

## Conference Paper

# Confiscation of Personal Assets of Corruption Defendants in a Positive Legal Perspective

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One-of-a-kind efforts to make the losses state's financial incurred by the State due to corrupt activities, is through the confiscation of the Defendant's assets. Later it may subsequently be utilized for a form of monetary payment in lieu of State losses charged to the Defendant. On the grounds of payment of money in lieu of State losses, confiscation of the Defendant's personal assets that had nothing to do with corruption was then carried out. The research's main eligibility is to find out how significance proof is involved due to tribunal mechanism, as in the safety measure of the defendant given right and assets as being regulated for evidences in the tipikor case. The researcher's study applied juridical normative method employing statutory and conceptual pathways. Secondly, layered information was gathered from observation and papers, in order to ensure the quality. According to the researcher's findings, the purpose of headlining deposition in tribunal is to support the proof of the litigant's motion, incapable of assuring the sentence's delivery. There is a guarantee and protection of property rights in the Indonesian constitutional written law 1945 (28H) par. (4). It demonstrates the litigant's possession of their property being safeguarded by the state, which had unassociated an elicit act of graft as property sheltered from confiscation in the court process. Unlike the personal property of the litigant, if is employed in an unlawful conduct as graft itself, the belongings shall be seized within the tribunal proceedings.

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## 1. Introduction

Corruption such complicated yet multifaceted issues, in Indonesia, it is critical and tough issues to overcome, given that been widespread and deep-rooted [1] The level of corruption index that occurs in Indonesia is currently in a very dangerous and worrying position that occurs in all lines of development. Corruption practices that develop from one year to the next continue to increase, particularly in relations of the sheer quantity of incidents and state's amount lost of money have been endemic in all aspects of society. The graftness issues doesn't represent an emerging issue in a country's legal

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and economic concerns, because it has existed for numerous of years, throughout established and frontier states.[2]

Corruption results in a mistake that Mahatma Gandhi called the worst form of violation, because state assets that should be used by the people are corrupted for the personal interests of the perpetrators of corruption. Starting from this, the state is obliged and responsible to protect society from criminal acts of corruption with all the consequences it causes. This protection does not only cover the repatriation of corrupted fortunes to be used for the welfare of the people through sustainable development [3]

The In accordance with the teachings of criminology in the hedonic theory which assumes that a person will not commit a crime if there is no advantage that he will get from committing the crime, because basically everyone commits an act based on the calculation of profit and loss. Likewise with corruptors who always think that by committing corruption they can reap the benefits and benefits of corruption. Economic analysis in criminal law, according to J.C Oudijk, is based within assumption of criminals or potential perpetrators always try to get the maximum profit [4] This is what makes the people's suffering even worse because it is the people who have to pay for what the perpetrators of corruption enjoy. The perpetrators of corruption take wealth or opportunities that should be used to prosper people's lives [5]

The handling of Corruption cases has so far prioritized the direction of punishment as a form of enforcement implementation. It is actually more based towards how a person is convicted, so that others do not do the same (shock therapy). As a criminal case, the handling of corruption is authorities, legal enforcer, and judges who are involved in the so-called Criminal Justice System. [6] One of these is the repayment of national loss basic objectives of eradicating corruption, including the punishment of corporate actors. The penal system in the corruption law, which is *primum remedium* and uses retributive justice, in practice does not succeed in optimally restoring state financial losses [7].

The issue that receives "more" attention in the eradication of corruption is a method to recoup governmental decreases caused by act of corrupt, both committed by individuals and corporations. Saving state money is important, considering the fact that has happened so far should corruption offences conducted by law enforcement be eradicated officials can nly save 10-15% of the total tainted. [8]

In 2022, the Indonesian National Police resolved 470 Corruption cases, with a total state decreased belongings of IDR 4.8 trillion, and succeeded in obtaining declare loss of funds of IDR 1.5 trillion, which were the result of confiscating the assets of 659 suspects during the investigation [9] while the Prosecutor's Office resolved cases with state losses of IDR 142 trillion and managed to recover state financial losses of IDR

33.09 trillion from confiscation and its derivatives [10] while the Corruption Eradication Commission (KPK). [11]

The obstacles to the payment of substitute money in order to settle state finances have been revealed by Ramelan are [12] a. corrupt-involved matters are possible to disclose after running within a period of time so that it is laborious to track down assets or funds earned through corruption; b. with various efforts of corruption perpetrators had splurged or utilized the earnings/transferred in different forms, such as on behalf of others unreachable through the legal aspects; c. there is a third party who sues the authorities for proof in order to fulfill the payment of substitute money.

