Execution of State Seized Property Based on Corruption Conviction Court Decisions Later Burdened with Bank Liens

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Abstract

One of the elements in the crime of corruption is the loss of state finances or the state economy, so that this element is the background for the formation of legislation regarding corruption crimes, both the old regulation, namely Law Number 3 of 1971 and the new regulation, namely Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes which establishes a policy that state financial losses must be returned or replaced by the perpetrators of corruption (asset recovery). When the goods confiscated by the state are free or not encumbered by property guarantees, they can be directly executed by the Prosecutor in accordance with statutory provisions, but legal problems occur when the assets confiscated by the state turn out to be later encumbered by Mortgage Rights by the Bank/creditor after a court decision which in its verdict is "confiscated by the state" because the investigator does not apply for recording of criminal confiscation to the local State Land Agency. This type of research is normative or doctrinal research using a statutory approach and an asset forfeiture concept approach. The results of the research are that the Investigator is obliged to apply for the recording of criminal confiscation to the local State Land Agency regarding the object of the confiscated land, this aims to prevent it from being transferred to other parties or encumbered by Mortgage Rights. The need for the immediate enactment of the Asset Forfeiture Bill in order to recover state losses by perpetrators of corruption through in rem asset forfeiture so that assets that have been transferred or transferred by the perpetrator to other parties can still be confiscated by the state as a decision that has been legally binding (inkrah).

I. Introduction

Currently, corruption has become a common thing to do, even corruption in Indonesia can be said to have been cultured since long ago, both before and after independence, in the era of the Old Order, New Order, and even continued until the Reformation era. Corruption according to Law Number 31 of 1999 concerning the Eradication of Corruption is mentioned as a type of criminal offense that is very detrimental to state finances or the state economy and hampers national development (Kamil, 2013). Corruption has become a serious problem for the Indonesian nation, because it has penetrated into all lines of community life carried out systematically, thus creating a negative stigma for the Indonesian state and nation in the international community (Chaerudin, 2008).

The issue of corruption in Indonesia today continues to grow and flourish like mushrooms in the rainy season, its existence will be very difficult to eradicate if there is no real action from the government and related parties. The eradication of corruption crimes that have occurred until now has not been optimally implemented (Fitriati & Tamin, 2013). The problem of corruption is no longer a new problem in legal and economic matters for a country because the problem of corruption has existed for thousands of years, both in developed and developing countries, including Indonesia. Corruption has crept and overtaken in various forms, or modus operandi so as to undermine state finances, the country's economy and harm the interests of society (Hamzah, 1991).

So far, it can be understood that corruption is not only a national problem of a nation, but an international problem. Purwaning M. Yanuar explained that many developing countries have suffered losses due to corruption, therefore, the problem of corruption as a matter that must receive serious attention. In fact, some countries want the seizure of corruption assets to be treated as a right that cannot be removed or revoked. Corruption assets are state rights that must be returned to the state and it is the state that has the right to manage state assets or wealth and be used to the greatest extent for the prosperity and welfare of the people (Yanuar, 2007).

In legal science, it is known that there is a system of punishment in Indonesia, both general and special crimes, in special crimes, among others, are regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption (hereinafter referred to as the PTPK Law). The UUPTPK regulates the forfeiture of tangible or intangible movable property or immovable property or asset forfeiture which is an additional punishment to the main punishment in the form of imprisonment or fines. Therefore, the nature of asset forfeiture is an additional sanction or punishment coupled with other criminal sanctions, not asset forfeiture without punishment.

