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# Criminal Appropriation From Money Laundering And Corruption Crime

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**ABSTRACT**
The rampant criminal acts of corruption in the country have not only affected the country's finances but have violated the social and economic rights of the people, corruption is no longer a national problem, so it has become a transnational phenomenon to eradicate it. The difficulty in eradicating criminal acts of corruption, including money laundering (money laundering), is because our legal norms are still very dependent on the Criminal Procedure Act (KUHAP), the principle of which is the acusatoir principle, including the principle that can be guessed or accused as a topic related to an examination trial case. The freedom of giving and obtaining legal freedom that governs shows the principle of acusatoir, which means the difference between preliminary hearings and court hearings on the principle has been eliminated. After the entry into force of the Criminal Procedure Code, the rights of the suspect are questioned. This is because whoever indicted, namely the prosecutor, is he who is obliged to prove the indictment. Authority of the Prosecutor's Office in the field of prosecution and education for special crimes, based on Article 30 paragraph (2) of Law Number 16 Year 2004 concerning the Republic of Indonesia Prosecutor's Office, namely: courts for and on behalf of the state or government."

**Keyword:** Criminal Appropriation, Money Laundering, Corruption Crime.

## 1. INTRODUCTION

The practice of money laundering in Indonesia does not show clear or transparent activities as does ordinary crime, such as theft, murder or rape. However, the symptoms of an increase in money laundering can be felt by Bank Indonesia (BI) or a bank with the entry of large amounts of money without knowing who the real owner is. If it is tracked by the bank, the owner is found using a fake name or the name of someone else to trick the identity of the owner of the money. This is due to the unknown origin and activities of the perpetrators in committing crimes that are very "hidden" by storing their currency as a "good" bank customer. Even though this event is reported to law enforcement officers, it is not uncommon to consider it only as the dark numer crime, which is a crime that is not clear even though there are real moral and material losses to other parties.[1]

Money laundering from proceeds of crime must be addressed, because it can damage the economic stability and mentality of officials. The impact of money laundering crimes, as stated by Bambang Setijopradjo, is felt in 3 (three) terms, namely: 1) the creation of unfair competition

[1] Suhartoyo, Argumen Pembalikan Beban Pembuktian Sebagai Metode Prioritas Dalam Pemberantasan Tindak Pidana Korupsi dan Tindak Pidana Pencucian Uang, Depok: Rajawali Pers, 2019, h. 110.

(unfair competition) between economic and business actors; 2) the degradation or decline in morale of officials due to the entrance and many circulation of "illicit money" in the country so that it encourages the temptation to do Corruption, Collusion and Nepotism; 3) damage to the national political and economic system.[2]

The rampant criminal acts of corruption in the country have not only harmed state finances but have been a violation of the social and economic rights of the wider community, that corruption is no longer a national problem, but has become a transnational phenomenon3 so that international cooperation is essential in preventing and eradicate it. In its development, corruption has to do with other organized crime, especially in the efforts of corruptors to hide the proceeds of corruption through money laundering using effective international transfers. Not a few public assets are corrupted, rushed and stored in financial centers in developed countries that are protected by the legal system in force in the country and by the services of professionals hired by corruptors, so it is not easy to track let alone to recover these assets . Developing countries where corruption generally occurs, feel this reality as a difficulty in recovering assets that have been stolen and hidden in the world's financial centers.[3]

For example, regarding corruption in the bureaucracy, based on available data, starting from 2004 to mid-June 2011, there were 158 regional heads, covering 33 provinces and 524 regencies / cities in Indonesia, involved in legal cases, both of whose status is still active or not served. Every week the head of the regions involved in legal cases continues to grow, from the start of the process to being convicted. Five years ago, the eradication of corruption began to improve as evidenced by the increase in Indonesia's GPA in 20016 to 3.7. Up compared to 2014 and 2015, which were each given a score of 3.4 and 3.6 so that Indonesia ranks 90th out of 180 countries. It's just that the GPA score remained stagnant when measured again in 2017. Indonesia's score remained at 3.7 and ranked 96th out of 180 countries. Even though there is progress, the data shows that the process of eradicating corruption is proceeding very slowly.[4]

