

LEGAL ASPECT OF EVIDENCE MANAGEMENT IN CORRUPTION CRIMES: AN OVERVIEW

ADHING TEDHALOSA¹, HIBNU NUGROHO², AGUS RAHARJO², AZMI SYAHPUTRA³, ANNISA DIAN ARINI⁴

Student of Doctor of Law Program, Universitas Jenderal Soedirman¹

Universitas Jenderal Soedirman²

Universitas Tri Sakti³

Universitas Islam Negeri Sunan Kalijaga⁴

adhing.tedhalosa@mhs.unsoed.ac.id¹

hibnu.nugroho@unsoed.ac.id agus.raharjo@unsoed.ac.id²

azmi@trisakti.ac.id³

annisa.arini@uin-suka.ac.id⁴

Abstract - Management of confiscated productive assets is a challenge in evidence handling from criminal proceeds such as corruption and money laundering. This study aimed to identify the essence of asset confiscation in corruption crimes, to evaluate the model of confiscated asset management in the corruption proceeds, to study the urgency of managing confiscated asset, and to formulate the management of confiscated assets, particularly the productive assets in the handling corruption cases in Indonesia. The research carried out through literature study. The objects include the regulations, journals and books. The research found that management of confiscated assets is important from two perspectives: to avoid asset value depreciation and to improve asset usefulness. However, currently the regulations needed to conduct management (and utilization) of confiscated assets is still lacking. Management of confiscated assets is limited to safekeeping and maintenance. Management and utilization of confiscated productive assets is expected to benefit the nation, such as to improve recovery potential of the nation's losses. However, several considerations need to be taken into account in managing the confiscated assets, including the funding and organizational capacity. Therefore, a proper strategy formulation is needed to carry out appropriate management practice for the confiscated assets, such as: determining management priorities, arrangement of legal policies, directives and organizational structures.

Keywords: benefit; confiscation; nation's interest; policies; strategy

INTRODUCTION

Corruption is a serious problem that draws public attention all over the world. Corruption is an action that could harm many parties, and even have systemic impact to the nation.¹ Therefore, corruption is categorized as an extraordinary crime. Corruption is a criminal activity that includes various acts which are described in the Law no. 31 of 1999 concerning The Eradication of Corruption Crimes and Law no. 20 of 2001 concerning the Amendments to Law no. 31 of 1999 concerning The Eradication of Corruption Crimes, such as:

- a. The acts to enrich oneself, other people, or corporations that harm the nation's financial or nations' economic (article 2 Law No. 31 Year 1999).

¹ Maulana Agus Salim, 'Judicial Analysis of Law Enforcement by the Attorney General in Republic of Indonesia on the Corruption Case of Jiwasraya Insurance Based on Law Number 40 on 2014 about Insurance', *JHR (Jurnal Hukum Replik)*, 10.1 (2022), 60-83 <<https://doi.org/10.31000/jhr.v10i1.5689>>; Aknolt Kristian Pakpahan, Albert Triwibowo, and Raden Roro Mirna Astari Magetsari, 'Pemberantasan Korupsi Dan Kemauan Politik Di Indonesia', *Jurnal Pertahanan & Bela Negara*, 3.1 (2018), 37-68 <<https://doi.org/10.33172/jpbh.v3i1.375>>.



b. The act of abusing the authority, opportunity, or facilities available to him/her due to his/her position or standing with the aim of benefiting oneself, other people or corporation which harm the nation's financial or nations' economic (article 3 law No. 31 Year 1999).

c. Accepting gifts or promises so that civil servants or state administrators acts or neglect to act in his/her position which is contradictive to his/her obligation (article 5 section 2 Law No. 20 Year 2001).

d. Accepting gifts or promises while it is known or should be suspected that the gifts or promises were given due to his/her position or authority related to his/her position (article 11 Law No. 20 year 2001).

Corruption is a serious problem in Indonesia. Viewed from the aspect of development, corruption causes the hampered economic growth and disruption of national integration, as well as encourage political instability.² From the business perspective, corruption becomes the main obstacle in doing business in Indonesia.³ While according to Supandi and Vernia,⁴ corruption leads to the increase of business cost due to the demand for illegal fundings and payments.

Corruption has various forms, actors, and models. However, corruption within the government institutions draws the most public attention. This is because government institution plays important role in the arrangement of public policy. Therefore, the losses caused by corruption is far beyond just the nation's finances. Up until now, the corruption in Indonesia is dominated by the acts of causing harm to the nation's finances with the proportion of 85.78%.⁵ Hampered development of infrastructures and facility, low education and health degree, loss of employment opportunity, and even the environmental damage are the impacts of corruption.⁶

Refer to the reports of Indonesian Corruption Watch (ICW), the corruption in Indonesia has an increasing trend. The record showed that the nation's loss caused by corruption reached 62.931 trillion rupiahs. Unfortunately, only 1.441 trillion could be returned to the nation's treasury.⁷ This shows that the potential of the nation's losses due to corruption that could be recovered is very low.

Many studies have shown that various policy formulations are applied in order to handle corruption cases that creates deterrent effect to the perpetrators. One of the most widely applied policy is the confiscation of assets owned by the corruption perpetrators. Asset confiscation of corruption convicts is an effort made to recover the lost assets/wealth/losses of the nation due to the corruption committed by the corruptors.