One of the elements in the crime of corruption is the loss of state finances or the state economy, so that this element is the background for the formation of legislation regarding the crime of corruption, both the old regulation, namely Law Number 3 of 1971 and the new regulation, namely Law Number 31 of 1999 concerning Eradication of the Crime of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of the Crime of Corruption which establishes a policy that state financial losses must be returned or replaced by the perpetrators of corruption (asset recovery) (Pakpahan & Firdaus, 2019). The spirit of "asset recovery" is as a form of recovery of state finances that have been lost / lost due to acts of corruption which is realized in Article 18 of the Corruption Law, namely:

1. In addition to the additional punishment as referred to in the Criminal Code, as additional punishment is:
   a) forfeiture of tangible or intangible movable property or immovable property used for or derived from the crime of corruption, including companies owned by the convicted person in which the crime of corruption was committed, as well as of property replacing such property;
   b) payment of restitution in an amount at most equal to the property obtained from the corruption offenses;
   c) closure of all or part of the company for a maximum period of 1 (one) year;
   d) revocation of all or part of certain rights or removal of all or part of certain benefits, which have been or may be granted by the Government to the convicted person.
2. If the convicted person does not pay the restitution as referred to in paragraph (1) letter b within 1 (one) month at the latest after the court decision that has obtained final legal force, his/her assets may be confiscated by the prosecutor and auctioned to cover the restitution.
3. In the event that the convicted person does not have sufficient assets to pay the restitution as referred to in paragraph (1) letter b, then he/she shall be punished with imprisonment which shall not exceed the maximum punishment of the basic punishment in accordance with the provisions of this Law and the length of such punishment has been determined in the court decision

The strategy of returning assets from corruption is a major breakthrough in the fight against corruption today. The issue of returning assets from corruption will face its own legal problems, both conceptually and operationally. The mechanism for managing this state booty as in Article 8 and Article 9 of Minister of Finance Regulation Number 03/PMK.06/2011 concerning Management of State Property Derived from State Confiscated Goods and Gratuities states that the Attorney General manages State Confiscated Goods in accordance with statutory provisions, then the Attorney General authorizes the Service Office to conduct an auction sale of State

Confiscated Goods within 3 (three) months and can be extended for a maximum of 1 (one) month, the proceeds of which are deposited into the state treasury as Non-Tax State Revenue in the form of general revenue at the Attorney General's Office.

When the goods seized by the state are free or not being encumbered by property guarantees, they can be directly executed by the Prosecutor in accordance with statutory provisions, but legal problems occur when the assets seized by the state turn out to be encumbered by Mortgage Rights by the Bank/creditor after a court decision in which it is "seized by the state". Mortgage Rights have executorial power because there is a phrase "For the Sake of Justice Based on God Almighty" so that it is the same as a court decision with permanent legal force, which means that the creditor or the holder of the Mortgage Rights has the right to execute the object of mortgage rights without having to submit a request for execution first to the court and without the consent of the object owner. The legal position of Mortgage Rights in addition to having an executorial title, Mortgage Rights also have preferential rights, namely the right of precedence owned by the holder of the mortgage right to obtain debt repayment from the sale of objects that make collateral so that the creditor is the party that takes precedence in the repayment of obligations.

As a case study, there is a corruption case with the Defendant H. Sunaryo as the Chairman of KSU Karya Mandiri Cooperative whose verdict of the Supreme Court Number 1153 K/Pid/2005 dated August 29, 2007 stated that the Defendant H. Sunaryo was legally and convincingly proven guilty of committing the crime of corruption as stipulated in Article 3 and Article 18 of Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption and sentenced the Defendant H. Sunaryo to imprisonment for 2 (two) years, meaning that in 2009 the Defendant was released from prison. In addition to being sentenced to imprisonment, Defendant H. Sunaryo was also sentenced to additional punishment in the form of confiscation of assets by the State, namely the land on which a house owned by H. Sunaryo stands on Saliwiryo Pranowo Street, Bondowoso Regency and the land on which a house/office of KSU Karya Mandiri owned by H. Sunaryo stands on Saliwiryo Pranowo Street, Bondowoso Regency. In 2012, H. Sunaryo applied for a loan from the bank by pledging the land and building, which had been confiscated by the state. In the explanation above, it can be seen that the Supreme Court Decision No. 1153 K/Pid/2005 dated August 29, 2007, which confiscated the Defendant's assets for the state, then in 2012 the Defendant H, Sunaryo was released and pledged the assets to the Bank which were subsequently encumbered by Mortgage Rights.