This also shows that the level of corruption eradication in Indonesia is still quite weak. This fact can be further seen from the results of the CPI based on data held by Indonesia International Transparency (IT) in 2017 which states Indonesia is at 3.7 points. This fact shows that Indonesia's GPA is still very far behind when compared to the GPA of neighboring countries such as Singapore with a score of 8.4 and Malaysia with a score of 5.0. Even though the device to eradicate corruption has been prepared, with the passing of many laws and regulations. No less

[2] *Ibid.*
[3] Konsideran Undang-Undang Nomor 20 Tahun 2001 tentang perubahan atas Undang-undang Nomor 31 tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.
[4] *Ibid*, h. 3

than nine laws and regulations related to corruption, both in the form of laws, Government Regulations in lieu of laws, Government Regulations, Presidential Decrees, and Presidential Instruction. For example, the legal instrument for eradicating corruption is based on Presidential Instruction Number 5 of 2015 concerning the Prevention and Eradication of Corruption Act of 2015, in fact the spirit of fighting corruption in Indonesia is still very weak and far from expectations.[5]

Along with technological developments in various fields, criminal acts of corruption and misappropriation of state finances are increasingly complex and complex. To ensnare and prove the perpetrators of corruption properly is not only applied to all articles of the relevant legislation, but also requires more ability from judges to improve the accuracy of fair decisions. Meanwhile, if you remember or consider the value of the assets that were charged to the perpetrators who are litigating as big, while the evidence that shows that the assets as goods resulting from corruption cannot be demonstrated then the charges themselves become weak.[6]

Further explanation regarding the difficulty in eradicating criminal acts of corruption, including money laundering, is because our legal norms are still very dependent on the Criminal Procedure Code (KUHAP), the principle of which is the principle of acusatoir, the principle that places suspects or the defendant as a subject in the examination of criminal cases. The freedom to give and get regulated legal counsel shows the adoption of the acusatoir principle, which means the difference between the preliminary hearing and the trial hearing on the principle has been eliminated. After the entry into force of the Criminal Procedure Code, the rights of the suspect get even more recognition. This is because whoever indicted, namely the prosecutor, is he who is obliged to prove the indictment.[7]

In a broad sense, basically the nature of corruption places more emphasis on unlawful behavior by means of betraying a trust. Corruption is an immoral act to obtain a method of carrying out acts of theft and fraud. Syed Hussein Alatas also formulated the concept of corruption simply. According to Alatas, "corruption is the abuse of trust in the interest of private gain," namely the misuse of the mandate for personal gain.[8]

The crime of money laundering or known as Money Laundering as a crime has a characteristic that is that this crime is not a single crime but a double crime. This is characterized by a form of money laundering as a crime that is a follow-up crime or a follow-up crime, whereas the main crime or original crime is referred to as a predicate offense or core crime or formulated by

[5] *Ibid.*
[6] *Ibid*, h. 5.
[7] *Ibid*., h. 6
[8] *Ibid*., h. 67

a country as unlawfull actifity, namely the original crime that produces money which is then carried out the laundering process.[9]

According to Article 2 paragraph (1) which is determined as predicate crime, there are 25 types of criminal acts, and paragraph (2) confirms to be equated as the result of a criminal act as referred to in paragraph (1) letter n, including Wealth assets that are known or reasonably suspected to be used and / or used directly or indirectly for terrorism activities, terrorist organizations, or individual terrorists. [10]

According to the provisions of Article 1 paragraph (1) of Law Number 8 of 2010 it is stated that the theft of money is any act that fulfills the elements of a criminal act in accordance with the provisions in the law. In this sense, the elements in question are elements of the perpetrators, elements of acts against the law and elements are the result of criminal acts.

The definition of money laundering can be seen in more detail in the provisions in Article 3, Article 4, and Article 5 of the TPPU. The point is that money laundering is a form of crime committed either by a person and / or corporation intentionally placing, transferring, transferring, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging with currency or letters valuable, or other acts of assets that are known to be or reasonably suspected are the results of criminal acts with the aim of concealing or disguising the origin of those assets, including those who receive and control them.