The existence of law enforcement practices under the pretext of saving state losses, often law conductor officials throughout the course of the investigation and investigation procedure confiscate the personal assets of the accused which cannot be the product of some sort of fraudulent criminal scheme.

Might kin an issue should be an interesting study to examine, but unfortunately it is difficult to find research that discusses the confiscation of the the accuser's private possessions that are not within result of corruption crimes, either in journals or seminar proceedings.

Based on these problems, this study will review 2 (two) crucial problems analyzed. First, In what capacity does convincing proof play in the courtroom trial proceed? Second, To what extent is the legal protection provided by Corruptor's Personal assets that are utilized as convincing proof within the matter of corruption.

## 2. Methodology

In regards judicial jurist study findings, where is concerned for assessing the validity of congruence in order to assess the fact that there is a regime within the law that follows norms of law. [13] The methodology utilized in this study is evaluation-based, alongside the intention of delivering arguments for its preliminary outcomes. The examiner will assess the study's findings, judging the possibility that the notion generated from the proposed theoretical framework has been adopted or dismissed. [14] This Legal Research uses a doctrinal approach to find philosophical research results. [15] In generating findings, a deductive technique is employed, which incorporates what is known regarding a generic objective to allow one to derive particular inferences. The study takes a statute-based approach, studying rules and laws. [16]

### 3. Results and Discussion

#### 3.1. The Position of evidence in the trial process

"Provenance is a means that validates the validity of an offer, viewpoint, or claim," says Andi Hamzah. Evidence constitutes attempt at proving something using instruments that can be employed to establish it. Evidence or in criminal cases of charges in court hearings, such as statements of the accused, In criminal cases, including claims and oaths, testimony, expert declarations, letters, and directives." [17]

In the meantime, Koesparmono Irsan cited Sudikno Mertokusumo's take on the situation definition of evidence in the legal sense: "Nothing other provides adequate reasons for the court who assigned the instance to express assurance regarding the reality of the suggested occurrences. As defined by him, verifying has several implications: proving logically, proving conventionally, and convincing in the realm of procedure has juridical value." [18]

In the The notion of "evidence" appears in numerous art.s of the penal procedure law, including:

- (a) Art. 5 par. (1) point a point 2: Among the abilities of the Investigator is to search for evidence;
- (b) Art. 8 par. (3) point b: If the investigation is deemed finalized, the investigator turns over charge of the accused & proof to the general prosecutors;
- (c) Art. 18 par. (2): If the detainment takes place lacking an authorization, the person being arrested shall promptly deliver upon the arrest and proof into the closest investigators or adjunct investigators;
- (d) Art. 21 par. (1): Of the causes with the requirement for custody is if there are reasonable grounds to believe the following: the person under suspicion or condemned will destroy or destroy proof;
- (e) Art. 181 par. (1): The trial's presiding judge presents the prosecution every piece of the evidence and queries whether the individual recognizes the item being presented, which is followed;
- (f) Art. 181 par. (2): The court in charge of the hearing can additionally demonstrate the person who testified the item in question if required;
- (g) Art. 194 par. (1): Within the instance of a certainty, dismissal, or discharge from any enforceable complaints, the court orders the newly taken proof be returned towards the entity most eligible for thus, the individual referred to in

the ruling, even though that proof is required by law to have been obtained for the betterment of the governing body or deteriorated to the point where it can no longer be used;

(h) art. 203 par. (2):The attorney general addresses the person charged to conduct a Preliminary Examinations, together with eyewitnesses specialists, translators, and any relevant proof; the notion of “proof” is not defined in the Law of penal procedure. The word ‘confiscated assets’ occurs in the law of penal procedure (see art.s 38 to art. 46 of the Code of Criminal Procedure).

