

Criminal Penalties For Asset Confiscation In Corruption

Cases: A Due Process Model Perspective

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ABSTRACT

Corruption is an extraordinary crime that causes state financial losses and hinders national development. Therefore, its handling is not sufficient only through the main punishment of imprisonment and fines, but also through the recovery of state assets. This study aims to analyze the construction of the criminal confiscation penalty as a substitute for state losses in corruption cases in Indonesia and the mechanism for imposing additional penalties of confiscation of assets based on the due process model. The research method used is normative juridical legal research with a statutory approach, a conceptual approach, and a case approach. Primary legal materials in the form of laws and regulations, court decisions, and secondary legal materials in the form of literature and scientific journals were analyzed qualitatively. The results of the study indicate that the criminal confiscation penalty is an additional penalty that has a strategic function to eliminate profits from crime, recover state losses, and provide a deterrent effect to perpetrators of corruption. The legal basis is found in the Corruption Eradication Law which allows for the confiscation of assets from corruption and other assets belonging to convicts to pay compensation. The mechanism for imposing additional penalties of asset confiscation must be implemented through the stages of investigation, prosecution, trial examination, judge's decision, and execution in a legal, proportional, and accountable manner. The due process model approach demands protection of the rights of the accused and third parties acting in good faith, so that asset confiscation is not carried out arbitrarily. Therefore, additional penalties of asset confiscation become an effective instrument in eradicating corruption when implemented based on the principles of legality, justice, proportionality, and legal certainty.

Keywords: Criminal acts of corruption, criminal confiscation, state losses, due process model, asset recovery.

1. INTRODUCTION

Corruption remains one of the most serious problems in the Indonesian state and government system. Changes in government regimes, changes in public policy, and the formation of new institutions have not been able to completely eradicate corrupt practices that have become entrenched in the bureaucracy, politics, procurement of goods and services, and the public service sector. This phenomenon shows that corruption is no longer just an ordinary violation of the law, but an extraordinary crime with a systemic impact on the life of the nation and state. Therefore, the eradication of criminal acts of corruption must be seen as a sustainable national agenda and cannot depend solely on changes in leadership. As a state based on the rule of law, Indonesia places law as the primary foundation in every act of state administration. This principle is constitutionally affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state based on the rule of law. The meaning of this provision is that all actions by the government, law enforcement officials, and citizens must comply with applicable

law. Therefore, all efforts to eradicate corruption, including investigations, prosecutions, criminalization, and recovery of state losses, must be carried out based on law and may not be carried out arbitrarily. (Atmasasmita, 2016; Hamzah, 2019). (Hiariej, 2020; Kansil & Kansil, 2018).

In the development of the modern concept of a state based on the rule of law, law enforcement is no longer understood merely as imposing sanctions on perpetrators of crimes. A state based on the rule of law also demands the protection of human rights, the guarantee of fair procedures, and a balance between the public interest and individual rights. Therefore, the process of enforcing criminal law must always adhere to the principle of due process of law, namely that every state action against an individual must be carried out through legal, rational, proportional, and accountable procedures. This principle is crucial in corruption cases, especially when the state confiscates and confiscates an individual's assets. The eradication of criminal acts of corruption in Indonesia actually has a relatively strong legal basis. The state has established various important regulations, including Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, the Law concerning the Corruption Eradication Commission, and various other implementing regulations. In addition, Indonesia also ratified the United Nations Convention Against Corruption (UNCAC) through Law Number 7 of 2006. This ratification shows that Indonesia is committed to adapting its legal system to international standards in preventing and eradicating corruption. (Harahap, 2016). (United Nations, 2004).

The existence of these various legal instruments demonstrates that the state focuses not only on punishing perpetrators but also on recovering state losses arising from corruption. Corruption has far-reaching impacts by reducing the state's ability to finance national development, undermining the quality of public services, widening social inequality, and diminishing public trust in state institutions. Therefore, recovering state losses must be a key objective in the corruption law enforcement system. Normatively, state losses are understood as a real and definite shortage of money, securities, or goods resulting from unlawful acts, whether intentional or negligent. This definition can be found in various laws and regulations, such as the State Treasury Law and the Law on the Supreme Audit Agency. With this definition, state losses in corruption cases must be objectively and measurably proven, and not based on mere assumptions. Certainty regarding the amount of state losses is crucial because it will influence the types of additional penalties that can be imposed. (Law Number 31 of 1999; Law Number 20 of 2001).

In the context of enforcing corruption laws, one instrument used to recover state losses is the additional penalty of asset confiscation. Through this mechanism, assets derived from or

related to criminal acts can be seized by the state based on a court decision. The primary objective is to prevent the perpetrator from enjoying the proceeds of crime obtained unlawfully. Therefore, asset confiscation has both a repressive and restorative dimension because, in addition to punishing the perpetrator, it also functions to recoup state losses. Asset confiscation is essentially part of the asset recovery policy developing in modern legal systems. In many countries, criminalizing corruption perpetrators is considered insufficient if the perpetrators can still enjoy the proceeds of their crimes after serving their sentence. Therefore, the state must have an effective mechanism to track, freeze, confiscate, seize, and return assets obtained from criminal acts. This policy also aligns with the principle that crimes should not benefit the perpetrators. (Suhariyanto, 2020; Chazawi, 2017).