Various ways have been taken to save state finances, among others by tracking / pursuing and confiscation of goods / wealth that are allegedly related to corruption crimes. Law Number 31 of 1999 jo. Law No. 20/2001 concerning Eradication of Corruption, the Law regulates the sanction of payment of fines and compensation for acts of corruption committed by individuals or legal entities with the aim of maximizing the return of corrupted state money.

Based on Article 35 paragraph (1) of Law Number 17 of 2003 concerning state finances: "Every state official and non-treasurer public servant who violates the law or neglects his obligations either directly or indirectly that harms state finances is required to compensate the intended loss". The provision is one of the efforts to settle the state's loss recovery which was taken by the corruptors.

Efforts to recover state financial losses as stipulated in the Corruption Act in reality still face obstacles both at the procedural level and at the technical level. At the procedural level, certain legal instruments that are in accordance with legal issues are needed. In corruption, the

[9] Suhartoyo, *Op. Cit*., h. 92.
[10] Pasal 2 ayat (1) dan (2) UU RI No. 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang.

proceeds of crime in the form of assets are not only enjoyed by the defendant, but also by third parties who are not accused.

One of the law enforcement agencies that is given the authority to enforce law in the handling of acts of corruption other than the Corruption Eradication Commission (KPK) is the Attorney General's Office of the Republic of Indonesia as affirmed in Law Number 16 of 2004. At present, the eradication of corruption has been carried out by various institutions such as the attorney general's office and the police and other bodies related to eradicating criminal acts of corruption, therefore regulating the authority of the Corruption Eradication Commission (KPK) in this Act is done carefully so that there is no overlapping of authority with these various agencies.[11]

Authority of the Prosecutor's Office in the field of prosecution and investigation for special crimes, based on the provisions of Article 30 paragraph (2) of Law Number 16 Year 2004 concerning the Attorney General's Office of the Republic of Indonesia, namely: act both inside and outside the court for and on behalf of the state or government. "

The authority in the field of civil service and state administration by the prosecutor, including if the convicted corruption criminal is unable to pay replacement money if the insufficient amount of replacement money or goods have been used up, the public prosecutor as the executor can wait until the defendant has more assets . If it turns out that after some time (having finished serving a criminal offense) has wealth, the public prosecutor can request the underpaid payment of compensation through a civil suit to the district court in accordance with the Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 1990.

The Prosecutor as a State Attorney in handling the return of corruption assets, can be seen that the act of seizure carried out based on a criminal justice decision, there are several obstacles including: the perpetrator fled, died, had immunity, had debate or power and the perpetrator was not known to be domicile, the asset was in third party, and lack of sufficient evidence.[12]

The return of assets by the state is carried out with the confiscation of these assets is a series of investigative actions to take over and or save under the control of movable or immovable, tangible and intangible objects for the purposes of proof and investigation, prosecution and trial.[13] In the case of asset recovery, there is also a method of seizing assets that is different from confiscation, namely revoking the right of a person to an object.

Given the legislation system that is not flexible and is always required to do changes and updates according to the circumstances that occur. It becomes a polemic when corruptors enjoy the proceeds of their crime (assets) by using it for personal interests or even shared interests with other

[11] Undang-undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi.
[12] www.kejaksaan.go.id, humas_i. diakses pada tanggal 03-09-2019
[13] Pasal 1 Butir 16 KUHAP.

parties, therefore there will be a mixture of existing interests, and the integration of assets. An example is if the assets of a corruption crime are made a part of an alliance for a business, so there is a merging of assets that will be used as business capital so that under these conditions there are parties involved in their interests (third parties).[14]

Article 38 of the Criminal Procedure Code has stipulated that an investigator can confiscate on the basis of a permit from the local District Court (or without a permit from the judge if in an urgent situation and only on movable objects but after confiscation is obliged to provide an investigative report to the relevant local District Court in his interest In the case of deprivation, efforts can be made to recover if there are interests or rights of a disadvantaged third party, related to the deprived assets, a third party can prove that the interests or rights are true and do not form part of a criminal act of corruption or belongs to the convicted person (Article 19 paragraph (1) of the Anti-Corruption Law) If there is a third party who submits an objection letter to the court, the time is no later than 2 months after the court's decision is decided in a public hearing (Article 19 paragraph (2) of the Anti-Corruption Law).