Corruption crime is frequently not carried out alone, but tend to be organized and structured.⁸ The organization of corruption crime is an attempt carried out by corruptors to reduce the obstacles in

² Robin Theobald, *Corruption, Development and Underdevelopment* (London: Palgrave Macmillan UK, 1990) <<https://doi.org/10.1007/978-1-349-20430-4>>.

³ Wahyu Widodo, Sapto Budoyo, and Toebagus Galang Windi Pratama, 'The Role of Law Politics on Creating Good Governance and Clean Governance for a Free-Corruption Indonesia in 2030', *The Social Sciences*, 13.8 (2018), 1307-11 <<https://doi.org/10.36478/sscience.2018.1307.1311>>.

⁴ 'Peran Pendidikan Anti Korupsi Dalam Rangka Mewujudkan Pembangunan Nasional Yang Bersih Dari Korupsi', *Research and Development Journal of Education*, 1.2 (2015), 30-37.

⁵ Kurnia Ramadhana, Lalola `Easter, and Diky Anandya, *Laporan Hasil Pemantauan Tren Vonis Tahun 2021* (Jakarta, Indonesia, 2022).

⁶ OECD, *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development* (Paris: OECD, 2015) <<https://doi.org/10.1787/9789264230781-en>>; Aled Williams and Philippe Le Billon, *Corruption, Natural Resources and Development*, ed. by Aled Williams and Philippe Le Billon, *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology* (Cheltenham: Edward Elgar Publishing, 2017) <<https://doi.org/10.4337/9781785361203>>.

⁷ Ramadhana, `Easter, and Anandya.

⁸ Paul Bleakley, 'The Cult of Corruption: Reframing Organizational Frameworks of Police Corruption from a Cultic Perspective', *Deviant Behavior*, 42.5 (2021), 565-77 <<https://doi.org/10.1080/01639625.2020.1741775>>; Yuan Wang, 'Uncertainty, Entrepreneurship, and the Organization of Corruption', *Small Business Economics*, 58.1 (2022), 121-39 <<https://doi.org/10.1007/s11187-020-00402-3>>.



the corruption attempts.⁹ In addition, corruption nowadays also involves the money laundering activity which makes the tracking process more difficult.¹⁰ Corruptors generally obtained a large sum of money through unreasonable way, so they feel the need to hide the source of the assets they have through money laundering.¹¹ Through the money laundering, the assets would appear like they were obtained through legal means.¹²

Corruption crimes are typically accompanied by the increase of the perpetrator's (corruptor's) assets. Therefore, the assets of the corruptors could be used as evidence in corruption proceeds. The evidence of corruption crimes, especially in the form of assets could be an important component in disclosing corruption cases. Generally, financial transaction is used as the underlying information in carrying out enquiry on corruption crimes.¹³ Unfortunately, corruptors frequently perform money laundering for their corruption gains by purchasing and disguising their assets.¹⁴ Thus, the financial transactions and the assets of corruptors could be taken as evidence in the investigation of corruption crimes.

The evidence seized from the process of crime disclosure needs to be stored and maintained for its authenticity, so that it could be used in the trial process. Unfortunately, the seizure is frequently not followed by appropriate handling. This could result in the decline of the seized assets. On the other hand, in some cases, the impact of evidence seizure from corruption cases also includes socio-economic factors. This generally occurs to the productive assets.

The handling of corruption cases generally involves the effort to recover the nation's losses through the payment of compensation or confiscation of defendant's assets.¹⁵ The recovery of the nation's losses due to corruption crimes could be done voluntarily by the defendants or through asset confiscation if the defendant is unwilling to pay the compensation voluntarily. Asset confiscation is important in proceeding the corruption cases, because the punishment alone is not effective in overcoming the corruption problems.¹⁶ Asset confiscation in corruption crimes is applied based on the assumption that people who commits crimes would always take into account the profits and losses

⁹ Kim K. Jeppesen, 'The Role of Auditing in the Fight against Corruption', *The British Accounting Review*, 51.5 (2019), 100798 <<https://doi.org/10.1016/j.bar.2018.06.001>>.

¹⁰ Ana Fauzia and Fathul Hamdani, 'Analysis of the Implementation of the Non-Conviction-Based Concept in the Practice of Asset Recovery of Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence', *Jurnal Jurisprudence*, 11.1 (2022), 57-67 <<https://doi.org/10.23917/jurisprudence.v11i1.13961>>.

¹¹ Muhammad Usman Kemal, 'Anti-Money Laundering Regulations and Its Effectiveness', *Journal of Money Laundering Control*, 17.4 (2014), 416-27 <<https://doi.org/10.1108/JMLC-06-2013-0022>>.

¹² Yasmirah Mandasari Saragih, 'The Efforts of Eradication of Corruption through Instruments of Money Laundering Law and Return Actors' Assets', in *The 2nd Proceeding "Indonesia Clean of Corruption in 2020"* (Semarang: Unissula Press, 2016), pp. 276-86.