Prior the judiciary, “proof” is a substance presented beforehand the tribunal by the public prosecutor that had been acquired prior to its arrival by the investigating officer. Despite the fact that the notion of proof appears in a variety of art.s of the penal procedure code, court rulings need to remain very clear about how things shall be carried out with evidence, given that not anything in the penal procedure code affirms the stance of any piece of proof. Contrary in the instance of proof, those is specifically addressed as follows:

1. Art. 183 of the Code of Penal Procedure, a judge may not convict a person unless by at least two valid pieces of evidence he or she has a conviction that a crime actually occurred and that the accused is guilty of committing it.
2. Art. 184 par. (1) of the Code of Penal Procedure, valid evidence is:
  - i. witness statements;
  - ii. expert information;
  - iii. letter;
  - iv. Instructions;
  - v. Defendant’s Statement,

If it is related between art. 184 par. (1) and art. 181 par. (3) of the Code of Penal Procedure, the proof shall mentions as follows:

1. Witness statement, whenever the person testifying is asked for factual details;
2. Testimony of the defendant, if information about evidence is requested to the defendant;
3. Expert testimony, if an expert gives oral testimony related to evidence at a court hearing.

4. Clue, changable proof remains as a clue Whenever such is an association given proof alongside additional proof, the Judge may find the accused individual liable of a criminal offense;
5. Letter, if a specialist provides an explanation in writing associated with the proof for which data is sought forth of the trial. As a result, evidentiary plays an essential part in backing up evidentiary attempts during the proceeding, in establishing and enhancing the General Prosecutor's accusation for the wrongdoing performed by the Defendant, and might build and enhance the judge's opinion in the Defendant's conviction. As a result, the attorney general must try as many cases and provide as much proof as feasible in court.[19]

The scope of proof is not specifically stated in the Statutes of penal procedure. Proof, contrary to popular belief, can be argued that these have the identical significance as seized belongings, as evidenced by the provisions of Art. 1, subsection 16 of the penal procedure code, which states that follows: "Confiscation is a series of actions of investigators to take over or keep under their control movable objects or tangible or intangible immovable objects for evidentiary purposes in investigation, prosecution and trial." [20]

art. 39 par. (1) mentions items which may become seized as being liable towards confiscation:

1. Assets or invoices of suspected or offenders that are believed to be those gained in entirety regardless of their partly from a criminal conduct as well as a consequence of some other crime act;
2. The objects which had been put to use to perform or arrange a criminal offense;
3. Items intended to impede an inquiry into a crime;
4. Items designed & designed for performing a criminal offense;
5. Additional possessions which have an immediate connection to the wrongdoing undertaken;

The relevance of proof consists in supporting and strengthening solid proof, as specified in art. 184 par. (1) of the penal procedure code, and obtaining the judge's belief for the criminality charged through the general prosecutor against the person charged. As a result, detectives need to do more than seek or find the suspect (perpetrator who committed the wrongdoing), but also gather evidence as well. It happens essentially the primary aim of penal procedure law is to reassemble the circumstances of an offender

including their illegal conduct, with proof serving as a supporting instrument. The culprit, their conduct, & the proof form a unified whole which serves as the center of attempts to discover and discover the actual truth.

### **3.2. Legal protection for corruptors' personal assets which are used as evidence in cases of criminal acts of corruption**

Currently Corrupted measures concentrate on three aspects: avoidance, elimination, then the restitution of resources caused by corrupt offences (asset restoration), with the goal of recouping public financial harm [21]. The restitution of public financial damages with asset seizures stemming from corruption-related offenses has three main goals: [22]

- A. Return Corruption has taken control of governmental assets
- B. Prevent Corruption is prevented from exploiting forfeited funds to perpetrate further crimes, such as money laundering.
- C. Condemn individuals who wish to engage in wrongdoing.

