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Ownership Rights Protection In The Criminal Jurisdiction System

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Abstrac

The practice of enforcing the law on criminal goods as evidence of crimes in criminal proceedings is not in line with the objective of the law itself, namely obtaining proportional truth. Confiscation of the possession of movable or immovable, tangible or intangible objects is carried out for the purposes of proof in investigation, prosecution and trial. Thus, it implies the guarantee of confiscated goods, so that the confiscated goods are often used by investigators for other purposes which are not in accordance with the law, which results in when the confiscated goods are needed to prove before a court session, the goods are not there, insufficient, not the same and so on prior to confiscation. On the basis of the thoughts described above, the authors are interested in examining and examining more deeply and analyzing this problem in research.

Keywords

Protection, Ownership Rights, Confiscated Goods.

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1. Introductions

The practice of enforcing the law on criminal goods as evidence of crimes in criminal proceedings is not in line with the objective of the law itself, namely to obtain proportional truth[1]. Article 1 number 16 of the Criminal Procedure Code, states that confiscation is a series of actions by an investigator to take over and keep under his control movable or immovable, tangible or intangible objects for the purpose of proof in investigation, prosecution and trial. Even though evidence has a very important role in the criminal process, the definition of evidence is not contained in the provisions stipulated in Article 1 of the Criminal Procedure Code which contains authentic interpretations, but if it is linked article by article which has something to do with the problem of the evidence, the evidence[2], among others Articles 21 paragraph (1), 45 paragraph (2), 46 paragraph (2) and Article 181 of the Criminal Procedure Code.

In addition to being placed in Rupbasan, state storage and management of confiscated goods are also placed in the respective agencies of the investigators due to the lack of available places for confiscated goods to be stored, this is because Rupbasan is only available in the provinces, while districts and cities are not yet available.[3]

Thus this implies a guarantee for confiscated goods, because the confiscated goods are often used by investigators for other purposes that are not in accordance with the law, so that when the confiscated goods are needed to prove in court, the confiscated goods are not available, not sufficient, not the same and so on.

The integrity of the confiscated objects is very necessary not only for the purposes of proof in the judicial process so that witnesses can easily recognize the confiscated objects

the same as when the criminal act was committed. By maintaining the intact and preservation of confiscated items, it is intended to protect the rights (property) of the suspect, and the rights of the party who is the victim of a crime or other parties that may be related to the crime.[4].

The Implementation Mechanism for the Management of State Confiscated Objects and State Seized Goods in Rupbasan which includes receipt, research, registration, storage, maintenance, removal, rescue, security, release, deletion and reporting. This was then regulated in the Decree of the Director General of Corrections No. E1.35.PK.03.10 Year 2002 concerning Implementation Guidelines and Technical Guidelines for the Management of State Confiscated Objects and State Seized Goods in Rupbasan, as an elaboration of Regulation of the Minister of Justice No. M.05.UM.01.06 1983. The purpose of this decree was so that the implementation of Basan and Baran management in Rupbasan could run according to its function[5].

The integrity of the confiscated objects is very necessary not only for the purposes of proof in the judicial process so that witnesses can easily recognize the confiscated objects the same as when the criminal act was committed[6]. By maintaining the intact and preservation of confiscated items, it is intended to protect the rights (property) of the suspect, and the rights of the party who is the victim of a crime or other parties that may be related to the crime.[7]

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The integrity of the confiscated objects is very necessary not only for the purpose Article 44 Paragraph (2) of the Criminal Procedure Code prohibits the use of these confiscated objects by anyone. The KUHAP does not regulate sanctions for violating these provisions because it is not the case that the KUHAP which regulates procedural law also regulates sanctions. Administratively, sanctions for violations of Article 44 of the Criminal Procedure Code are regulated by the investigating agency (for example the police) or the public prosecutor's agency (Attorney) in the form of a Kapolri regulation or a Attorney General's regulation. If the violation is criminal in nature, such as embezzlement of evidence, of course the criminal provisions as regulated in the Criminal Code apply. This prohibition needs to be enforced consistently because so far there have been quite a number of irregularities committed by law enforcement officials. This needs to be done to prevent the loss or change of evidence and to maintain the authority of law enforcement..s of proof in the judicial process so that witnesses can easily recognize the confiscated objects the same as when the criminal act was committed. By maintaining the intact and preservation of confiscated items, it is intended to protect the rights (property) of the suspect, and the rights of the party who is the victim of a crime or other parties that may be related to the crime.

2. Discussion

a. Position of Right of Ownership of Confiscated Goods in a Criminal Case

The position of confiscated goods or evidence is included in the proof system contained in Article 184 of the Criminal Procedure Code relating to "instructions" because all or part of it is allegedly obtained from a criminal act or as a result of a criminal act, objects that have been used directly to commit a criminal act or to prepare it and the instructions are supporting evidence which has a very important position in a criminal case[8]. evidence is obtained from the results of examination at court proceedings. Where the judge makes a decision based on his conviction, the judge's conviction is obtained from at least two valid pieces of evidence.