¹³ Olukayode Abayomi Sorunke, 'Forensic Accounting Investigation Techniques and Successful Prosecution of Corruption Cases in Nigeria', *International Journal of Academic Research in Accounting, Finance and Management Sciences*, 8.3 (2018) <<https://doi.org/10.6007/IJARAFMS/v8-i3/4450>>; Budi Saiful Haris, 'The Importance of Company Ownership and Business Transaction Data Integration in Supporting the Efforts to Prevent and Eradicate Corruption in Indonesia', *Asia Pacific Fraud Journal*, 1.1 (2017), 71 <<https://doi.org/10.21532/apfj.001.16.01.01.06>>.

¹⁴ Alexander Cooley and J. C. Sharman, 'Blurring the Line between Licit and Illicit: Transnational Corruption Networks in Central Asia and Beyond', *Central Asian Survey*, 34.1 (2015), 11-28 <<https://doi.org/10.1080/02634937.2015.1010799>>.

¹⁵ Tommy Lyston, 'Restoration for State's Financial Loss as a Countermeasure against Corruption in Indonesia', *International Journal of Social Sciences Perspectives*, 2.2 (2018), 161-64 <<https://doi.org/10.33094/7.2017.2018.22.161.164>>.

¹⁶ Tommaso Trinchera, 'Confiscation and Asset Recovery: Better Tools to Fight Bribery and Corruption Crime', *Criminal Law Forum*, 31.1 (2020), 49-79 <<https://doi.org/10.1007/s10609-020-09382-1>>.



of the crime he/she would commit.¹⁷ Asset confiscation from criminals is an attempt to ensure that crimes committed by criminal would not result in fruition.¹⁸

Assets that are confiscated from corruption crimes frequently includes the productive assets that support the livelihood of many people. Typically, it occurs to the corruption that involved corporation. Confiscation of those productive assets could inflict a social problem of the confiscation is not followed by appropriate management. For example, Operti¹⁹ found that confiscation of mafia's asset in the form of retail network had caused around 500 of its workers to lose their jobs. Therefore, special handling attempt is needed in the confiscation of assets related to public interests.

Assets that are not managed properly would undergo a decline of their economic value. The declined economic value could be caused by the damages or the loss of its *brand value*. In terms of the nation's asset recovery in corruption cases handling, the reduced economic value would create a gap between the expected and actual value.

Currently, the management of confiscated assets (goods) in the handling of corruption crimes in Indonesia is still weak. It is indicated by the lack of policies which regulates the management of confiscated goods/assets, particularly the productive asset. Refer to these problems, this study aimed to identify the essence of asset confiscation in corruption crimes, to evaluate the model of confiscated asset management in the corruption proceeds, to study the urgency of managing confiscated asset, and to formulate the management of confiscated assets, particularly the productive assets in the handling corruption cases in Indonesia.

This research was carried out with a qualitative approach, while the type of the research was phenomenology. The object studied in this research was the management of productive assets confiscated from crimes. The collection of information was carried out through literature study to relevant regulations, journals and books. Data analysis was carried out through narrative method to describe the relevant information found during the research activities.

1. The Essence of Asset Confiscation

Asset confiscation is a strategy proposed as an attempt to suppress corruption crimes.²⁰ Through asset confiscation, the assets of corruptors, particularly that was obtained from the corruption result could be forcefully seized by the nation. Primarily, asset confiscation is functioned to return or recover the nations' wealth and/or assets that was lost due to the corruption crimes committed by the corruptors.²¹ Among the policies that regulates the asset confiscation is the Attorney General's Regulation No. 7 of 2020 concerning The Second Amendment to the Attorney General's Regulation No. Per-027/A/JA/10/2014 concerning The Guidelines for Asset Recovery. Confiscation of assets from

¹⁷ Do Thu Huyen and Vu Cong Giao, 'Asset Recovery in the Fight against Corruption in Vietnam: Problems and Perspective', *Jindal Global Law Review*, 9.1 (2018), 57-74 <<https://doi.org/10.1007/s41020-018-0057-3>>; Hendi Yogi Prabowo, 'To Be Corrupt or Not to Be Corrupt: Understanding the Behavioral Side of Corruption in Indonesia', *Journal of Money Laundering Control*, 17.3 (2014), 306-26 <<https://doi.org/10.1108/JMLC-11-2013-0045>>.

¹⁸ Michaël Fernandez-Bertier, 'The Confiscation and Recovery of Criminal Property: A European Union State of the Art', *ERA Forum*, 17.3 (2016), 323-42 <<https://doi.org/10.1007/s12027-016-0436-1>>.

¹⁹ 'Tough on Criminal Wealth? Exploring the Link between Organized Crime's Asset Confiscation and Regional Entrepreneurship', *Small Business Economics*, 51.2 (2018), 321-35 <<https://doi.org/10.1007/s11187-018-0003-y>>.

²⁰ Thu Thi Hoai Tran and Louis De Koker, "Confiscation of Proceeds of Crime in Vietnam: Improving the Legal Framework," *Journal of Money Laundering Control* 24, no. 2 (July 2021): 215-33, <https://doi.org/10.1108/JMLC-11-2020-0123>; Olusola Joshua Olujobi, "Recouping Proceeds of Corruption: Is There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeria?," *Journal of Money Laundering Control* 24, no. 4 (October 2021): 806-33, <https://doi.org/10.1108/JMLC-09-2020-0107>.