Asset according to the Big Language Dictionary is It refers to an item with monetary value, financial resources, or fortune [23]. Asset are capable of being construed as either intangible or tangible domain; art. 499 of the Civil Code defines objects (zaak) as “anything that can be a subject of property rights.” Items which may acquire rights of ownership may exist in the kind of goods or entitlements, which include intellectual property rights, patents, and so on.

Since its Civil Code defines things as real entities like as automobiles, property, and so on, immaterial assets that include intellectual property and patents are governed in statutes rather than the Civil Act. The statute is known as the Intellectual Properties Protection Act. [24] Although the concept of prosperity is controlled in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, specifically Prosperity is defined as all that is portable or immovable items, whether physical and intangible, earned in one way or another. As it relates to the restitution of state financial damages in corrupt wrongdoing, the Corruption Law had expected safety precautions over assets caused by graft offenses perpetrated by the Defendant along the investigative process. This is governed by Tipikor Law art. 28, and reads the following:

The accused individual must disclose details about all of his possessions, as well as the possessions of his spouse's or spouse, young ones, and any individual or entity

known or reasonably believed of being involved in anything to do with the wrongdoing of corruption, to supply the intent of prosecution..

This provision turns out to be in line with art. 48 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, which states:

Corrupt behavior believes have to give details to law enforcement regarding all they own in assets, as well as assets of their spouse or children, and anyone with an interest in a business who is believed to have been associated alongside the unlawful act of graft conducted by the suspect.

Furthermore, whether the accused in a case of misconduct fails to disclose accurate details regarding all of their assets of their spouse or children, and anyone with an interest in a business who is believed to have been associated alongside the unlawful act of graft, Art. 22 of the Corruption Law imposes sanctions. Art. 22 of the Penal Code effectively states:

Every individual addressed to in art.s 28, 29, 35, or 36 who intentionally fails to provide information or provides inaccurate data shall face confinement for no less than of three (three) years and an aggregate of twelve (twelve) years, or a monetary punishment regarding a minimum of IDR 150,000,000 (one hundred fifty million rupiah) alongside a highest of IDR 600,000,000 (six hundred million rupiah).

According to the provisions of art.s 22 and 28, the Corruption Law applies to the perpetrator's property that was acquired using the proceeds of corruption in addition to the perpetrator's conduct. Therefore, prior to its purchase, the property of corruption offenders must be detected.

Similar to this, laws addressing the existence of the defendant's property are also a priority in the trial process of criminal actions of corruption, including those governed in:

1. According to art. 37 A, the accused is required to disclose all of his property as well as the property of his spouse or husband, children, and anyone else who is allegedly connected to the case at hand.
2. The person charged with committing one of the crimes of corruption listed in Art. 2, 3, 4, 13, 14, 15, and 16 of Act Num. 31 of 1999 Concerning the Eradication of Corruption as well as art.s 5 to Art. 12 of this Law, shall prove his innocence against any property not charged but allegedly derived from the crime of corruption, according to Art. 38 B.

Of course, this is done in order to make up for public fund decreases, as required by art. 18 par. 1 of the law on the eradication of corruption crimes:



1. Besides to other offenses as defined by the Penal Law;
2. the confiscation of movable or immovable property utilized for or associated with graft offenses, including enterprises controlled by those found guilty where illicit activities are perpetrated, as well as commodities which substitute such items.
3. payment of substitute funds in an amount same amount as property gained via the corrupt penal conducted;
4. The prosecutor may seize the convict's property and sell it at auction in order to if the criminal fails to pay the substitute cash make the payment specified in par. (1) point b within one (one) month of the court ruling that has become permanently enforceable.
5. If the defendant lacks the assets necessary to provide the replacement payment mentioned in par. (1) point b, They is going to get condemned to a period of jail which is not more than the longest term permitted by law for the primary offense.