If in the case of confiscation of assets that have been transferred by a third party, it must be done based on what has been explained above that there must be a court decision that has permanent ownership which states that the defendant is proven to have committed a criminal act of corruption and is declared as a convict by being charged with being seized. his assets which are the proceeds of crime from corruption. And if the crime property has changed hands or is ruled by another party, then directly or indirectly the act of seizure is carried out on the asset regardless of the existence of the asset under whose control, and based on legal protection in article 19 of the Corruption Act, an effort is made against those parties. the party who feels aggrieved over the act of appropriation of these assets to object to the reverse evidence. So in this position of course the role of the reverse proof mechanism is very dominant in the mechanism of appropriation of assets where the asset is controlled or is in the hands of a third party.

One way of transferring to third parties with various modes is also inevitable assets that are suspected of proceeds of corruption have been carried out buying and selling by a criminal offense to a third party with the deed of the authorized official namely through the Sale and Purchase Deed (AJB) issued by the Official Land Deed Makers (PPAT), if seen from the process and requirements to conduct the sale and purchase, there are no problems or violate the legal provisions, the requirements to make the AJB have been fulfilled, but what becomes a problem after the buying and selling process is carried out or marked by surrender ( levering) i.e. the transfer between one

[14] Purwaning. M. Yanuar, *Pengenmbalian Aset Hasil Korupsi*, PT. Alumni, Bandung, 2007, h. 51.

owner to the other owner legally,[15] the object, in this case the land, house or assets promised will be surrendered by the state for allegedly obtained from the results of criminal acts of corruption and money laundering committed by the seller.

It is clear that the third party as a buyer in good faith is harmed by the confiscation carried out on the basis of a court decision because there are allegations that the assets were obtained from the results of corruption and money laundering, in the law the Civil Code clearly provides protection for buyers in good faith namely Article 1338 paragraph (3) explains that each agreement must be implemented in good faith, this explains that each party making the agreement must be based on good faith, in this case including the sale and purchase agreement where the object is fixed and movable objects.

**Criminal Appropriation of Crimes Related to Money Laundering and Corruption Crimes**

Deprivation is an additional type of crime aimed at assets that are used or obtained from crime. In ancient times, the emperors of the Roman Empire were a criminal offense as legal politics which intended to rake as much wealth as possible to replenish their cash. Criminal plunder appeared in the Roman code of justice in 1810 and was removed in the Netherlands in the 18th century. Then the criminal robbery reappeared in Wetboek van Strafrecht (WvS) in the Netherlands and based on the principle of concordance was imposed in Indonesia. Through Law No. 1 of 1946 concerning Criminal Law Rule jo. Law Number 73 of 1958 concerning Declaring Law Number 1 of 1946 applies to all parts of Indonesia (hereinafter referred to as the Criminal Code). In the Criminal Code the provisions related to seizure are regulated in Article 39. According to the provisions of Article 39 of the Criminal Code, what can be carried out is the possession of the defendant used to commit a crime, the goods have been confiscated.[16]

The goods belonging to the convicted person obtained from crime. The confiscation of goods regulated in Article 39 of the Criminal Code is facultative, which is divided into two groups, namely :[17]

a. Goods obtained from crime, for example money obtained from crime theft. These goods are called corpora delicta and these items are always confiscated as long as they belong to the midwives and come from crimes, both dolus and culpose crimes. In the case that corpora delicta is obtained by violation (overtredingen), the goods can only be confiscated in matters

[15] Andi Muhammad Anas, 2011, Penyerahan atau Levering, dikutip dari *http:andianas.blogspot.com/2011/12/levering-penyerahanoperdraeht.html*, diakses pada tanggal 3 Oktober 2013 pukul 14.02 WIB.

[16] Supardi, *Perampasan Harta Hasil Korupsi "Prespektif Hukum Pidana Yang Berkeadilan"*, Prenadamedia Group, Jakarta, 2018, h. 47.

[17] *Ibid*., h. 48.

determined by law, for example Article 502 paragraph (2), Article 519 paragraph (2), Article 549 paragraph (2) Criminal Code (related to weapons, fake money, livestock that causes violations);

b. Goods that are intentionally used to commit crimes, for example; firearms, daggers, poisonous materials, unauthorized abortion and others. These items are called instrumenta delicta and can always be seized as long as they are used to commit a crime. If the offense instrument is used to commit dolus or colpus crimes or violations, then the instrumental delicta can only be deprived in matters specified in the law, for example Article 205 paragraph (3), Article 519 paragraph (2), Article 549 paragraph (2) of the Criminal Code.