However, the practice of imposing asset confiscation sentences in Indonesia still presents various legal challenges. One major issue is the lack of clear parameters regarding the relationship between the value of confiscated assets and the amount of state losses that must be recovered. In a number of cases, conditions have been found where the value of confiscated assets exceeds the state losses proven in court. This situation has given rise to debate regarding the limits of the state's authority to seize the assets of convicts. If confiscation exceeds the amount of state losses without a clear legal basis, such action potentially violates the principles of proportionality and justice. While the state has the right to recover losses arising from criminal acts of corruption, it is not permitted to profit from the law enforcement process. In other words, recovery of state losses must be distinguished from excessive punitive measures against perpetrators. This is where the due process model becomes crucial as a check on state repressive actions. (Suhariyanto, 2020; Chazawi, 2017).

The problem becomes even more complex when the seized object is land, buildings, or other immovable assets. Immovable assets generally have an economic value that tends to increase over time. As a result, assets whose value at the time of seizure equals the state's losses may increase significantly once the court decision becomes final and enforceable. This increase in value raises new questions about how to handle the difference. If all proceeds from an asset auction are paid to the state without a proportional calculation mechanism, it could give the impression that the state has benefited more than the actual losses it has suffered. This situation certainly raises questions from the perspective of criminal justice and the protection of property rights. Furthermore, it is possible that third parties may have an interest in the assets, such as spouses, heirs, creditors, or joint owners. Therefore, asset confiscation cannot be carried out simply without considering civil aspects and the rights of other parties. (Suhariyanto, 2020; Chazawi, 2017).

In judicial practice, rulings regarding the additional penalty of asset confiscation also show considerable variation. Some rulings simply state that certain assets are "confiscated for the state" without explaining the purpose or basis for the confiscation. On the other hand, there are also rulings that expressly state that assets are confiscated and auctioned to cover compensation payments. These differences in the formulation of rulings indicate a lack of uniformity in the concept and implementation of asset confiscation. This disparity in practice creates legal uncertainty for law enforcement officials during the execution phase of the ruling. Prosecutors, as executors, may face difficulties in determining whether the confiscated assets fully belong to the state or are only used to cover state losses. This ambiguity also has the potential to give rise to new disputes between convicts and third parties who feel aggrieved. Therefore, more robust and consistent normative guidelines are needed. (Suhariyanto, 2020; Chazawi, 2017).

From a criminal policy perspective, recovering state losses is indeed a crucial objective. However, this orientation must not override the principle of protecting human rights and constitutional guarantees of ownership. Any restrictions on property rights must be based on law, through court decisions, and within proportionate limits. A state governed by the rule of law rejects all forms of arbitrary action, including those carried out in the name of eradicating corruption. Therefore, the mechanism for imposing criminal sanctions for asset confiscation must be designed in a clear, measurable, and accountable manner. Determining which assets can be confiscated must consider the origin of the assets, their direct connection to the crime, their economic value, their ownership status, and their balance with the amount of state losses. With the right mechanism, the goal of recovering state losses can be achieved without violating the fundamental rights of convicts or other well-intentioned parties. (Suhariyanto, 2020; Chazawi, 2017).

The due process model approach is relevant because it positions legal procedures as a protective instrument against potential abuse of state authority. In this context, the state can still take firm action against corruptors, but such action must be limited by clear regulations, valid evidence, and effective judicial oversight. Thus, eradicating corruption and protecting human rights are not mutually exclusive but can operate in balance. Furthermore, strengthening the due process model-based asset confiscation mechanism is crucial for increasing public legitimacy in law enforcement. The public not only wants perpetrators of corruption to be severely punished but also expects a fair and transparent legal process. When asset confiscation is conducted objectively and measurably, public trust in law enforcement institutions will increase. (Suhariyanto, 2020; Chazawi, 2017).

Based on this description, a study of the mechanism for imposing confiscation sentences to compensate state losses in corruption cases based on the due process model is important and

relevant. This research is expected to provide a fairer, more certain, and proportional legal framework for corruption criminal justice practices in Indonesia. Furthermore, the results of this study are expected to provide recommendations for legislators and law enforcement officials in improving the system for recovering assets from corruption in the future.

2. RESEARCH METHODS

This research is a normative legal research with a normative juridical approach that examines doctrinal legal sources, in the form of written legal norms and applicable legal principles. The purpose of normative research is to provide legal arguments to assess the morality of an event and appropriate legal action. The approaches used in this research include the statute approach, analytical approach, and historical approach. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions. Secondary legal materials consist of legal literature, books, scientific journals, and expert opinions related to Islamic law and notaries. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources. The legal material analysis technique is carried out through deductive analysis of positive legal norms, or jurisprudence, which is the legal material analysis approach used in this work. This approach is carried out by first searching for jurisprudence and positive legal norms, then looking for how relevant doctrines answer the problem description in the research. (Soekanto & Mamudji, 2019; Marzuki, 2021; Ali, 2021).