²¹ Yogi Yasa Wedha and Edy Nurcahyo, "Criminal Law Reform toward Deprivation of Property Resulting from Corruption Criminal Acts," *Prizren Social Science Journal* 5, no. 1 (April 2021): 97-103, <https://doi.org/10.32936/pssj.v5i1.207>; Huyen and Giao, "Asset Recovery in the Fight against Corruption in Vietnam: Problems and Perspective."



the corruption crimes could be carried out through two justice pathways, including the *in personam* justice (*in personam forfeiture*) or the *in rem* justice (*in rem forfeiture*).²²

Asset confiscation is a punishment applied in several criminal cases, such as money laundering²³ and tax evasion.²⁴ Money laundering is an act frequently committed by criminals that obtained dirty money (result of criminal activities), including corruption. Among the methods of money laundering conducted by criminals is through assets purchases so that it could be easily transferred through shell companies.²⁵

Asset confiscation is necessary so that corruptors could no longer enjoy the money they obtained from corruption.²⁶ Refer to article 18 paragraph 1 letter (a) of Law No. 31 of 1999 concerning The Eradication of Corruption Crimes, it states that confiscation in the corruption cases could be done to “tangible or intangible movable objects or immovable objects used for or obtained from corruption activities, including the companies owned by convicts where the corruption is committed, as well as the goods that are applicable for replacement.” Therefore, confiscation could also be carried out to the productive assets, including business units owned or business activities done by corruptors.

Although asset confiscation has been widely applied in handling corruption cases, its impact on the recovery of nation’s loss is still ineffective. According to the ICW records in 2021, the nation’s loss caused by corruption crimes reached 62.931 trillion rupiahs, but only 1.441 trillion was recovered to the nation’s treasury.²⁷ This could be due to the cunning strategies used by the corruptors who most likely hide their assets through various means. However, asset confiscation is at least could be a consideration for corruptors to refrain themselves from committing corruption.

Asset confiscation of a crime is not limited to assets available within the nation, but also includes the assets existing in other countries. Cooperation between countries in handling organized transnational crimes could increase the number of assets possible for confiscation.²⁸ This shows that in the future, there would be a greater challenge in the handling and management of the nation’s assets of confiscation results.

The general indication of corruption is the increase of one’s wealth by unreasonable amount.²⁹ Moreover, corruptors typically also carry out money laundering attempt to cover up the sources of the wealth.³⁰ Therefore, tracking and analysis on the assets owned by corruptors is needed in the handling of corruption cases to ensure that the assets was the result of the committed corruption.³¹

²² Arizon Mega Jaya, “Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi (Implementation of Asset Deprivation of Criminal Act of Corruption),” *Cepalo* 1, no. 1 (2017): 19-28, <https://doi.org/10.25041/cepalo.v1no1.1752>.

²³ Giovanni Maria Mazzanti, Giulio Ecchia, and Tamami Komatsu, “Innovative Partnerships for the Utilization of Confiscated Assets Previously Owned by Mafias,” *Social Enterprise Journal* 12, no. 1 (May 2016): 21-41, <https://doi.org/10.1108/SEJ-08-2015-0019>.

²⁴ Rudi Margono et al., “The Urgency of Asset Confiscation Sanction in Tax Crimes,” *International Journal of Research in Business and Social Science* 9, no. 5 (September 2020): 285-93, <https://doi.org/10.20525/ijrbs.v9i5.802>.

²⁵ Kemal, “Anti-Money Laundering Regulations and Its Effectiveness.”

²⁶ Elwi Danil and Iwan Kurniawan, “Optimizing Confiscation of Assets in Accelerating the Eradication of Corruption,” *Hasanuddin Law Review* 3, no. 1 (March 2017): 67, <https://doi.org/10.20956/halrev.v3i1.717>.

²⁷ Ramadhana, Easter, and Anandya, “Laporan Hasil Pemantauan Tren Vonis Tahun 2021.”

²⁸ Fernandez-Bertier, “The Confiscation and Recovery of Criminal Property: A European Union State of the Art.”

²⁹ Hamdan Rampadio, Ana Fauzia, and Fathul Hamdani, “The Urgency of Arrangement Regarding Illicit Enrichment in Indonesia in Order to Eradication of Corruption Crimes by Corporations,” *Jurnal Pembaharuan Hukum* 9, no. 2 (2022): 225-41.

³⁰ Saragih, “The Efforts of Eradication of Corruption through Instruments of Money Laundering Law and Return Actors’ Assets”; Kemal, “Anti-Money Laundering Regulations and Its Effectiveness.”

³¹ Peter Leasure, “Asset Recovery in Corruption Cases,” *Journal of Money Laundering Control* 19, no. 1 (January 2016): 4-20, <https://doi.org/10.1108/JMLC-04-2015-0010>.



Therefore, Trinchera ³² suggested that extended confiscation to the assets that are not directly related to corruption could be carried out as an alternative strategy in asset recovery.