The position of confiscated goods in practice in a criminal case is included in the material position. As meant by Materil, namely the actual truth, which is complete, which is closer to the truth itself. In this discussion, the writer will suggest how the results of the research that occurred in the field concerning confiscated goods, whether the confiscated goods have been properly managed or not by the investigator, the writer will present the results of the research.[9]

Ownership here means that it still belongs to the convicted person when the criminal incident is committed. Confiscated objects for the purposes of the judicial process for confiscated goods which in the provisions of criminal procedure are also referred to as confiscated objects as regulated in Article 1 point 4 of Government Regulation Number 27 of 1983 concerning Implementation of the Criminal Procedure Code. Confiscated Objects are part of Non-Tax Income in the Government Regulation of the Republic of Indonesia Number 22 Tahuh 1997 dated July 7, 1997 concerning Types and Deposits of Non-Tax State Revenues, namely explaining the points of the types of non-tax state revenue that apply to the attorney general's office, including the following[10]:

- 1) Receipts from sales of booty.
- 2) Receipt from the sale of confiscated / booty products.
- 3) Receipt of compensation and criminal acts of corruption.
- 4) Receipt of court fees.
- 5) Other receipts, in the form of finding money, results from auction of found goods and proceeds from sales of goods.
- 6) Evidence not taken by those entitled.
- 7) Receipt of fines. By law, the definition of assets is regulated in Article 499 of the Civil Code, which is called a material, that is, each goods and every right, which can be controlled by property rights.

Material according to its form is divided into bodily and bodiless objects. Meanwhile, according to its nature, objects can be divided into moving objects, namely those that are spent and cannot be spent, as well as immovable objects. This is in accordance with the definition of assets regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, namely; What is meant by wealth is all movable or immovable objects, both tangible and intangible, obtained either directly or indirectly. Meanwhile, according to Law Number 31 of 1999 as amended by Law Number

20 of 2001 concerning the Eradication of Corruption, Article 18 paragraph (1) states that confiscation is carried out against guilty people who are handed over to the government, but only for goods items that have been confiscated. confiscation as an additional form of punishment. referring to the Civil Code, several terms are used, namely objects, goods, assets of a criminal act, and assets. For simplicity, ideally refer to the provisions in Article 39 of the Criminal Procedure Code concerning the category of objects that can be confiscated, which includes all or part of what is alleged to have been obtained from a criminal act or as a result of a criminal act or commonly referred to as an asset. So, the confiscation carried out by the investigator in connection with the investigation of a corruption case is in accordance with the provisions stipulated in Article 39 of the Criminal Procedure Code. Since confiscation is one of the forced attempts (*dwang middelen*) that can violate human rights, it is in accordance with the provisions of Article 38 of the Criminal Procedure Code. Normatively, it can be seen in the provisions of Article 18 letter (a) of the Corruption Act which states: ³ Confiscation of movable property that is tangible or intangible or immovable property used for or obtained from a criminal act of corruption, including companies owned by the convict where the criminal act of corruption is committed. , so is the price of the goods that replace these goods. Thus, confiscating assets is an anticipatory step aimed at saving or preventing the loss of state assets due to crime. These assets will be decided by the court, whether it should be taken as an effort to recover state financial losses or as an additional punishment in the form of seizing proceeds of crime. Thus, it can be understood that the confiscation process is a forced attempt that is part of the investigation stage, while the confiscation process occurs after a judge's decision has permanent legal force (*inkracht*).

b. Settlement of Management of Confiscated Property in a Criminal Case which may result in loss to the owner

Article 44 of the Criminal Procedure Code states that: "Confiscated objects are kept in a state confiscated object storage house. In Article 1 point 3 Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code states that the State Confiscated Property Storage House, hereinafter referred to as RUPBASAN, is the place for objects confiscated by the State for the purposes of the judicial process. State Confiscated Objects Storage House (RUPBASAN) is a place for objects confiscated by the State for the purposes of judicial proceedings. RUPBASAN is established in every district or city capital, and if necessary, RUPBASAN branch can also be formed. In the RUPBASAN placed objects that must be stored for the purposes of evidence in examination at the level of investigation, prosecution and examination in court, including goods that are declared confiscated based on a judge's decision. Provisions regarding the RUPBASAN can be seen in Article 26 through Article 34 PP Number 27 Year 1983 concerning Implementation of the Criminal Procedure Code. RUPBASAN under the responsibility of the Correctional Directorate of the Ministry of Law and Human Rights, which is parallel to detention centers and prisons. This is the implementation of Article 44 paragraph (2) of the Criminal Procedure Code, which states that the storage of confiscated objects is carried out properly and the responsibility for it rests with the authorized official according to the level of examination in the judicial process and such objects are prohibited from being used by anyone.[11]