4. RESULTS AND DISCUSSION

The Criminal Construction of Confiscation as Compensation for State Losses in Corruption Cases in Indonesia

1. Basic Concept of the Relationship between Criminal Confiscation and State Losses

Confiscation is a form of additional punishment that has long been recognized in the Indonesian criminal law system. In criminal law doctrine, an additional punishment is a sanction imposed concurrently with the principal punishment on a defendant who is legally and convincingly proven to have committed a crime. Unlike the principal punishment, which directly targets the freedom or property of the perpetrator through imprisonment, fines, or other penalties, additional punishment has a complementary function aimed at eliminating certain legal consequences of the crime. One form of additional punishment that has significant relevance in the development of modern law is the confiscation of goods or assets related to the crime. Conceptually, confiscation initially developed as a means for the state to seize goods used in a



crime or goods directly obtained from the proceeds of crime. In classical criminal law, confiscation is usually imposed on tools used to commit a crime, such as weapons, vehicles, illegal production equipment, or other objects directly related to the crime. In addition, confiscation is also imposed on proceeds of crime, such as stolen money, fraudulent goods, or other objects obtained unlawfully. The main goal is so that the perpetrator can no longer use the goods to commit crimes and does not enjoy the proceeds of the crime he obtained. (Moeljatno, 2015; Lamintang, 2014).

As forms of economic and organized crime have evolved, the concept of confiscation has expanded in meaning and function. Modern states recognize that many crimes are committed for financial gain, making corporal punishment alone ineffective in combating crime. Perpetrators who have served prison sentences can still enjoy the proceeds of their crimes if the assets they acquired are not touched by the law. Therefore, a paradigm has developed that crimes should not provide economic benefits to the perpetrators. In this context, confiscation has become a crucial instrument, particularly in cases of corruption, money laundering, narcotics, and other economic crimes. In corruption cases, confiscation has more complex characteristics than other conventional crimes. Corruption not only attacks the interests of specific individuals but also harms state finances and ultimately harms the wider community. Public funds that should be used for infrastructure development, education, health care, and public services are instead misappropriated for the benefit of certain individuals or groups. Therefore, eradicating corruption cannot simply focus on punishing perpetrators through imprisonment but must also be directed at recovering state losses as a form of protection for the public interest. On this basis, confiscation in corruption cases is positioned not merely as an additional punishment, but as a strategic instrument in recovering state assets. Through this mechanism, the state can reclaim assets obtained by the perpetrator through corruption, as well as other assets of equivalent value to the state's losses. Thus, confiscation has two dimensions: a repressive dimension, as it eliminates the profits from the crime, and a restorative dimension, as it restores the state's financial losses. (Chazawi, 2017; Sutan Remy Sjahdeini, 2017).

From a legal perspective, the main legal basis for confiscation in corruption cases in Indonesia is regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption. Important provisions regarding additional penalties are contained in Article 18 paragraph (1), which states that in addition to additional penalties as referred to in the Criminal Code, perpetrators of corruption crimes may be subject to additional penalties in the form of confiscation of tangible or intangible movable property, immovable property,

used for or obtained from the crime of corruption, including the company owned by the convict where the crime was committed, as well as the price of the goods that replace these goods. The formulation of Article 18 shows that the legislators provide judges with sufficient room to impose confiscation. Confiscation is not only aimed at goods that directly originate from the crime of corruption, but also replacement goods originating from the conversion of the proceeds of corruption. For example, if the money from corruption has been used to buy a house, vehicle, shares, or transferred to another form of asset, then the replacement assets can still be confiscated. This construction is important because perpetrators of corruption generally try to disguise the proceeds of crime through various forms of transactions and changes of ownership.

In addition to confiscation of assets, Article 18 also stipulates an additional penalty in the form of payment of compensation equal to the amount of assets obtained from corruption. This provision emphasizes that recovery of state losses can be achieved through two channels: the confiscation of assets resulting from corruption and the obligation to pay an amount equal to the proceeds of corruption. If the convict fails to pay compensation within a certain period after the verdict has become final and binding, the prosecutor has the authority to confiscate and auction off the convict's assets to cover this obligation. From a criminal law perspective, this provision demonstrates a close relationship between confiscation and state losses. State losses arising from corruption serve as the basis for the state's legitimacy to demand restitution through additional criminal mechanisms. The state, as the injured party, has the right to receive compensation for real and measurable losses. Therefore, confiscation in corruption cases cannot be separated from the objective of recovering state losses.