The general provisions apply to the two things above, namely the possession of the convicted person, but there are exceptions, namely crime related to counterfeit currencies contained in Article 250 of the Criminal Code bus and also in legislation outside the Criminal Code. In accordance with the provisions of the article, in a crime of currency the appropriation is imperative even though it does not belong to the convicted person, in contrast to the general provisions which are facultative. According to Jonkers, as quoted by Aruan Sakidjo and Bambang Purnomo, in the general rules in Book I of the Criminal Code, deprivation is determined as punishment or criminal, but the implementation is as stipulated in Book II of the Criminal Code.[18]

Types of punishment or criminal according to the provisions of Article 10 of the Criminal Code are divided into two parts, are:[19]

a. Principal sentences consisting of, (1) capital punishment; (2) imprisonment; (3) incarceration; and (4) fines;

b. Additional penalties consisting; (1) revocation of certain rights; (2) confiscation of certain goods; and (3) announcement of the judge's decision.

Based on the provisions of Article 10 of the Criminal Code, confiscation is one of three additional types of punishment, Ubi non est principalis, non potest esse accessorius, where there is no main point, then there is no additional matter. Such is the postulate which underlies the principal and additional matters. The general principle that applies is that additional crimes may not be imposed without the principal criminal, but on the contrary the principal criminal can be imposed without additional criminal. Judges may impose only one main criminal with more than one additional criminal.[20]

Mardjono Reksodiputro explained that the legal concept of confiscation of assets or assets according to Indonesian and Dutch criminal law is an additional sentence that can be imposed by

[18] *Ibid*.
[19] *Ibid*., h. 49.
[20] *Ibid*.

the judge together with the principal crime. According to Jonkers, the basic punishment is different from the additional punishment, as the name suggests additional punishment can only be handed down along with the basic punishment. The law recognizes several exceptions to the application of this hope. Deprivation, for example, can be imposed on children surrendered to the government, only regarding confiscated goods (Article 39 paragraph (3) of the Criminal Code). So, here is an additional sentence imposed but not subject to basic crimes (only an act). As in the case of possessing, loading or transporting goods that are contrary to the rules of the law, which are carried out by persons under the age of sixteen know, the judge can drop the seizure of these items, even if the child is not subject to a basic sentence (only returned to parents).[21]

According to P.A.F. Lamintang and Theo Lamintang, according to Article 39 paragraph (3) of the Indonesian Criminal Code from the words of "guilty person" and placed under government surveillance, it can be seen that the perpetrators of the criminal offenses concerned by the judge were not subject to a criminal (principal). The statement of confiscation of objects as referred to in Article 39 paragraph (3) of the Criminal Code is a question, is it still appropriate to be called a temporary additional criminal without the principal criminal.[22]

Although in the explanation of Article 39 paragraph (3) of the Criminal Code says zonder hoofdstraf geen bijkomende straf, which means that without the main criminal offense there may be no additional criminal sanctions, but according to the provisions of the article the government has permitted the imposition of additional criminal offenses in the form of seizure of objects without the imposition of objects basic crime. This is repeated again in the explanation of the establishment of Article 40 of the Criminal Code which expressly recognizes the seizure of certain objects is not a crime as referred to in the Criminal Code, but only as a politiemaregel or a mere precautionary measure. Therefore, the general concept of yam est principalis, non potest esse accessorius, in the Criminal Code does not apply absolutely because there are several provisions that deviate from it.[23]

Regarding the foregoing, Pompe said, "One must make a distinction first between the statement of seizure of an object as a criminal offense, and the statement of seizing an object as an act. Furthermore, the person who feels aggrieved always has the right to express an objection to hakum against the appropriation. In addition, Langenmeijer also revealed "A statement of seizure of an object for the benefit of the state, must never harm the rights of others, unless the law expressly permits that against such things can also be done against objects belonging to another person. The character of the action (matregel) is attached to the reading of the additional sentence