Some literatures showed the importance of extended asset confiscation. Along with the advancement of knowledge, the efforts in asset recovery is also progressing, which enables the confiscation of assets to a wider coverage.³³ Asset confiscation could be extended to properties outside the subject of related crimes if the value of the assets is incomparable to the loss inflicted by the crimes.³⁴

In the context of organized crime such as corruption, the assets owned by the criminals could be transnational.³⁵ This occurred due to the attempt of the criminals to launder the money in order to cover up the committed crimes. This suggestion is in accordance with the research carried out by Kurisbergen et al³⁶ which showed that organized crime actors also invested their wealth in various legal business activities such as housing, real estate, and companies in well-known sectors.

2. Current Model of Asset Management

Management of evidence and confiscated goods is a process that should be carried out in the handling of crime cases. Management of evidence and confiscated goods in Indonesia is currently performed by 3 (three) institutions, including PPA (*Pusat Pemulihan Aset - Asset Recovery Center*) under the Attorney General's Office, RUPBASAN (*Rumah Penyimpanan Benda Sitaan - The House for Storage of Confiscated Goods*) under the Ministry of Law and Human Rights, and LABUKSI (*Pengelolaan Barang Bukti dan Eksekusi - Management of Evidence and Execution*) under the Commission for Corruption Eradication.³⁷

Refer to Article 1 point 16 of the Criminal Code Procedure, confiscation of evidence is carried out during the investigation process.³⁸ This includes the assets suspected as the result of a crime. The goods (assets) from the confiscation process were then stored in the afore mentioned institution, depending on the law enforcement which handle the case. The criteria of goods/objects that could be included as confiscable assets is determined in article 30 paragraph (1) of the Criminal Code Procedure as follows:³⁹

- a. Goods/objects or bills of the suspect or defendant in which the whole or partially alleged to be obtained from criminal activities or as the result of criminal activities;
- b. Goods/objects that have been used directly in committing criminal activities or to prepare criminal activities;
- c. Goods/objects that are used to obstruct the enquiry of criminal activities;
- d. Goods/objects that are particularly made or intended to commit criminal activities;
- e. Other goods/objects that have direct connection with criminal activities.

Goods (assets) confiscated during the enquiry process are goods that are not completely acquired by the nation since the legal status of the suspect is yet to be determined (*inkracht*). Therefore, there

³² Trinchera, "Confiscation and Asset Recovery: Better Tools to Fight Bribery and Corruption Crime."

³³ Johan Boucht, "Asset Confiscation in Europe - Past, Present, and Future Challenges," *Journal of Financial Crime* 26, no. 2 (April 2019): 526-48, <https://doi.org/10.1108/JFC-04-2018-0043>.

³⁴ Fernandez-Bertier, "The Confiscation and Recovery of Criminal Property: A European Union State of the Art."

³⁵ Michael Levi, Peter Reuter, and Terence Halliday, "Can the AML System Be Evaluated without Better Data?," *Crime, Law and Social Change* 69, no. 2 (March 2018): 307-28, <https://doi.org/10.1007/s10611-017-9757-4>.

³⁶ "Profitability, Power, or Proximity? Organized Crime Offenders Investing Their Money in Legal Economy," *European Journal on Criminal Policy and Research* 21, no. 2 (June 2015): 237-56, <https://doi.org/10.1007/s10610-014-9263-5>.

³⁷ Aghia Khumaesi Suud, "Optimization of The Role of Asset Recovery Center (PPA) of The Attorney-General's Office of The Republic of Indonesia in Asset Recovery of Corruption Crime Results," *Jurnal Hukum Dan Peradilan*, 2020, <https://doi.org/10.25216/jhp.9.2.2020.211-231>.

³⁸ Dessy Rochman Prasetyo, "Penyitaan Dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor," *DiH: Jurnal Ilmu Hukum* 12, no. 24 (2016): 149-63, <https://doi.org/10.30996/dih.v12i24.2243>.

³⁹ Prasetyo.



is a possibility that the confiscated goods would need to be returned to its rightful owner. In certain conditions, the confiscated goods should be returned to the most rightful owner as specified in the Article 46 of Criminal Code Procedure, such as:

- a. If actually or objectively the enquiry no longer needs it;
- b. Or if the prosecution is not performed due to insufficient evidence or justified as not a crime.
- c. The case is set aside/deponeer-ed for the public interest (by the Attorney General) or the case is closed for the sake of the law, for *nebis in idem* reason or the suspect/defendant dies or because the charge against the crime is expired, unless if the goods were obtained from a criminal activity or used to commit a criminal activity (article 46 paragraph (1) of Criminal Code Procedure).

Refer to the Attorney General's Regulation No. 7 of 2020 concerning The Second Amendments to the Attorney General's Regulation No. Per-027/A/JA/10/20214 concerning The Guidelines for Asset Recovery, the management conduct of assets is limited to safeguarding and maintenance activities. Based on the regulation, maintenance of assets that requires special treatments is carried out through the involvement of competent institutions. However, the regulation does not cover the conduct for the management of productive assets. Typically, the confiscated assets that functions as the mean of the nation's asset recovery would be auctioned off.

Another regulation that regulates the management of productive assets is the Law No. 31 of 1999 concerning The Eradication of Corruption Crimes. In terms of confiscation in corruption cases with company as the subject, the company would be closed down entirely or partially for 1 (one) year period, as mentioned in the article 18 paragraph 1 letter (c) of Law No. 31 of 1999.⁴⁰ This shows that government concern in the management of confiscated productive assets from a criminal act is still lacking.