Based on the explanation above, it can be seen that when the investigator confiscated the object belonging to the Defendant, no blocking was carried out at the State Land Agency so that when the Defendant was released, the object could freely be used as collateral to the Bank and when checking the certificate it turned out that the status

of the object was clean or not being burdened by a block or not in dispute.

Based on the above background, this research aims to analyze the mechanism of investigators in confiscating objects in the form of land. As well as the prosecutor's efforts in seizing objects with the status of being seized by the state that are being burdened by Mortgage Rights.

2. Research Method

This type of research is normative or doctrinal research. According to Peter Mahmud Marzuki, the term legal research or *rechts onderzoek* is always normative, as well as the term juridical - normative which is actually also unknown in legal research. If the type of research must be stated in writing, it is sufficient to state that this research is legal research. With this statement, it is clear that the research is normative (Marzuki, 2005).

3. Results and Discussion

a. Duties and Responsibilities of the Police, Prosecutor's Office, and Corruption Eradication Commission as Investigators in Corruption Cases

Before defining the crime of corruption, we must first explain the terms crime and corruption. A criminal offense is an unlawful act that has been committed intentionally or unintentionally by a person who is accountable for his or her actions and has been declared by law to be punishable (Mulyadi, 2001).

According to Marpaung, corruption is misappropriation or embezzlement (of state or company money, etc. for personal or other people's benefit) (Marpaung, 2009). According to Kartono quoted in his book ICCE, corruption is the behavior of individuals who use authority and position to gain personal gain, harming the public interest and the wider community for the benefit of certain individuals or groups (Azra, 2003). Meanwhile, according to Article 2 of Law Number 31 of 1999, corruption is an unlawful act to enrich oneself / others (individuals or a corporation), which directly or indirectly harms the State's finances or economy. Then in Article 3, it is stated that corruption is any person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of position or position that can harm the state finances or the state economy.

From the definitions of crime and corruption, it can be concluded that the crime of corruption is an unlawful act whose actions are punishable by law. Elements of the Crime of Corruption To be considered as corruption, corruption must fulfill the elements of the crime of corruption:

1. Actions of a person or legal entity against the law
2. The action is an abuse of authority.
3. With the intent to enrich oneself or others.
4. The action is detrimental to the state or the economy of the State or should be suspected of harming the state's finances and economy.
5. Giving or promising something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his/her position, which is contrary to his/her obligations.
6. Giving something to a public servant or state organizer because of or in relation to something that is contrary to the obligation, done or not done in his/her position.
7. Giving or promising something to a judge with the intention of influencing the decision of a case submitted to him/her for adjudication.
8. Giving or promising something to a person who, according to the provisions of laws and regulations, is designated as an advocate to attend a court session with the intention of influencing the advice or opinion to be given in relation to a case submitted to the court for trial.
9. The existence of fraudulent acts or deliberately allowing such fraudulent acts to occur.
10. A public servant or a person other than a public servant who is assigned to perform a public office continuously or temporarily, intentionally embezzles money or securities deposited in virtue of his office, or allows such money or securities to be taken or embezzled by another person, or assists in the commission of such act.
11. Deliberately embezzles, destroys, damages, or renders useless any article, deed, letter, or register used for the purpose of convincing or proving before an authorized official, which is in his possession by virtue of his office, and allows others to remove, destroy, damage, or render useless such article, deed, letter, or register, or to assist others to remove, destroy, damage, or render useless such article, deed, letter, or register.
12. A public servant or state organizer who accepts a gift or promise knowing or reasonably suspecting that the gift or promise is given because of power or authority related to his/her position, or that the person giving the gift or promise thinks it is related to his/her position (Indonesia, 2001).

Meanwhile, there are several categories of corruption offenses that can be categorized, such as financial losses incurred by the state, bribery, misappropriation of funds in public office, extortion, fraudulent activities, conflicts of interest in procurement, and gratification (Komisi, 2006).