On the other hand, Article 1 Number 16 of the Criminal Procedure Code states that: "Confiscation is a series of actions by an investigator to take over and / or keep under his control movable or immovable, tangible or intangible objects for the benefit of evidence in investigations, prosecutions and trials" [12]. Then in Government Regulation Number 27 of 1983 as amended in Government Regulation Number 27 of 1983 as amended in Government Regulation Number 58 of 2010 in conjunction with PP. 92 of 2015 concerning the Implementation of the Criminal Procedure Code in Article 1 point 4 defines "Confiscated objects are objects confiscated by the state for the purposes of a judicial process". Then in Article 27 paragraph (1) it is stated that "objects that must be stored for the purposes of evidence are placed in the examination at the level of investigation, prosecution and examination in court, including items declared to have been confiscated by the judge." This regulation is based on a statutory decision on the legal basis of the implementation of the duties and functions of Rupbasan whose position is under the Penitentiary. According to Basmanizar, "Rupbasan is the only place to store all kinds of confiscated objects required as evidence in court proceedings based on Article 44 paragraph 1 of the Criminal Procedure Code, which includes items declared confiscated based on a judge's decision, and these objects are prohibited from being used by anyone until a certain period of time until it is destroyed, or auctioned according to the judge's decision.

Management of Confiscated Property in Criminal Cases so as not to cause harm to the owner, in this case confiscated property and booty related to criminal acts are problems that have long existed in law enforcement practices in Indonesia. Developments in practice require practitioners to be more careful in managing confiscated items and booty given the consequences of confiscation and confiscation and their relation to the issue of protecting human rights.

The management of confiscated objects is specifically regulated in Articles 44-46 of the Criminal Procedure Cod[13]e. The definition of confiscation itself is explained in Chapter I Article 1 point 16. From this understanding it is clear that the confiscation was carried out for the purpose of proof. The problem of managing confiscated objects and booty stems from the use of forced attempts in the form of confiscation by investigators. The basic principles and legal construction of confiscation are often not comprehensively understood by investigators, including also by public prosecutors and judges, apart from especially in relation to efforts to prove a criminal case in court. The confiscation of evidence related to a criminal act often does not take into account the impacts that arise, even though legally the types of objects (to be) confiscated have different ways and consequences. In other words, the problem of managing confiscated objects and booty is not always due to limited management capabilities but can occur because investigators do not understand the need for confiscation and control of the goods. Confiscation of evidence is always followed by confiscation of goods, namely control over physical evidence. On the other hand, confiscation of evidence followed by physical control often creates problems for investigators. Among the problems include: inadequate storage space and limited ability to maintain / manage evidence which results in damage to evidence and a decrease in the value of confiscated goods. Damage to confiscated evidence creates a legal risk for investigators and the state if the judge / court declares the goods to be returned to the owner / authority of the goods before being confiscated. Meanwhile, on

the other hand, damage or decrease in the value of the confiscated goods will increase the state's losses if the judge decides that the goods are confiscated as state property.

3. Conclusion

1. The position of the right of ownership of confiscated goods in a criminal case is the position of the confiscated goods or evidence that is included in the proof system contained in Article 184 of the Criminal Procedure Code relating to "instructions". As meant by Materil, namely the actual truth, which is complete, which is closer to the truth itself. Sabadai, the legal basis is Article 39 of the Criminal Procedure Code concerning the category of objects that can be confiscated, which includes all or part of what is alleged to have been obtained from a criminal act or as a result of a criminal act or commonly referred to as an asset.
2. Settlement of the Management of Confiscated Property in a Criminal Case that Causes Losses to the Owner is that the confiscation of evidence related to a criminal act often does not take into account the effects that arise, whereas legally the types of objects (to be) confiscated have different methods and consequences. In other words, the problem of managing confiscated objects and booty is not always due to limited management capabilities but can occur because investigators do not understand the need for confiscation and control of the goods. Confiscation of evidence is always followed by confiscation of goods, namely control over physical evidence. On the other hand, confiscation of evidence followed by physical control often creates problems for investigators. Among the problems include: inadequate storage space and limited ability to maintain / manage evidence which results in damage to evidence and a decrease in the value of confiscated goods. Damage to confiscated evidence creates a legal risk for investigators and the state if the judge / court declares the goods to be returned to the owner / authority of the goods before being confiscated. Meanwhile, on the other hand, damage or decrease in the value of the confiscated goods will increase the state's losses if the judge decides that the goods are confiscated as state pro

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