State losses are defined in various laws and regulations as a real and definite shortage of money, securities, or goods resulting from unlawful acts, whether intentional or negligent. Therefore, in corruption cases, proving state losses is crucial. Without clear evidence of state losses, it is difficult to determine the extent to which additional penalties in the form of confiscation or replacement money can be imposed proportionately. In judicial practice, the determination of state losses is generally based on audit results or calculations by authorized institutions, such as the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BAPPEDA), or the testimony of competent experts. The value of state losses proven in court then becomes the primary reference in determining the amount of replacement money and the relevance of confiscated assets. Therefore, the relationship between confiscation and state losses is not an abstract one, but rather a concrete and measurable legal relationship.

In addition to its restorative function, confiscation also serves a preventive function. One reason corruption persists is because the economic benefits outweigh the risks faced by perpetrators. If perpetrators are only sentenced to prison but are still able to conceal or enjoy the proceeds of their corruption, the deterrent effect is weakened. Conversely, if the state can recover all the economic benefits from corruption, the appeal of corruption is significantly reduced. In this regard, confiscation serves as an important deterrent in anti-corruption policies. However, confiscation should not be applied without limits. A state governed by the rule of law requires that any confiscation of a person's property must have a clear legal basis, be carried out through a legitimate judicial process, and be limited by the principle of proportionality. The state only has the right to confiscate assets related to the crime or other assets legally designated as means of fulfilling the obligation to pay compensation. The state may not arbitrarily confiscate all of a convict's assets without considering the source of the assets' acquisition and their relationship to the crime. (Prasetyo, 2018; Prodjodikoro, 2016).

Furthermore, in many corruption cases, there is often a problem of assets being mixed between the proceeds of crime and the perpetrator's legitimate assets. For example, the proceeds of corruption are used as additional business capital, to purchase property with a partner, or mixed with other legitimate income. In such circumstances, the application of confiscation requires caution to avoid harming the rights of other parties acting in good faith. Therefore, the legal construction of confiscation must always consider the principles of justice and the protection of property rights. Therefore, it is understandable that confiscation as a substitute for state losses in corruption cases is a legal instrument that holds a central position in the corruption eradication system in Indonesia. Conceptually, this punishment aims to eliminate the profits from crime and recover state losses. Legally, the legal basis is provided in the Corruption Eradication Law. Practically, the effectiveness of confiscation depends heavily on the state's ability to prove state losses, trace assets obtained from corruption, and execute decisions fairly and proportionally. Therefore, confiscation cannot be viewed merely as a complement to the principal penalty, but rather as a primary instrument in achieving substantive justice in corruption cases. Through appropriate confiscation, the state can recover the losses suffered, the perpetrator loses the economic benefits of the proceeds of crime, and the community regains its collective rights to misappropriated state funds. This is the essence of the relationship between criminal confiscation and state losses in Indonesia's corruption legal system.

2. Forms of Criminal Construction of Confiscation from the Perspective of Due Process of Law

Criminal confiscation in corruption cases is essentially a legal instrument used by the state to eliminate the economic benefits obtained by perpetrators through unlawful acts. In law enforcement practice, criminal confiscation does not stand as a single concept, but rather has several forms of construction that have evolved according to the needs of corruption eradication. This development indicates that the Indonesian criminal law system is no longer solely oriented towards corporal punishment of perpetrators, but also places asset recovery and restitution of state losses as an important part of the objectives of punishment. In general, the first form of criminal confiscation is the direct confiscation of goods or assets proven to be the proceeds of corruption. In this model, the state takes over goods that are clearly derived from the proceeds of crime, for example, cash from bribes, funds from project mark-ups still held in certain accounts, vehicles purchased with corrupt funds, houses obtained from criminal proceeds, or other valuables that can be proven to originate from crime. This direct confiscation model is, in principle, the most ideal, because the state confiscates the proceeds of crime itself and returns them to the public interest. (Hiariej, 2020; Hamzah, 2019).

Direct confiscation requires clear evidence of the connection between the assets and the crime. Prosecutors must be able to demonstrate that the assets originated from corruption, were used to commit corruption, or are closely related to the crime. Without such evidence, confiscation will be difficult to justify legally. Therefore, the ability of law enforcement officials to conduct asset tracing is a crucial factor in the success of this model. In practice, direct confiscation often faces obstacles because the proceeds of corruption are not always kept in their original form. Corruptors generally have the ability to conceal their proceeds through various means, such as transferring funds to other accounts, purchasing assets in the name of third parties, converting cash into property, investing funds in companies, or transferring funds abroad. As a result, the connection between assets and the crime becomes more difficult to prove. This situation has led to the development of this second form of criminal confiscation.

The second form of criminal confiscation is the seizure of other assets belonging to the convict as a means of fulfilling the obligation to pay compensation. In this model, if the convict fails to pay the compensation as ordered by the court within the specified time period, the prosecutor, as executor, has the authority to seize the convict's assets for auction. The proceeds from the auction are then used to cover unpaid state losses. This second model is important because many corruption cases show that the proceeds of crime have been used up, transferred, or disguised in such a way that they are difficult to locate. If the law only permits the direct confiscation of remaining corruption proceeds, many perpetrators will escape the obligation to



recover state losses. Therefore, confiscation of replacement assets is a rational and necessary form of legal construction.

