this is an achievement in itself for the struggle for human rights (HAM) in the State of Indonesia, because not many countries in the world include a special and separate section on human rights in their constitutions.

Regarding assets, the 1945 Constitution through Article 28H paragraph (4) states that

has the right to have private property rights and that property rights cannot be taken arbitrarily by anyone.

The existence of a guarantee of human rights by the state is considered as one of the main characteristics of adhering to the principle of the rule of law in a country, everyone wherever he is is guaranteed his ownership rights, but at the same time has a human obligation to uphold the human rights of others in obtaining rights over property or objects, meaning that a person in addition to having human rights, also has basic obligations. Recognition of the constitution and laws regarding these human obligations as regulated in Article 28 J

²⁸ Max Boli Sabon, Human Rights (Jakarta: Atmajaya University, 2014), p. 1.

paragraph (2) of the 1945 Constitution and Article 73 of Law Number 39 of 1999 concerning Human Rights²⁹

Article 28 J paragraph (2) of the 1945 Constitution which states

: people are obliged to comply with the restrictions established by law for the sole purpose of ensuring the recognition and respect for the rights and freedoms of others and to meet just demands, in accordance with moral considerations. Religious values of security and public order, in a democratic society.

Article 73 of Law Number 39 of 1999 concerning Human Rights The

rights and freedoms regulated in this Law can only be limited by and based on the law, solely to ensure the recognition and respect for human rights and the basic freedoms of others. , morality, public order, and the interests of the nation

With these provisions in the perspective of the rule of law, the *rule of law* must be enforced consistently and consistently so that the law functions to control, supervise and limit power. Law should not be used as a political instrument of power (*rule by law*) to justify the actions of the authorities that harm the people and the state. the main component that must enforce its own laws.³⁰

State *obligations and responsibilities* in the framework of a human rights-based approach can be seen in three forms, namely

a. Respect (*to respect*)

It is the responsibility of the state not to interfere to regulate its citizens when exercising their rights. The state is obliged not to take actions that will hinder the fulfillment of all human rights (*human rights*);

b. Protect (*to protect*)

The state's obligation to act actively to provide guarantees for the protection of the human rights of its citizens. The state is obliged to take measures to prevent violations of all human rights by third parties;

c. Fulfilling (*to fulfill*)

The state is obliged to take legislative, administrative, legal and other measures to fully realize human rights (HAM)³¹

The obligation to respect, protect and fulfill each contains an obligation to conduct, namely the state is required to take certain steps to carry out the fulfillment of a right, and the obligation to have an impact (*obligation to result*), which requires the state to achieve certain targets to meet substantive measurable standards³² The existence of guarantees and protection of private property rights shows that the State protects the acquisition of the Defendant's property which has nothing to do with the criminal act of corruption as property rights that are protected by the State from being confiscated and used as evidence in the trial process for criminal acts of corruption. Defendant's property which is used in a criminal act of corruption and is the result of a criminal act of corruption, the property in question can be confiscated during the trial process.

²⁹ Supardi, confiscation of assets resulting from corruption in the perspective of a just criminal law, (Jakarta, Kencana 2018) Page 65

³⁰ John Pieris & Wiwik Sri Widiarty, State of Law and Consumer Protection Against Expired Food Products (Jakarta: Pelangi Cendikia, 2007), p. 29.

³¹ Maidah Purwanti, "State Obligations and Responsibilities in Fulfilling Human Rights," BPHN, 2020, accessed March 8, 2022, <https://lsc.bphn.go.id/article?id=365>.

³² *ibid*

Conclusion

Based on the description above, the authors draw conclusions related to the legal protection of the Defendant's property as evidence in the trial process for corruption , namely: In the trial process, evidence serves to support and strengthen legal evidence as referred to in Article 184 paragraph (1) KUHAP, and to obtain the judge's conviction for the guilt that the public prosecutor has accused the defendant of. This is considering that the main function of criminal procedural law is none other than reconstructing the events of an actor and his prohibited actions, while the complementary tools of this effort are evidence. his actions and the evidence are a single unit that becomes the focus of efforts to seek and find material truths;

The defendant's property that has nothing to do with the case of a criminal act of corruption and is not the result of a criminal act of corruption cannot be used as evidence in a trial which will later be used as a guarantee for payment of money to compensate the state, because the principle of presenting evidence in a trial is to support proof of action. The defendant, not to be used as collateral for the execution of the sentence, so that the Defendant's property which is not related and is not the result of a criminal act of corruption cannot be used as evidence in the trial process as stated in the Judicial Review Decision of the Supreme Court of the Republic of Indonesia Number 97 PK/Pid.Sus /2021 dated May 6, 2021. The guarantee of protection of the defendant's property which was obtained legally and has nothing to do with a criminal act of corruption is contained in the 1945 Constitution Article 28H paragraph (4) which states: "everyone has the right to have private property rights and property rights. it should not be taken over arbitrarily by anyone"

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