3. *Urgency of the Management of Confiscated Goods*

The government needs to have a polity which facilitates the attempt of reutilization of confiscated assets for the nation's and public interest.⁴¹ Asset confiscation is an effort that is carried out to recover the nation's losses inflicted by criminal activities, one of which is corruption. Unfortunately, the assets that could be recovered from the disclosure of corruption cases is still low.⁴² This is caused by the acts of "hiding" the assets committed by other "hidden" parties which result in the difficulties in tracing of assets resulted from corruption.⁴³

In addition of confiscation process, the confiscated assets also need to be well managed. Asset management is needed as an attempt to recover the nation's wealth. This becomes an important process that needs to be conducted in order to maintain the value of confiscated assets, so that the claim could be made according to he estimated value at the time the assets were confiscated.⁴⁴

Assets, whether it's moving nor not moving are objects that has economic value sot that they can be valued. However, the economic value could change, either they decrease or increase. A decrease of asset value could be caused by various factors, such as damages, age, nor production capacity. Asset management is needed because sometimes the assets could not be auctioned off immediately, such as assets that are used or are business facilities such as hotels, factories or docks.⁴⁵

⁴⁰ Danil and Kurniawan, "Optimizing Confiscation of Assets in Accelerating the Eradication of Corruption."

⁴¹ Operti, "Tough on Criminal Wealth? Exploring the Link between Organized Crime's Asset Confiscation and Regional Entrepreneurship."

⁴² Suud, "Optimization of The Role of Asset Recovery Center (PPA) of The Attorney-General's Office of The Republic of Indonesia in Asset Recovery of Corruption Crime Results."

⁴³ Daniel González Uriel, "Money Laundering, Political Corruption and Asset Recovery in the Spanish Criminal Code," *International Annals of Criminology* 59, no. 1 (May 2021): 38-54, <https://doi.org/10.1017/cr.2021.5>.

⁴⁴ Boucht, "Asset Confiscation in Europe - Past, Present, and Future Challenges."

⁴⁵ Boucht.



Management of confiscated asset is not an easy task. Calamunci⁴⁶ noted that decreases of profit and efficiency are found in the confiscated assets. Basically, assets that are confiscated if they are not properly managed would likely have higher potential of being damaged.⁴⁷ Mismanagement, on the other hand, could inflict a great economic loss, in which the case the assets is returned, the nation should bear the compensation of the losses.⁴⁸

Asset management is an important step in unveiling corruption cases. Effective and efficient asset management would generate a great wealth flow.⁴⁹ Therefore, the management of assets in a professional manner unfolds the potential in rendering economic impact from the productivity. In terms of recovery of the nation's losses, this is an important matter to conduct. Management of confiscated assets could be a potential means to recover the nation's losses inflicted by corruption. Aside from the function to recover the nation's losses, asset management could also be performed to improve the productivity of local society. For example is the case of Forli, Italia where confiscated assets from money laundering crime with the subject of agricultural land, was used by local society for farming which produced various agricultural products and provide economic benefits to the society.⁵⁰

According to Mazzanti et al⁵¹ the utilization of confiscated assets is important to do in order to support the social and economic growth. This is because assets that are confiscated due to the proceed of criminal case could be assets that supports the livelihood of many people. The confiscation of productive assets which subjects were companies had been shown by Calamunci,⁵² in which instead of being frozen, the companies belonging to the mafia were taken over. Previously, the research carried out Mosca⁵³ found that tin 2020 there were 2.370 companies from various fields had been seized from the mafia. That was not a small number considering the job vacancies that could be made available for the society. Mazzanti et al⁵⁴ also provided us with an overview regarding the utilization of lands and buildings previously used by mafia in money laundering activity. The confiscated assets were utilized for the public interest, such as community's agriculture with the involvement of competent organizations as assistants.

4. Formulation of Confiscated Asset Management

Utilization of confiscated assets is a challenge in evidence management where pros and cons accompany the effort. Asset management is needed to keep the confiscated asset value from decreasing.⁵⁵ Management is also needed to sustain or even improve its merit to the society socially and economically. However, in order to carry out management on confiscated assets, proper planning and conduct are needed according to the types of assets about to be managed. In the management

⁴⁶ "What Happens in Criminal Firms after Godfather Management Removal? Judicial Administration and Firms' Performance," *Small Business Economics* 58, no. 1 (January 2022): 565-91, <https://doi.org/10.1007/s11187-020-00439-4>.

⁴⁷ Ghufon Ali Wicaksono, "Kajian Empiris Terhadap Pengelolaan Barang Sitaan Negara Dan Barang Rampasan Negara Hasil tindak Pidana Di Rumah Penyimpanan Benda Sitaan Negara Kelas I Surakarta," *Dinamika Hukum* 11, no. 2 (2020): 93-107.

⁴⁸ Boucht, "Asset Confiscation in Europe - Past, Present, and Future Challenges."

⁴⁹ Michele Mosca and Salvatore Villani, "The Reuse for Social Aims of Illegal Assets and the Competition Policy. A New Network Strategy to Defeat Organized Crime," in *Polish International Yearbook of Law & Economics*, ed. J. Beldowski, K. Metelska-Szaniawska, and L. Visscher, 3rd ed. (Monaco: Verlag C. H. Beck, 2012), 1-26.