[21] *Ibid*.
[22] *Ibid*., h. 50.
[23] *Ibid.*

"announcement of the judge's decision" in a hearing that is declared open to the public (openbaarmarking van de rechtelijke uitspraak). In addition to containing elements of punishment, concerning the offense of the good name of the convict, the announcement referred to also functions as a warning to the general public. The same thing also concerns additional crimes in the form of revocation of certain rights. Part of it is suffering that is felt by the convict at the same time as aiming to protect certain social interests.[24]

Additional crimes of confiscation of assets resulting from corruption as one type of crime, are specifically regulated in Article 18 and Article 19 of Law Number 31 of 1999 concerning Eradication of Corruption Acts as amended by Law Number 20 of 2001 concerning Amendments to Laws Law Number 31 of 1999 concerning Corruption Eradication of Corruption Corruption (Anti-Corruption Act).

In accordance with Article 18 paragraph (1) letter a, confiscation is carried out on goods obtained from criminal offenses in addition to those used or items that replace them. This means, the seizure of property can be done even though the defendant / convict does not enjoy it. Giving, surrendering, transferring the transfer so that the defendant does not enjoy the assets obtained from the criminal act of corruption does not reduce the right of the state to seize the property, especially for corruption assets that have been made in other forms (goods that replace it). Such deprivation must pay attention to the rights of third parties in good faith. If it is proven that a third party receiving the gift, transfer, transfer or transfer of assets of the convicted person is proven in good faith, then the provisions of Article 18 paragraph (1) letter b shall apply, namely the payment of replacement money sourced from the legal assets of the convicted person at most the same as the assets obtained from criminal acts of corruption.[25]

The provision of Article 19 paragraph (1) regulates the protection of the confiscation of assets produced by third parties, which reads "The court's decision regarding the confiscation of goods not belonging to the defendant is not handed down, if the rights of third parties in good faith will be impaired". The third party to whom the seizure was subjected to further may submit an objection as referred to in the next paragraph, namely:[26]

(2) In the event that a court decision as meant in paragraph (1) includes third party goods of good faith, the third party may submit an objection letter to the court concerned, no later than two months after the court decision is declared open to the public.

(3) Submission of objection letters as referred to in paragraph (2), does not suspend or stop the implementation of court decisions.

[24] *Ibid*.
[25] *Ibid*,. h. 56.
[26] *Ibid*.

(4) In the circumstances referred to in paragraph (2), the judge requests information from the public prosecutor and interested parties.

(5) Judge's determination of the objection letter as referred to in paragraph (2) may be appealed to the Supreme Court by the applicant or the public prosecutor.

The meaning contained in the provisions of Article 19 is very appropriate as a complement to the provisions of the confiscation of assets and payment of compensation money to the convicted person, bearing in mind that the assets obtained from the criminal act of corruption are not always enjoyed by the convicted person. Not infrequently the results of criminal acts of corruption obtained by third parties, meaning that third parties receive property as part of the proceeds of crime committed along with the convicted person. The convicted person gets a part of the proceeds of crime, so does a third party but has not / has not been legally processed.[27]

Additional criminal formulations related to the seizure of goods or property regulated in the Anti-Corruption Act (Article 18 including Article 19) are different from what is stated in the Criminal Code. The articles in the Criminal Code receive additional materials and formulations adjusted to the current condition of criminal acts of corruption. In addition to the confiscation of assets or property obtained from criminal acts of corruption, the most important thing related to the restoration of ownership rights (state) is the existence of criminal payment of compensation in the amount of as much as the assets obtained from criminal acts of corruption. This additional criminal payment of replacement money is not known in the Criminal Code.[28]

Additional penalties according to the Criminal Code in the form of a confiscation of objects belonging to the convicted person obtained from a crime are actually a crime, which is a bermofensstraf or a criminal intended to negate or reduce the property of the convicted person, especially those obtained from the crime. For this reason the establishment of the law requires that objects seized must belong to the convict himself.[29]

Therefore, the essence that underlies the norms of imposing criminal assets seizure in a criminal act of corruption that takes state money unlawfully, the principle is the same as the spirit that is harmed by the perpetrators of a crime and in a criminal act of corruption is the state or society. Recovery of the financial losses of the said country through the methods regulated in Article 18 paragraph (1) to letters a and b jo. Article 19 paragraph (1) of the Law on Corruption in the form of confiscation of goods or assets obtained from a criminal act of corruption or goods that replace it and payment of compensation in the amount of as much as the assets obtained from a criminal act of corruption.