In addition to these two main forms, modern legal developments also recognize the confiscation of assets whose value is equivalent to the proceeds of a crime, even if they cannot be proven to be the direct result of corruption. This approach essentially emphasizes the principle that perpetrators should not enjoy the economic benefits of their crimes. However, the application of this model must be carried out with great care to avoid conflicting with the principles of legality and the protection of property rights. The existence of several forms of confiscation demonstrates that criminal law on corruption is shifting from a traditional approach to a criminal economic approach. The state not only imprisons perpetrators but also cuts off the financial benefits that are the primary motivation for corruption. Thus, confiscation becomes an important instrument in creating a real deterrent effect.

Although the state has the authority to confiscate assets, this authority is not absolute. In a state governed by the rule of law, any action that restricts a person's property rights must comply with the principle of proportionality. The principle of proportionality requires a balance between the objectives the state seeks to achieve and the extent of the restriction on citizens' rights. In the context of criminal confiscation, the assets seized must be proportional to the amount of state losses or profits obtained by the perpetrator from the crime. The principle of proportionality is crucial because confiscation affects a person's constitutionally protected property rights. While the state has the right to recover losses suffered due to corruption, it is not permitted to confiscate assets beyond the limits necessary for that purpose. If the state confiscates assets worth significantly more than the state's losses without a clear legal basis, such action has the potential to constitute excessive punishment. (Prasetyo, 2018; Prodjodikoro, 2016).

For example, if state losses are proven in court to be five billion rupiah, but the state confiscates and auctions off assets worth twenty billion rupiah without a mechanism for reimbursing the difference, a question of justice arises. In such circumstances, the state not only recovers the losses but also gains excess benefits from the criminal process. This contradicts the principle that the purpose of criminal confiscation is recovery, not enrichment. The principle of proportionality is also important to apply to objects of confiscation, such as immovable assets such as land and buildings. These assets generally experience an increase in value over time. Often, assets are confiscated during the investigation stage when their value is equivalent to the state's losses. However, once the verdict becomes final and enforceable several years later, their value increases sharply. If the entire sale proceeds are remitted to the state without



recalculation, there is a high likelihood of an imbalance between the confiscated value and the actual state losses. (Prasetyo, 2018; Prodjodikoro, 2016).

In addition to proportionality, the implementation of criminal confiscation must be based on the principle of due process of law. This principle is a fundamental element in a state based on the rule of law, requiring that all state actions against citizens be carried out through legal procedures that are legitimate, fair, and verifiable. Asset confiscation, as a form of limiting a person's property rights, cannot be carried out arbitrarily but must be based on law and court decisions. In the context of criminal confiscation, due process of law comprises at least several important elements. First, there must be a clear legal basis regarding the type of assets that can be confiscated. Second, there must be an objective investigation and evidentiary process regarding the relationship of assets to the crime of corruption. Third, the defendant must be given the opportunity to defend themselves and refute the prosecutor's arguments. Fourth, the decision regarding confiscation must be made by an independent and impartial judge. Fifth, legal remedies must be available to any party who feels aggrieved. (Harahap, 2016).

This principle is crucial because in corruption cases, assets are often formally registered in the name of another party, such as a spouse, child, family member, business partner, or specific company. These assets are often obtained from a mix of legitimate income and proceeds of crime. In such circumstances, the state cannot simply seize assets based solely on the suspicion that they are connected to the convict. A fair evidentiary process must be in place to ensure that the rights of well-intentioned third parties are not violated. Furthermore, due process of law demands transparency and accountability in the management of confiscated assets. Highly valuable confiscated assets, such as land, buildings, luxury vehicles, or shares, must be managed professionally to prevent damage, loss, or depreciation during the legal process. The state is not simply required to confiscate; it is also obligated to maintain the economic value of these assets until the verdict can be executed. (Harahap, 2016).

From a modern criminal law perspective, the balance between effective corruption eradication and human rights protection is crucial. The state is indeed required to be firm against corruptors, but this firmness must not sacrifice the fundamental principles of the rule of law. Eradicating corruption that ignores legal procedures has the potential to lead to new abuses of power. Therefore, confiscation must be placed within a just legal framework. The state is granted broad authority to recover assets obtained through corruption, but this authority is limited by the principles of legality, proportionality, and due process of law. Thus, restitution of state losses can be achieved without diminishing the protection of citizens' fundamental rights.

From this description, it can be understood that the forms of confiscation in corruption cases include direct confiscation of the proceeds of crime and confiscation of other assets as compensation. Both forms are legitimate and necessary as long as they are implemented proportionally and through proper legal procedures. By placing the principles of proportionality and due process of law as the primary foundation, confiscation will be an effective instrument in eradicating corruption while remaining in line with the values of the rule of law. (Harahap, 2016).