In essence, assets that are the result of corruption are returned under art. 18 of the Anti-Corruption Law. The return on assets therefore needs to be dependent on a number of factors. According to Michael Levi, there are at least three explanations for the return on assets, including:

1. Preventing criminal criminals from having control over assets obtained unlawfully to commit more crimes in the future is the goal of prevention (prohylatic);
2. The lack of proper rights by criminal actors to these illicitly acquired assets is the basis for propriety;
3. The argument for priority or preemption is that the criminal conduct gives the state priority to pursue assets obtained through illegal means rather than the rights that the criminal act's offender possesses;
4. Because the asset was acquired unlawfully, the state has a proprietary interest in it, thereby justifying possession. [25]

The act of seizing assets allegedly obtained through corruption becomes a very urgent matter in the course of a criminal case, particularly one involving corruption, given that evidence seized is not only intended to be used as evidence at trial but also to compensate the state for financial losses brought on by corruption. As a result, confiscation becomes a crucial first step in the process of investigating, prosecuting, and trying corruption matters in court. Seizing property or items used in a criminal

prosecution requires caution. It must be assured that there is a 100% accurate correlation between the items that were seized and the criminals.

In essence, confiscation is an additional punishment that is governed by the Criminal Code (KUHP). According to Eddy O.S., the following guidelines are generally followed when commodities are seized:

1. Confiscation in the sense of seizing items used in committing a crime or *objectum sceleris*;
  2. confiscation in the sense of seizing items connected to crimes or *instrumentum sceleris*;
  3. When referring to confiscation, think of *fructum sceleris* or the proceeds of crime.
- [26]

Although the Criminal Procedure Code strictly regulates the use of an accused person's property as evidence, investigators and public prosecutors frequently disregard it at the level of law enforcement. By seizing an accused person's property that has nothing to do with a criminal act of corruption and is not the result of a criminal act of corruption, this is done in an effort to recover state financial losses. Given the assumption that if state damages resulting from corruption offenses committed cannot be recovered, this success is deemed insufficient, In order to be able to seize the assets of those accused of committing corruption offences in court, which will then be used to pay the state compensation money owed to the offender, such success must be deemed sufficient.

The Law Number 39 of 1999 Concerning Human Rights (HAM) states in art. 29 par. (1) that "Everyone has the right to protection of himself, family, honor, dignity, and property rights," which includes the protection of property.

According to Jimly Asshiddiqie, all Indonesians constitutionally recognized the notion of human rights (HAM) as a concept in line with the ideology of Pancasila when the 1945 Constitution was revised by the addition of Chapter XA, designated Human Rights (HAM). As a result, there are no longer any disagreements regarding whether or not the 1945 Constitution should include the concept of human rights, which existed during the battle for independence. [27] This is significant for the HAM in the State of Indonesia because not many nations in the world have a distinct and independent section on human rights in their constitutions, compared to the constitutions of other nations.

art. 28H, par. 4, of the 1945 Constitution, provides that everyone has the right to private property rights, and that these rights cannot be arbitrarily taken away by anyone.

One of the key elements of a nation's rule of law is the state's commitment to upholding human rights. Everybody is entitled to their property rights regardless of where they are, but they also have a moral duty to protect others' rights to human dignity. over things or property, implying that a person possesses both fundamental duties and human rights. Regarding this fundamental duty, which is outlined in art. 28 J par. (2) of the 1945 Constitution and art. 73 of Law Number 39 of 1999 respecting Human Rights, it is recognized that these documents and laws must be followed. [28]

art. 28 J par. (2) of the 1945 Constitution which states:

Everyone must abide by the limitations imposed by the law, which exist solely to ensure that others' rights and freedoms are acknowledged and respected as well as to satisfy fair expectations that are consistent with moral principles. In a democratic society, religious ideals of safety and public order are important.

art. 73 of Law Number 39 of 1999 concerning Human Rights

To ensure acknowledgment and respect for other people's human rights and fundamental freedoms, decency, public order, and the nation's interests, the rights and freedoms outlined in this Law can only be restricted by and based on the law.