Presidential Instruction No. 9 and 17 of 2011 outline 10 areas prone to corruption, including procurement of government goods/services, finance and banking, taxation, oil and gas, state-owned enterprises (BUMN) and Regional-Owned Enterprises (BUMD), customs and excise, state and regional assets, management of state and regional budgets, mining, and public service.

The duties and responsibilities of the police in corruption crimes are as investigators. The duties and responsibilities of investigators are clearly regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code and Law No. 2 of 2002 concerning the Indonesian National Police. Article 4 to article 9 of the Criminal Procedure Code describes the Investigator as a police officer of the Republic of Indonesia who has the duty and responsibility to conduct investigations, investigations until the submission of case files for all criminal acts that occur including corruption crimes and the procedures for carrying out these duties and responsibilities are described in articles 102 to 136 of the Criminal Procedure Code (Hutabarat et al., 2022).

Law No. 2 of 2002 concerning the Indonesian National Police has also outlined the duties and responsibilities of investigators (Article 1 to Article 8 and Article 10), Article 14 letter g states that the duties and responsibilities of investigators are guided by the Criminal Procedure Code. To handle corruption crimes, the police are guided by:

1. Law No. 8 of 1981 concerning the Criminal Procedure Code, explains that Investigators are State Police Officers of the Republic of Indonesia. Investigators according to the Criminal Procedure Code are authorized to investigate criminal acts that occur, where Article 1 paragraph (1), (2) does not recognize the term general crime or special crime, thus every act that is against the law and threatened with punishment both inside and outside the Criminal Code, Investigators in this case the Police are authorized to investigate. Thus, this authority has existed since the enactment of the Criminal Procedure Code.
2. Based on Law No.31 of 1999 on the Eradication of Corruption Crimes which was updated with Law No.20 of 2001. This law gives the broadest possible authority to police investigators to investigate corruption crimes, which are described in this law in detail and contain criminal provisions, namely determining special minimum criminal penalties, higher fines and special criminal penalties which are the eradication of corruption crimes. Article 26 explains: Investigation, prosecution and examination in court of Corruption Crimes are carried out based on the applicable Criminal Procedure Law and otherwise provided for in this law where the authority of the investigator in this article includes the authority to conduct wiretapping.
3. Based on Law of the Republic of Indonesia No.2 of 2002 concerning the Indonesian National Police Article 14 paragraph (1), namely to conduct investigations and investigations into all criminal acts in accordance with criminal procedure laws and other laws and regulations.

Thus, the authority of Police investigators in combating corruption is clear and directed so that what is expected by the government / society to law enforcement officials, in this case the Police, can run well.

The Public Prosecutor's Office is a state institution that exercises state power,

especially in the field of prosecution (Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Public Prosecutor's Office of the Republic of Indonesia). Meanwhile, a prosecutor is a functional official authorized by law to act as a public prosecutor and executor of court decisions that have obtained permanent legal force and other powers based on the law.

Duties and powers of the Public Prosecutor's Office in the criminal field:

1. Conduct prosecution
2. Execute judges' decisions and court verdicts that have obtained permanent legal force.
3. Supervise the implementation of conditional criminal verdict, supervision criminal verdict, and conditional release verdict.
4. Conducting investigation on certain criminal offenses based on the law
5. Completing certain case files and for that purpose can conduct additional examinations before being submitted to the court, which in its implementation is coordinated with the investigator.

With the existence of the duties and authority of the prosecutor's office in point 4, namely conducting investigations into certain criminal acts based on law, the prosecutor's office can handle corruption crimes, because corruption is one of the criminal acts regulated in law, namely Law Number 31 of 1999.

In terms of handling corruption crimes, the prosecutor's office is guided by:

1. Law Number 16 of 2004 and Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia
2. Article 91 paragraph (1) of KUHAP regulates the prosecutor's authority to take over the minutes of examination, Article 284 paragraph (2) of KUHAP states: "Within two years after this law is enacted, the provisions of this law shall apply to all cases, with the temporary exception of the special provisions of criminal procedure as referred to in certain laws, until they are amended and/or declared invalid.