[27] *Ibid*.
[28] *Ibid*., 57.
[29] *Ibid*.

**Decidendi Ratio**

According to Law No. 48 of 2009 concerning Judicial Power in Article 4 letter b, it states that the court helps justice seekers and tries to overcome all obstacles and obstacles in order to achieve a simple, speedy and low cost trial.[30] In connection with this matter, Judges in the court are required to use the principle of the ratio decidendi or decision based on clear and sufficient considerations. In this case, in addition to having to contain the reasons and basis for the decision, it also contains certain articles and relevant laws and regulations (unwritten legal sources) that are used as the basis for hearing, and each decision must contain legal considerations based on the reasons for the assessment. and the right and correct legal basis.[31] Regarding legal considerations from judges or ratio decidendi means that an argument / reason used by the judge as a legal consideration is the basis before deciding on a case. Regarding legal considerations from judges or ratio decidendi means that an argument / reason used by the judge as a legal consideration is the basis before deciding on a case.[32] Judges' considerations, known as ratio decidendi, are legal reasons or rationale used by a judge in deciding a case. The legal considerations or ratio decidendi are contained in the consideration considering the main case, which starts with the opinion of experts (doctrine), evidence, and jurisprudence which must be arranged systematically, logically, and interconnected (samenhang) and complementary. Concrete legal considerations must be set forth as an analysis, argumentation, opinion, and conclusions of the judge.[33]

In general, the function of Ratio decidendi or legal reasoning, is as a means of presenting the main points of thought about the problematic of legal conflicts between one person and another, or between the community and the government of cases that are controversial or counterproductive to become a replica and duplicate of the pilot, especially concerning the good and bad system of law enforcement and application, the attitude of the law apparatus, and the judiciary.[34]

**Asset Seizure Mechanism in Indonesia**

Current criminal law is seriously considered in jurisdiction in Indonesia. The current Penal Code in Indonesia is basically a legacy from the Dutch East Indies colonial government called

[30] UU No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.
[31] Ahmad Mujahidin, *Pembaharuan Hukum Acara Peradilan Agama,* Ghalia Indonesia, Bogor, 2012, h. 40-41.
[32] I.P.M. Ranuhandoko, *Terminologi Hukum Inggris - Indonesia*, Sinar Grafika, Jakarta, Cetakan Ketiga, 2003, h. 475.
[33] Lilik Mulyadi, *Pergeseran Perspektif dan Praktek Dari Mahkamah Agung mengenai Putusan*, Citra Aditya Bakti, Bandung , 2009, h. 164.
[34] Abraham Amos H.F, *Legal Opinion Teoritis & Empirisme,* Grafindo Persada, Jakarta, 2007, h. 34.

Wetboek van Strafrecht vor Nederlandscg Indie (WvSNI) imposed under the Konlulijk Besluit dated October 15, 1915 Staadsblad 1915 Number 732 and came into force on January 1, 1918, Under the Law of the Netherlands Number 1 of 1946 the official name of Wetboek van Strafrecht vor Nederlandscg Indie (WvSNI) was changed to Wetboek van Strafrecht (WvS) which can be referred to as the Criminal Code (KUHP). The Penal Code is based on the "Principe de la légalité" (principle of legality), which means that a person can be found guilty only on the basis of violations that are included in the Criminal Code. The Latin word "nullum crimen nulla poena sine Lege" (no punishment without law). This must be understood as a "stronghold" against the arbitrariness of the powers of law enforcement officers.

In all cases, the claimant must prove that a violation has taken place and that the asset is the result of an illegal act or is intended to be used in criminal activities or as a result of the crime thereof. In the global seizure of assets, of course, in terms of the term "assets" must be widely understood. They can be objects or values, or any type of economic benefit that can be estimated, either by increasing assets or decreasing liabilities. To be seized, assets must be the result of a violation or crime. The result can be from any type of crime, as long as it has been determined in the Criminal Code or other criminal acts regulated in the provisions of other laws (for example, the Law on non-criminal corruption, money laundering and trafficking, etc.).