⁵⁰ Mazzanti, Ecchia, and Komatsu, "Innovative Partnerships for the Utilization of Confiscated Assets Previously Owned by Mafias."

⁵¹ Mazzanti, Ecchia, and Komatsu.

⁵² Calamunci, "What Happens in Criminal Firms after Godfather Management Removal? Judicial Administration and Firms' Performance."

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⁵⁴ Mazzanti, Ecchia, and Komatsu, "Innovative Partnerships for the Utilization of Confiscated Assets Previously Owned by Mafias."

⁵⁵ Boucht, "Asset Confiscation in Europe - Past, Present, and Future Challenges."



attempt, it does not rule out the possibility (necessity) of cooperation with competent external parties.

Currently, there is no adequate legal regulation that regulates the management of confiscated assets, particularly from the proceeds of corruption crimes. This problem is frequently found in the management of confiscated assets where the existing laws and regulations are insufficient to support the attempt.⁵⁶ Whereas, the confiscated assets would become the nation's property when they are concluded as the result of corruption. Therefore, the decline on the asset value inflicted by mismanagement would be a loss to the nation. Thus, formulation of confiscated asset management is needed, particularly related to productive assets obtained from criminal case proceeds, especially corruption.

According to Jaya,⁵⁷ asset confiscation in corruption crimes could be carried out since the enquiry stage. It refers to Article 1 point 16 of Criminal Code Procedure where confiscation is carried out during the enquiry process after the investigation.⁵⁸ Therefore, law enforcement authorities have a long responsibility in handling, maintaining and managing the confiscated assets. On the other hand, the confiscated assets are not allowed to undergo value depreciation until the corruption proceeds is concluded so that the nation would not bear the compensation for value depreciation. In the other side, law enforcement authorities have to calculate the cost of confiscated asset management.

Management of confiscated goods from criminal proceeds also becomes a concern in many countries. The attempt to manage confiscated assets has been applied in European Union. Based on the Confiscation Directive of European Union (2014/42/EU), it is directed that confiscation also involves the clause of managing the confiscated goods, where management is carried out to ensure that the value of the assets is maintained, and if possible, increase the profitability of asset management.⁵⁹

The utilization of confiscated goods from a criminal proceeds was also shown by Picciotto⁶⁰ where assets confiscated from the mafia were used for social innovation. Management of confiscated asset in Italia had been begun in 1996 through the Law No. 109/1996.⁶¹ The Law regulates the confiscation and reutilization for social purposes of assets confiscated from organized crimes.⁶² The Law permits the confiscation of assets and entrustment of its management to civil society organizations for social purposes. The policy was proven to enable the creation of jobs as well as promoting the social, culture and economic growth of local society.⁶³ The utilization of confiscated assets also promotes the growth of entrepreneurship guided by ethics and legality.

In Hungary, the Law XII of 2000 allows the allocation of confiscated assets to the NGO.⁶⁴ While in Italy, the confiscated assets from mafia groups that are returned to the public reached 50% of total assets confiscated by the government.⁶⁵ Asset management through the involvement of society is

⁵⁶ Rosanna Spanò et al., "Accountants' Hybridization and Juridification: A Critical Reflection on the Fight against Organized Crime," *Public Money & Management* 36, no. 6 (September 2016): 441-46, <https://doi.org/10.1080/09540962.2016.1190208>.

⁵⁷ Jaya, "Implementasi Perampasan Harta Kekayaan Pelaku Tindak Pidana Korupsi (Implementation of Asset Deprivation of Criminal Act of Corruption)."

⁵⁸ Prasetyo, "Penyitaan Dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor."

⁵⁹ Boucht, "Asset Confiscation in Europe - Past, Present, and Future Challenges."

⁶⁰ "The Social Innovation of Social Cooperatives Operating on Confiscated Mafia Properties: Support Factors and Critical Issues," in *Proceedings of the MakeLearn and TIIM Joint International Conferences*, ed. V. Dermol et al. (Celje, Slovenia: ToKnowPress, 2015), 543-58.

⁶¹ Mosca, "Policies to Combat Organized Crime in Europe: The Italian Experience."

⁶² Susanne Elsen and Luca Fazzi, "Extending the Concept of Social Farming: Rural Development and the Fight against Organized Crime in Disadvantaged Areas of Southern Italy," *Journal of Rural Studies* 84 (May 2021): 100-107, <https://doi.org/10.1016/j.jrurstud.2021.03.009>.

⁶³ Picciotto, "The Social Innovation of Social Cooperatives Operating on Confiscated Mafia Properties: Support Factors and Critical Issues."

⁶⁴ Picciotto.

⁶⁵ Paolo Esposito and Paolo Ricci, "How to Turn Public (Dis)Value into New Public Value? Evidence from Italy," *Public Money & Management* 35, no. 3 (May 2015): 227-31, <https://doi.org/10.1080/09540962.2015.1027499>.



mainly conducted for social interest.⁶⁶ The involvement of the society could be in direct or indirect forms. However, utilization of confiscated assets for social interest is typically taken as the last resort.