KPK (Corruption Eradication Commission) is a state institution that in carrying out its duties and authorities is independent and free from the influence of any power (Law Number 30 of 2002). KPK in eradicating corruption is based on:

1. Legal certainty;
2. Openness;
3. Accountability;
4. Public interest;
5. Proportionality.

What is meant by legal certainty is the principle in a state of law that prioritizes the basis of legislation, appropriateness, and justice in every policy to carry out the duties and authority of the Corruption Eradication Commission.

The principle of openness is a principle that opens itself to the public's right to obtain correct, honest and non-discriminatory information about the performance of the Corruption Eradication Commission in carrying out its duties and functions; Accountability is a principle that determines that every activity and the final results of the activities of the Corruption Eradication Commission must be accountable to the public or the people as the highest sovereignty holders of the state in accordance with applicable laws and regulations.

Public interest principle is a principle that prioritizes public welfare in an aspirational, accommodative, and selective manner. Meanwhile, proportionality is a principle that prioritizes the balance between the duties, authority, responsibilities, and obligations of the Corruption Eradication Commission. The duties of the Corruption Eradication Commission include:

1. Coordination with agencies authorized to eradicate corruption.
2. Supervision of agencies authorized to eradicate corruption.
3. Conducting investigations, investigations, and prosecutions of corruption crimes.
4. Taking measures to prevent criminal acts of corruption; and
5. Monitor the implementation of state government.

In carrying out its coordination duties, the Corruption Eradication Commission is authorized:

1. Coordinate the investigation, investigation, and prosecution of corruption crimes;
2. Establish a reporting system in corruption eradication activities;
3. Requesting information about corruption eradication activities to related agencies;
4. Conducting hearings or meetings with agencies authorized to eradicate criminal acts of corruption; and
5. Requesting reports from relevant agencies regarding the prevention of criminal acts of corruption.

In carrying out its supervision duties, the Corruption Eradication Commission is authorized to conduct supervision, research, or review of agencies that carry out their duties and authorities relating to the eradication of criminal acts of corruption, and agencies that carry out public services. In this task, the Corruption Eradication Commission is also authorized to take over the investigation or prosecution of perpetrators of corruption crimes that are being carried out by the police or prosecutors.

The takeover of investigation and prosecution was carried out by the Corruption Eradication Commission on the grounds of:

1. Public reports on corruption crimes are not followed up;

2. The process of handling corruption crimes is protracted or delayed without justifiable reasons;
3. The handling of corruption crimes is aimed at protecting the real perpetrators of corruption crimes;
4. Handling of corruption crimes contains elements of corruption;
5. Obstacles to handling corruption offenses due to interference from the executive, judiciary, or legislature;
6. Other circumstances that, according to the considerations of the police or prosecutor's office, the handling of corruption crimes is difficult to carry out properly and accountably.

In terms of the task of investigating, investigating, and prosecuting corruption crimes, the Corruption Eradication Commission is authorized to investigate, investigate, and prosecute corruption crimes:

1. Involving law enforcement officials, state administrators, and other people who are related to corruption crimes committed by law enforcement officials or state administrators;
2. Gets attention that disturbs the public;
3. Involves state losses of at least Rp.1,000,000,000.00 (one billion rupiah).

In carrying out the duties of investigation, investigation, and prosecution, the Corruption Eradication Commission is also authorized:

1. Eavesdropping and recording conversations;
2. Ordering the relevant agencies to prohibit a person from traveling abroad;
3. Requesting information from banks or other financial institutions about the financial condition of the suspect or defendant being examined;
4. Ordering banks or other financial institutions to block accounts suspected of being the proceeds of corruption belonging to suspects, defendants, or other related parties;
5. Ordering the leader or superior of the suspect to temporarily dismiss the suspect from his position;
6. Requesting wealth data and tax data of the suspect or defendant to the relevant agencies;
7. Temporarily suspend a financial transaction, trade transaction, and other agreements or temporarily revoke licenses, licenses and concessions carried out or owned by the suspect or defendant which is suspected based on sufficient preliminary evidence to be related to the corruption crime being examined;
8. Request the assistance of Interpol Indonesia or other state law enforcement agencies to conduct searches, arrests, and confiscation of evidence abroad;
9. Request assistance from the police or other relevant agencies to arrest, detain, search, and seize in corruption cases being handled.