3. Current Legal Construction Issues and Ideal Construction in the Future

Although criminal confiscation is regulated in various laws and regulations, its practical application in Indonesia still faces various normative and technical issues. One major issue is the lack of uniform parameters regarding the valuation of confiscated assets. In practice, valuations of land, buildings, vehicles, shares, or other assets can vary depending on the appraisal method used. As a result, the value of confiscated assets often gives rise to disputes. Another issue is the lack of detailed regulations regarding excess auction proceeds if the value of confiscated assets exceeds the amount of compensation or state losses. In a number of cases, auctioned assets have generated a value greater than the amount of compensation or state losses. However, positive law does not yet provide a clear mechanism for determining whether this difference belongs to the state or must be returned to the convict or other entitled parties. Furthermore, court decisions regarding additional penalties are still inconsistent. Some decisions simply state "confiscated for the state," without specifying whether the confiscation is the proceeds of crime or as compensation. Conversely, others explicitly state that assets are confiscated and auctioned to cover compensation. This disparity creates uncertainty during the execution phase.

Another problem is the weak asset tracking and management system. Many confiscated assets experience a decline in value, are damaged, or become unproductive during the legal process. However, the success of asset recovery is determined not only by court decisions but also by the state's ability to maintain the assets' economic value from the confiscation stage to execution. Therefore, the ideal construction of criminal confiscation in the future must be built on the principles of clear norms, proportionality, and effectiveness. First, there is a need for clear regulations regarding the classification of assets subject to confiscation, asset valuation mechanisms, and auction procedures. Second, clear provisions are needed regarding excess proceeds from asset sales to avoid injustice. Third, court decisions must be formulated explicitly regarding the purpose of confiscation. Fourth, an integrated asset tracing, asset management, and asset recovery system must be established between investigators, public

prosecutors, courts, and asset management institutions. Fifth, protection for good-faith third parties must be strengthened through a special objection or lawsuit mechanism. With this construction, criminal confiscation as a substitute for state losses will truly function as an effective instrument for recovering state finances while respecting the principles of the rule of law. The state recovers its losses, the perpetrator loses the benefits of corruption, and the fundamental rights of citizens remain protected. This is the essence of the ideal criminal penalty for confiscation in corruption cases in Indonesia.

Mechanism for Imposing Additional Criminal Sentences in the Form of Asset Confiscation in Corruption Cases Based on the Due Process Model

1. The Urgency of Imposing Additional Criminal Sentences of Asset Confiscation

The additional penalty of asset confiscation in corruption cases is a crucial instrument in the modern law enforcement system. Imprisonment for corruption perpetrators is often insufficient to achieve the goal of punishment if the proceeds of the crime remain in the hands of the perpetrator or other related parties. In many cases, the primary focus of corrupt perpetrators is to obtain economic gain through abuse of office, budget misappropriation, bribery, gratuities, or other forms of malfeasance. Therefore, if these economic gains are not addressed by law, punishment loses its substantive meaning because the perpetrator can still enjoy the proceeds of the crime. Therefore, the additional penalty of asset confiscation is highly urgent in eradicating corruption. Asset confiscation aims to eliminate the economic benefits of the proceeds of the crime, recover state losses, prevent the perpetrator from enjoying the proceeds of the crime, and create a deterrent effect for the perpetrator and other potential perpetrators. Therefore, this additional penalty is not merely a supplement to the primary penalty but an integral part of the national strategy for eradicating corruption. (Suhariyanto, 2020; Chazawi, 2017).

However, because asset confiscation directly relates to a person's ownership rights, its implementation must be carried out carefully and in accordance with the principle of due process. This principle emphasizes that every state action against a citizen's rights must be carried out according to the law, through fair, rational, transparent procedures, and can be tested in court. The state cannot confiscate a person's assets solely based on prejudice or the interests of law enforcement; it must go through a legitimate evidentiary process. The mechanism for imposing additional penalties in the form of asset confiscation begins at the investigation stage. At this stage, investigators have the authority to trace the suspect's assets to identify assets derived from corruption or assets that can be used to cover state losses. Asset tracing is crucial because in practice, corruptors often hide the proceeds of their crimes



through bank accounts, investments, shell companies, property purchases, or transfers to third parties. (Suhariyanto, 2020; Chazawi, 2017).

From a due process perspective, asset tracing must be conducted based on sufficient preliminary evidence and legal procedures. Every action, including opening account data, requesting financial documents, examining land certificates, blocking accounts, or conducting searches, must have a clear legal basis. Investigators must not act arbitrarily under the pretext of eradicating corruption, as the principle of the rule of law still requires limits on authority. If there is a strong suspicion that an asset is linked to a criminal act of corruption, investigators can confiscate it. This confiscation is carried out to prevent the asset from being diverted, sold, lost, moved, or disguised during the legal process. However, confiscation is not a final seizure. It is merely a temporary measure, a provisional measure, until the court decides on the asset's legal status.