Arrangement of confiscated asset management should be performed before the confiscation is conducted by considering the nature of the assets.⁶⁷ For example, assets that tend to rapidly lose its economic value should be auctioned off immediately so that the loss will not be too large. However, this is only applicable for the assets with clear status (concluded as the nation's property). Therefore, auctions could not be performed for confiscated assets which cases are still in process.

One of the challenges in the management of confiscated asset is the management productive assets that are legally occupied and managed. Other challenges in the management of productive assets includes the existence of third parties who hold partial ownership of the asset.⁶⁸ This is a problem that needs to be reconciled along with the attempt to manage the confiscated asset.

Productive assets are typically managed by people with specific competence in respective fields. Therefore, according Olujobi,⁶⁹ management of confiscated assets requires the cooperation with third parties who have competence in managing the asset since human resource in the law enforcement authorities are lack of required skills to be directly involved in the management. Management of assets which contains business aspect in them could be a challenge for the entrusted agencies.⁷⁰ Managing assets is not an easy task, especially those originated from the confiscation of criminal proceeds. A research by Elsen & Fazzi⁷¹ showed the failure in the management of confiscated asset by civil society where the utilization resulted in losses.

Asset confiscation is basically aimed to benefit the nation and society as much as possible.⁷² However, management of confiscated asset from criminal acts is a complex matter. The main issue that becomes a concern is the attempt to remove the crime elements without affecting the position of the asset in the market.⁷³

Management of confiscated assets required the explication in various aspects. According to Spanò et al.,⁷⁴ there are at least three professional groups required in the attempt of managing confiscated asset, including lawyers, accountants and police. While Cabana⁷⁵ explained that the management method of confiscated assets requires the involvement of relevant authorities and administrator appointed by the court or the owner that acts as escrow agent for confiscated assets. In addition, management of confiscated assets could also be cooperated with or delegated to the local government where the assets are located.⁷⁶

⁶⁶ Stefano Montaldo, "Directive 2014/42/EU and Social Reuse of Confiscated Assets in the EU: Advancing a Culture of Legality," *New Journal of European Criminal Law* 6, no. 2 (June 2015): 195-212, <https://doi.org/10.1177/203228441500600204>.

⁶⁷ Patricia Faraldo Cabana, "Improving the Recovery of Assets Resulting from Organised Crime," *European Journal of Crime, Criminal Law and Criminal Justice* 22, no. 1 (2014): 13-32, <https://doi.org/10.1163/15718174-22012037>.

⁶⁸ Esposito and Ricci, "How to Turn Public (Dis)Value into New Public Value? Evidence from Italy."

⁶⁹ Olujobi, "Recouping Proceeds of Corruption: Is There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeria?"

⁷⁰ Boucht, "Asset Confiscation in Europe - Past, Present, and Future Challenges."

⁷¹ Elsen and Fazzi, "Extending the Concept of Social Farming: Rural Development and the Fight against Organized Crime in Disadvantaged Areas of Southern Italy."

⁷² Prasetyo, "Penyitaan Dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor."

⁷³ Spanò et al., "Accountants' Hybridization and Juridification: A Critical Reflection on the Fight against Organized Crime."

⁷⁴ Spanò et al.

⁷⁵ Cabana, "Improving the Recovery of Assets Resulting from Organised Crime."

⁷⁶ Theodoros Rakopoulos, *From Clans to Co-Ops: Confiscated Mafia Land in Sicily, From Clans to Co-Ops* (New York: Berghahn Books, 2018), <https://doi.org/10.2307/j.ctv8bt1s8>.



Based on the information obtained from the research, there are several considerations that needs to be taken into account in the management of productive assets confiscated during the proceeds of corruption cases, including:

- a. The confiscation of productive assets needs to be followed by professional management practice to avoid the decline of asset value which would inflict other losses to the nation;
- b. The management of productive assets needs the involvement of relevant professional parties (institutions) who are competent in their fields;
- c. The priority in managing the productive assets is for the nation's interest; and
- d. Alternatively, the management of productive assets could be used for the development of local society's social and economic.

Refer to the limitations and obstacles in the management of confiscated assets from criminal proceeds, particularly in the form of productive asset, supporting instruments are needed, including:

- a. Preparation of legal policies regarding the management of confiscated assets;
- b. Arrangement of standard operational procedure, conducts, directive or guidelines in the handling of confiscated productive asset;
- c. Arrangement of organizational structure for the management of productive assets along with the cooperation models.

CONCLUSION

Management of confiscated assets is an important process in handling corruption cases in Indonesia, especially that involves productive assets. The management of productive assets holds the importance in reducing the risk of asset's value depreciation which is potential to inflict additional losses to the nation and to improve its usability in recovering the lost nation's assets due to corruption crimes. Unfortunately, the management of productive assets from the proceeds of corruption cases in Indonesia is still weak. It is shown by the lack of supporting instruments for the management attempt. In fact, productive assets obtained from the confiscation of a crime could benefit the nation and society if they are well utilized. Therefore, formulation of appropriate management strategy for confiscated productive assets is needed, such as the determination of management priorities, involvement of professional organizations (institutions), and preparation of supporting instrument for the management attempt in the form of legal policies, directives and organizational arrangement.

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