In carrying out its preventive duties, the Corruption Eradication Commission is authorized to carry out the following preventive measures or efforts:

1. Registering and examining the wealth reports of state administrators;
2. Receive reports and determine the status of gratuities;
3. Organizing anti-corruption education programs at every level of education;
4. Designing and encouraging the implementation of socialization programs to eradicate corruption;
5. Conducting anti-corruption campaigns to the general public;
6. Conducting bilateral or multilateral cooperation in the eradication of criminal acts of corruption.

In carrying out its monitoring duties, the Corruption Eradication Commission is authorized:

1. Conduct an assessment of administrative management systems in all state and government institutions;
2. Advise the heads of state and government institutions to make changes if based on the results of the assessment, the administrative management system has the potential for corruption;
3. Report to the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, and the Supreme Audit Agency, if the Corruption Eradication Commission's suggestions regarding the proposed changes are not heeded.

The Corruption Eradication Commission is obliged:

1. Provide protection for witnesses or whistleblowers who submit reports or provide information regarding the occurrence of corruption crimes;
2. Provide information to the public who need or provide assistance to obtain other data related to the results of the prosecution of corruption crimes handled;
3. Prepare an annual report and submit it to the President of the Republic of Indonesia, the House of Representatives of the Republic of Indonesia, and the Supreme Audit Agency;
4. Enforce the oath of office;
5. Carry out their duties, responsibilities, and authorities based on the principles.

b. Mechanism of Seizure by Investigators Against Objects in the Form of Land

Confiscation is a series of actions by investigators to take over or keep under their control movable or immovable, tangible and intangible objects for the benefit of evidence in investigation, prosecution and justice. Confiscation can be seen in the Criminal Procedure Code / KUHAP criminal case examination process in article 1 number. Based on this definition, the following conclusions can be drawn:

1. Seizure is included in the investigation stage, as it is "a series of actions by the investigator to take over and keep under his control".
2. Confiscation is the taking or keeping under the control of the investigator of

an object belonging to another person.
3. The seized object is in the form of movable and immovable, tangible or intangible objects.
4. This is an innovation from the HIR, because according to the provisions of the HIR, intangible objects such as bills of rights and others cannot be confiscated.
5. The seizure is for the purpose of evidentiary interest. There is a shortcoming in this provision of KUHAP, because in fact confiscation should be carried out not only for evidentiary purposes, but also for objects that can be seized.

According to the Criminal Procedure Code, it can also be confiscated:
1. Article 39 paragraph (1) point b of KUHAP: Objects that have been used directly to commit the offense or to prepare it.
2. Article 39 paragraph (1) item c of KUHAP: Objects used to obstruct the investigation of the offense.
3. Article 39 paragraph (1) item d of KUHAP: Objects specially made or intended to commit an offense.
4. Article 39 paragraph (1) point e of KUHAP: Other objects that have a direct relationship with the offense committed.

If the object confiscated is land, then the legislation refers to the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 13 of 2017 concerning Procedures for Blocking and Confiscation. Article 1 point 3 of Permen ATR 13/2017 states that:

"*Recording confiscation is an administrative action of the Head of the Land Office or a designated official to record the existence of confiscation from a judicial institution, investigator or other authorized agency*."

Article 1 point 3 of Permen ATR 13/2017 states that:

"*Criminal confiscation is the confiscation of Land Book, Surat Ukur or other data submitted by the investigator which is used as evidence in court with a confiscation report and receipt of the confiscated goods*."

Article 26 paragraph (3) of Permen ATR 13/2017 states that:

"*Recording of Criminal Confiscation as referred to in paragraph (1) letter b, is carried out in the context of investigation*."