Once the case file is declared complete, the next stage is prosecution. At this stage, the public prosecutor plays a central role in formulating additional criminal charges in the form of asset confiscation. In the indictment and charges, the prosecutor is required to explain in detail which assets are being sought for confiscation, their location and status, their economic value, the legal basis for the confiscation request, and their relationship to the alleged corruption crime. The burden of proof at this stage remains with the state through the public prosecutor. The prosecutor must be able to prove that the assets are the proceeds of corruption, tools used to commit the crime, or other property belonging to the defendant that can legally be seized to pay compensation. Within the due process model, the defendant retains the right to refute all of the prosecutor's arguments, present counter-evidence, and explain the origin of the assets. Therefore, the investigation and prosecution stages are crucial in determining the validity of additional criminal charges in the form of asset confiscation. (Suhariyanto, 2020; Chazawi, 2017).

2. Stages of Trial and Court Decision

The trial stage is the primary arena for testing the legality and legitimacy of additional criminal charges in the form of asset confiscation. At this stage, the judge is tasked with objectively and impartially assessing all evidence presented by the public prosecutor and the defendant. The judge may not simply accept the prosecutor's demands, but must instead determine whether the assets requested for confiscation are truly related to the corruption crime or can be used as compensation. (Suhariyanto, 2020; Chazawi, 2017). (Law Number 8 of 1981 concerning the Criminal Procedure Code).

Within the due process model, trials must ensure the principle of a fair trial. The defendant has the right to be represented by legal counsel, to examine and respond to evidence presented by the public prosecutor, to present witnesses and experts, and to present a defense. Furthermore, if a third party claims ownership of confiscated assets, the judge must provide them with the opportunity to express their objections. Judges must be especially careful regarding assets acquired before the crime, inherited assets, marital property, or assets owned by a third party acting in good faith. Without thorough investigation, asset confiscation can lead to injustice and violate legitimate ownership rights. Therefore, proving the origin and ownership of assets is a crucial aspect of the trial. (Suhariyanto, 2020; Chazawi, 2017).

If the investigation proves there is sufficient legal basis, the judge may impose an additional penalty in the form of asset confiscation in his/her decision. However, such a decision must comply with the principle of proportionality, namely a balance between the value of the confiscated assets and the amount of state losses or profits obtained by the defendant from the corruption crime. The state has the right to recover losses, but is not permitted to obtain excessive profits from the criminal process. Therefore, the verdict must be formulated clearly. The judge must clarify whether the assets were confiscated because they were the proceeds of crime, tools for committing the crime, or confiscated to cover the payment of compensation. This clarity is important to avoid multiple interpretations during the decision implementation stage. (Suhariyanto, 2020; Chazawi, 2017). (Prasetyo, 2018; Prodjodikoro, 2016).

Once the verdict has permanent legal force, the next stage is the execution of the verdict by the prosecutor as executor. Assets declared confiscated can be sold through an auction mechanism in accordance with applicable law. The auction proceeds are then deposited with the state or used to cover the obligation to pay compensation. From the perspective of the due process model, the execution stage must also be carried out transparently and accountably. The state is obliged to maintain the economic value of the assets during the confiscation period until the auction. Assets must not be damaged, lost, illegally transferred, or sold below market value due to official negligence. Furthermore, if the value of the auction proceeds exceeds the amount of the obligation to be recovered, a fair legal mechanism must be in place to address the excess value. Therefore, the trial, sentencing, and execution stages are an inseparable series. All three must proceed based on fair procedural law so that the additional penalty of confiscation of assets truly becomes a legitimate and just instrument for recovering state losses.

3. Protection of the Rights of the Defendant and the Ideal Model for Sentencing Asset Confiscation in Indonesia

One of the key characteristics of the due process model is the balanced protection of the state's interests in enforcing the law and the individual rights of citizens. In corruption cases, the state has a significant interest in recovering state financial losses and firmly prosecuting perpetrators. However, the spirit of eradicating corruption must not be carried out by ignoring the principles of the rule of law. Any action that affects a person's property rights, particularly the seizure and confiscation of assets, must be carried out through legal, proportionate mechanisms that respect human rights. Asset confiscation is essentially a form of state intervention in a person's property rights. Therefore, such action cannot be separated from the state's obligation to provide legal protection to those affected, both the defendant and third parties with legal ties to the assets. If legal protection is ignored, the additional penalty of asset confiscation has the potential to transform from an instrument of justice into a tool for abuse of power. (Suhariyanto, 2020; Chazawi, 2017). (Chazawi, 2017; Sutan Remy Sjahdeini, 2017). (Harahap, 2016; Hiariej, 2020).