Three types of state obligations and responsibilities can be identified within the scope of a human rights-based strategy, namely:

1. Respect

It is the duty of the state to refrain from interfering with or controlling how its citizens exercise their rights. States are required to refrain from taking any measures that might prevent the realization of all human rights;

2. to defend

the responsibility of the state to take proactive measures to ensure the protection of its citizens' human rights. States are required to take action to stop third parties from violating all human rights;

3. To complete:

For the full implementation of human rights, states are required to take legislative, administrative, legal, and other actions.

the requirement that the state accomplish certain objectives and adhere to quantifiable substantive standards is known as the obligation to have an impact (obligation to result). [29]

The viewpoint of Philip M. Hadjon about the existence of a state providing legal protection for its citizens is likewise supportive of the existence of the state protection

for its people as stated in Art. 28G par. (1) of the 1945 Constitution. There are two (two) categories of legal protection for the populace: preventative protection and repressive protection. Before a government decision has final authority, the public is given the chance to voice any concerns or disagreements. It attempts to preserve community rights based on the shared interests of people living in the community as well as people's rights derived from individual rights. [30]

Deprivation is a type of imposing criminal sanctions, as was previously established, and criminal sanctions themselves are an element of law enforcement. According to Sudikno Mertokusumo, law enforcement: The law protects human interests; thus, the law must be put into practice in order to defend human interests. the law's implementation can tak Furthermore Sudikno Mertokusumo also said:

The law that was broken in this instance needs to be applied. The law must be put into effect for it to be effective, and for the law to be put into effect, there must be components of fairness and legal clarity. [31]

Even the community expects legal certainty, given that the law is charged with establishing it because it seeks to maintain public order. Legal certainty is judicial protection against arbitrary actions, meaning that someone will be able to obtain something expected under certain circumstances. [32]

The author contends that Pancasila, as a national philosophy, in a legal perspective, means that Pancasila as a basis for assessing justice, because in principle in legal philosophy is to assess justice. This argument relates to justice to the accused's property, which is used as evidence in the trial process of corruption cases. According to the pancasila viewpoint, legal justice is justice based on the second precept, which is just and decent. Dignified justice is founded on the second principle of Pancasila, which states that even if someone is guilty in law, they should still be treated with respect. This was stated by Teguh Prasetyo:

Similarly, Justice that strikes a balance between rights and obligations is called dignified justice. Justice that is both materially and spiritually just is automatically followed by material justice. Respectful justice views man as a being made by God, whose rights are unalienable. [33]

As is known, that the Second Precepts of Pancasila, namely humanity and being civilized, put forward an acknowledgment of human dignity with all its basic rights and obligations, which of course, from one of these values one can draw a meaning that human rights must be upheld in every law enforcement, which is human rights. can not be removed for someone who has the status of 'sick' in a legal case, including corruptors [34][35]

Presence on rights of ownership assures and safeguards it is found in Art. 28H, par. 4 of the 1945 Constitution, which reads: "Everyone has the right to have private property rights, and these property rights may not be arbitrarily taken away by anyone." demonstrate that, compared with The defendant assets which serves as proof in the unlawful conduct of graft as well as has become a consequence out of the unlawful serve of graft, the obtaining of The defendant assets having not anything connection to the criminal act of graft is shielded regarding seizure and use as proof in the unlawful act of corruption trial handled by the authorities. In the course of the legal process, the assets within issue might be taken.

## 4. Conclusion and Recommendations

### 4.1. Conclusion

The purpose of providing evidence at a trial is to prove the defendant's guilt, not to ensure that the punishment will be carried out. There is a guarantee and protection of property rights art. 28H, clause (4) of the 1945 Constitution. demonstrates that the State protects the defendant's acquisition of property as being protected by the State from being seized even though it has nothing to do with the defendant's unlawful act of corruption in the court process. The property can be seized during the trial process, unlike the defendant's personal property, which is both used in and the product of the illegal act of corruption.

### 4.2. Recommendations

It is vital to establish clear laws in order to recover state financial damages brought on by corruption, regarding the criteria for what personal property of the accused can be confiscated In the defendant's case's legal proceeding, considering that if the confiscation process is carried out after the court decision the defendant may lose his property, so that he cannot pay money in lieu of state losses, The new Code of Criminal Procedure may have been amended to include the regulation, considering that the Criminal Code has been amended and will be enforced in 2026

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