The procedure for recording criminal confiscation is regulated in Article 28 of Permen ATR 13/2017 as follows:

Then the period of confiscation is regulated in Article 39 Permen ATR 13/2017 as follows:

1. Application for the recording of Criminal Confiscation shall be submitted by an investigator/ law enforcement officer.
2. Application for recording of criminal confiscation by investigator as referred to in paragraph (1), shall be completed by attaching:
   a) Permission Letter of the Head of the local District Court, in accordance with the place where the criminal offense occurred;
   b) seizure warrant signed by the investigator;
   c) court order; and/or
   d) other requirements in accordance with the provisions of laws and regulations.
3. In an urgent situation, the Head of the Land Office may record the confiscation first based on the confiscation warrant from the investigating agency.
4. After recording the Criminal Confiscation as referred to in paragraph (2), the investigator must follow up by processing the issuance of a license from the Chairman of the local District Court.

Then the period of confiscation is regulated in Article 39 Permen ATR 13/2017 as follows:

Criminal confiscation is valid until the case being examined is completed, and is proven by the existence of:

1. An order of termination of investigation (SP3) and a letter of request for the appointment of confiscation from the investigator; or
2. The case is declared finished as evidenced by a decision that has permanent legal force

Based on this explanation, confiscation is essentially an effort to temporarily secure an object that is suspected of being the result of a crime or an object that is in a dispute. Confiscation is the takeover of another person's possession for the purposes of evidence in the investigation, prosecution in a court session where the criminal procedure law proves the authority for investigators to carry out confiscation based on the provisions contained in the law. In the event that the object of confiscation is a land object, the investigator can submit an application for recording a criminal confiscation which aims to maintain land registration data in the form of recording in the Land Book and Measurement Letter so that it cannot be transferred to another party or encumbered by Mortgage Rights.

c. Prosecutor's Efforts in Seizing Objects with State Confiscation Status Based on Corruption Court Decisions That Are Being Burdened by Mortgage Rights

Prosecutors are functional officials authorized by law to act as public prosecutors and implement court decisions that have obtained permanent legal force and other powers under the law. Such a role requires a prosecutor not only to master the

discipline of criminal law, but also the discipline of civil law and state administration. Prosecutors are not only required to master positive laws that are general in nature (*lex generalis*) but also those that are specific in nature (*lex specialis*) which have been born recently (Pramudya & Widiatmoko, 2010). Article 35 paragraph (1) letter h states that the Attorney General has the duty and authority as an investigator and Public Prosecutor and executor of court decisions that have obtained permanent legal force so that if there is a decision that has permanent legal force (*inkrah*) then the Prosecutor is authorized to execute the court decision.

As a case study, there is a corruption case with the Defendant H. Sunaryo as the Chairman of KSU Karya Mandiri Cooperative whose verdict of the Supreme Court Number 1153 K/Pid/2005 dated August 29, 2007 stated that the Defendant H. Sunaryo was legally and convincingly proven guilty of committing the crime of corruption as stipulated in Article 3 and Article 18 of Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption and sentenced the Defendant H. Sunaryo to imprisonment for 2 (two) years, meaning that in 2009 the Defendant was released from prison. In addition to being sentenced to imprisonment, Defendant H. Sunaryo was also sentenced to additional punishment in the form of confiscation of assets by the State, namely the land on which a house owned by H. Sunaryo stands on Saliwiryo Pranowo Street, Bondowoso Regency and the land on which a house/office of KSU Karya Mandiri owned by H. Sunaryo stands on Saliwiryo Pranowo Street, Bondowoso Regency. In 2012, H. Sunaryo applied for a loan from the bank by pledging the land and building, which had been confiscated by the state. In the explanation above, it can be seen that the Supreme Court Decision No. 1153 K/Pid/2005 dated August 29, 2007, which confiscated the Defendant's assets for the state, then in 2012 the Defendant H, Sunaryo was released and pledged the assets to the Bank which were subsequently encumbered by Mortgage Rights.

If the above case study is examined, it can be seen that the investigator did not record the criminal confiscation at the local National Land Agency so that when the defendant was released after serving his sentence, the defendant pledged the object of goods confiscated by the state to the bank and the object could be encumbered by a mortgage by the bank. If the land object has been applied for criminal confiscation by the investigator, it is impossible for the land object to be encumbered by a bank lien and the bank will not want to make the object as an object of guarantee.