In the context of defendants, legal protection must begin from the early stages of the criminal process. Defendants have the right to clearly know what assets have been seized, the reasons for the seizure, the legal basis for the seizure, and the assets' connection to the alleged crime. This transparency is essential for defendants to prepare an effective defense. The state may not seize a person's assets secretly or without proper notification, as this violates the principle of transparency in the legal process. In addition to the right to know, defendants also have the right to refute law enforcement's arguments regarding the origin of assets. Not all assets owned by a person being investigated in a corruption case can be considered proceeds of crime. A person may possess assets derived from legitimate businesses, inheritances, gifts, legal investments, professional income, or assets acquired before the crime occurred. Therefore, defendants must be given full opportunity to present legal evidence regarding the ownership and source of assets.

The right to legal assistance is also an important part of protecting defendants. Asset confiscation cases often involve complex issues, such as tracing financial transactions, company ownership structures, land and building status, and assessing the economic value of an asset. Without adequate legal counsel, defendants potentially lose the ability to effectively defend their rights. Therefore, access to legal counsel is a crucial requirement for achieving a fair trial. Furthermore, defendants have the right to receive a clear, rational, and accountable decision. When imposing an additional penalty of asset confiscation, judges must fully outline their rationale, including the relationship of the asset to the crime, the legal grounds for the confiscation, and the value of the seized assets. A decision that is vague or does not explain



the rationale for the decision will create legal uncertainty and complicate the execution of the sentence. (Suhariyanto, 2020; Chazawi, 2017).

Besides protection for the accused, another aspect that often receives less attention is protection for third parties. In the practice of enforcing corruption laws, many confiscated assets are linked to the interests of parties not involved in the crime. For example, joint marital property, assets of companies with multiple shareholders, goods pledged as collateral to banks, or assets transferred to a good-faith buyer before the criminal process begins. If the state confiscates these assets without providing the third party with an opportunity to defend their rights, this action can create further injustice. Third parties who were not involved in the crime could lose their assets as a result of criminal proceedings directed against others. Such a situation clearly contradicts the principles of justice and the principle of personal liability in criminal law, namely that criminal responsibility should be imposed on the perpetrator, not the innocent party.

Therefore, the asset confiscation mechanism must provide legal space for third parties to file objections. Third parties need to be given the opportunity to provide evidence that the seized assets are their legitimate property, were obtained through legal transactions, and are unrelated to corruption. This objection mechanism can be pursued in criminal court or through a separate procedure in accordance with applicable procedural law. Protection for the accused spouse is also important. In the Indonesian legal system, the concept of joint marital property is recognized. Not all assets registered in the name of one spouse automatically become the personal property of the party committing the crime. If assets that are joint property are to be confiscated, it must first be determined which portion can legally be attributed to the proceeds of corruption and which portion belongs to the spouse not involved in the crime. (Suhariyanto, 2020; Chazawi, 2017).

Likewise, financial institutions such as banks or other creditors hold collateral rights over an asset. If the seized asset is being used as a mortgage, fiduciary, or other form of security, the creditor's rights must be considered. The state cannot ignore legitimate civil relations simply because the asset is involved in a criminal case. A fair settlement must be sought to protect both the state's and the creditor's interests. In addition to protecting rights, the ideal model for asset confiscation also demands professionalism in the management of confiscated assets. In practice, many assets lose their value drastically during the legal process due to neglect, damage, neglect, or unproductive conditions. Vehicles can become damaged due to prolonged storage, buildings can lose value due to lack of maintenance, and companies can even go

bankrupt if their assets are frozen for too long. This situation is detrimental to all parties, including the state itself. (Suhariyanto, 2020; Chazawi, 2017).

4. CONCLUSION

The criminal construction of confiscation as a substitute for state losses in corruption cases in Indonesia is a form of additional punishment that functions strategically in the corruption eradication system. This punishment is not only intended to punish the perpetrator, but also as a means of recovering state financial losses resulting from corrupt acts. The legal basis is found in the Corruption Eradication Law, which authorizes judges to confiscate assets obtained from corruption, tools used in the crime, and other property belonging to convicts to meet restitution payments. Thus, the criminal confiscation is oriented towards eliminating the profits from crime, returning state assets, and creating a deterrent effect. However, its application must remain guided by the principles of legality, proportionality, legal certainty, and protection of property rights to prevent arbitrary action by the state. (Suhariyanto, 2020; Chazawi, 2017).

The mechanism for imposing additional penalties of asset confiscation in corruption cases based on the due process model must be carried out through legal, fair, and accountable procedural stages from the investigation to the execution of the verdict. During the investigation stage, assets are tracked and confiscated based on sufficient evidence. Then, during the prosecution stage, the prosecutor proves the connection between the assets and the crime in court. The judge then examines the case objectively while still guaranteeing the defendant's right to defend himself and the rights of third parties acting in good faith. If proven valid, the judge can impose additional penalties in the form of asset confiscation proportional to the value of the state's losses or the obligation to pay compensation. Once the verdict is legally binding, execution must be carried out transparently and professionally. Therefore, the due process model approach is an important foundation for effective asset confiscation to recover state losses while upholding the principles of the rule of law and justice. (Suhariyanto, 2020; Chazawi, 2017).

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