Efforts that can be taken by the prosecutor to seize the object that has the status of being seized by the state which is encumbered by the Bank's Mortgage Rights, namely by seizure in rem. In principle, there are 2 (two) forms of asset forfeiture, namely *forfeiture* in *personam* and *forfeiture* in rem. First, in *personam forfeiture* is an action aimed at a person personally for his/her wrongdoing through the available legal mechanism or also known as forfeiture through a criminal law mechanism. The action

must be carried out based on a criminal court decision. Prosecutors in this case must prove that the assets seized are the proceeds or means of a criminal offense. Second, in rem forfeiture, also known as civil forfeiture, civil forfeiture, and NCB asset forfeiture. Essentially, the action is brought against the asset, not against the person. This action is separate from criminal proceedings, but only determines that the assets have been tainted by the criminal offense (Hafid, 2021).

In rem Asset Forfeiture itself is defined in the Draft Law on Criminal Asset Forfeiture (Draft Law on Asset Forfeiture) as a legal action taken by the state to confiscate Criminal Assets based on a court decision that has permanent legal force without being based on the punishment of the perpetrator (Nasional). Thus, broadly speaking, the application of this forfeiture is separated from the actions of the perpetrator or subject owner.

Various literatures have different explanations regarding in rem asset forfeiture. However, in general, the concept of in rem asset forfeiture is emphasized on assets from the wrongdoing or crime of the subject or owner of the assets. Thus, whether the subject has been convicted, the subject is still in the process of being examined in court, or even the subject has been acquitted, in rem asset forfeiture can still be carried out.

In the concept of in rem forfeiture proposed by Ian Smith and friends (Smith, 2003), They explained that the principle used in in rem asset forfeiture is that the holder does not have the right to control assets obtained from unlawful acts. In in rem asset forfeiture the allegation that the asset originated from an unlawful act is completely neutral to the act committed by the holder or possessor of the asset. This is because in in rem asset forfeiture the focus is on the origin of the asset, therefore asset forfeiture will not depend on the unlawful act committed by the holder of the right to the asset or the fault attached to the asset involved in a crime (Harrington, 1994).

The idea of in rem asset forfeiture was introduced in Indonesia through the Draft Law on Criminal Asset Forfeiture. The draft provides a definition of in rem asset forfeiture as a legal action taken by the state to seize criminal assets based on a court decision that has permanent legal force without being based on the punishment of the perpetrator. Meanwhile, another opinion states that in rem forfeiture is defined as an action by the state to take over assets through a court decision in a civil case based on stronger evidence that the assets are suspected of originating from criminal acts or being used for criminal acts. It is explicitly stated here that assets suspected of being from and for criminal offenses are tried in a civil court.

Article 18 paragraph (2) of Law 11/2021 states that the Attorney General by special power or because of his position and position acts as a State Attorney, in the fields of

civil and state administration and state administration in all judicial circles, both inside and outside the court for and on behalf of the state or government, as well as the public interest. So that the prosecutor is not only an executor of the decision but can also take civil legal remedies to seize objects that have the status of being seized by the state based on a court decision that has permanent legal force even though the object has been encumbered by bank mortgage rights.

4. Conclusion

Investigators in confiscating land objects are required to apply for the recording of criminal confiscation to the local State Land Agency because this aims to maintain land registration data in the form of recording in the Land Book and Measurement Letter so that it cannot be transferred to other parties or encumbered by Mortgage Rights. If the investigator is negligent in submitting a criminal confiscation record on the confiscated object, it can harm the mortgage holder who should get priority payment for the sale of the object. The need for the immediate enactment of the Asset Forfeiture Bill in order to recover state losses by perpetrators of corruption through in rem asset forfeiture so that assets that have been transferred or transferred by the perpetrator to other parties can still be confiscated by the state as a decision that has been legally binding (*inkrah*).

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