Based on the criminal justice system in Indonesia which is based on the laws and regulations that govern it, in the context of legal settlement against corruption, criminal acts are carried out based on a criminal justice system mechanism for criminal acts of corruption in order to recover assets from efforts to restore the results of criminal acts of corruption and recovery of the country's economy. The mechanism is based on Law Number 20 Year 2001 concerning Amendments to Law Number 31 Year 1999 jo. Law Number 31 of 1999 and Law Number 46 of 2009 concerning Corruption Court. The asset seizure mechanism is based on Article 18 letter (a) of the TIPIKOR Law which states:[35]

> "Confiscation of tangible or intangible immovable property or immovable property used for or obtained from a criminal act of corruption, including a convict-owned company where a criminal act of corruption was committed, as well as the price of the goods that replace the items".

Based on this article, the act of seizure of assets has been regulated and used as sanctions against perpetrators of criminal acts of corruption, in terms of efforts to return the proceeds of crime. Furthermore, the criminal act of corruption places the act of appropriation of assets not only as a criminal sanction, in the event that an act of appropriation of assets can be carried out in

[35] Undang-Undang RI Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi

the event that the defendant dies before a verdict is rendered against him by obtaining strong enough evidence that the relevant person has committed a criminal act of corruption, then the judge for the demands of the public prosecutor determined the act of confiscation of goods that had been confiscated previously (Article 38 number (5) of the corruption act).

In the positive law provisions of Indonesia as a law that has been determined and applies in a binding manner (ius constitutum), namely Law Number 31 of 1999 which is then updated through the provisions of Law Number 20 of 2001 concerning Eradication of Corruption, there is a criminal law policy against ownership of assets of perpetrators of corruption. Basically, the criminal law policy which is applied to the formulative policy determines that the regulation of ownership of assets of a criminal act of corruption can be done through 2 (two) channels, namely criminal law through the decision of a criminal court and through a civil law that is through a civil procedure (civil procedure). The provisions of the civil law line are based on Article 32 paragraph (1) of the Corruption Crime Act:[36]

> "In the event that the investigator finds and believes that one or more elements of a criminal act of corruption do not have sufficient evidence, whereas there is clearly a state financial loss, the investigator immediately submits the case file of the investigation to the State Attorney for a civil lawsuit or submitted to the agency disadvantaged to file a lawsuit. " Paragraph (2) determines: "A free decision in a criminal act of corruption does not nullify the right to sue for losses to the state finances."

And Article 33 of the Corruption Crime Act:[37]

> " In the event that the suspect dies at the time of the investigation, while there is clearly a state financial loss, the investigator immediately submits the case file of the investigation result to the State Attorney or submitted to the aggrieved agency for a civil suit against his heirs."

Article 34 of the Corruption Crime Act:[38]

> "In the event that the defendant dies during an examination at a court hearing, whereas there is clearly a state loss, the public prosecutor shall immediately hand over a copy of the proceedings to the State Attorney or handed over to the injured institution for a civil suit against his heir."

Article 38 C of the Corruption Crime Act:[39]

> "If after the court's decision has obtained permanent legal force, it is known that there are

[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*

still assets belonging to the convicted person which is allegedly or reasonably suspected to also originate from a criminal act of corruption that has not been subject to seizure for the state as referred to in Article 38C paragraph (2), then the state can make a civil suit against the convicted and / or his heir."

Law Number 20 Year 2001 concerning Amendment to Law Number 31 Year 1999 through a civil claim and the provisions of Article 38 paragraph (5) determine:[40]

"In the event that the defendant dies before the verdict is handed down and there is sufficient evidence that the person concerned has committed a criminal act of corruption, then the judge of the prosecution demands the confiscation of confiscated goods."

Article 38 paragraph (6) :[41]

"Appropriation of appropriation as referred to in paragraph (5) cannot be appealed for."

Article 38B paragraph (2):[42]

"In the event that the defendant cannot prove that the assets referred to in paragraph (1) were obtained not due to a criminal act of corruption, the property is deemed obtained also from a criminal act of corruption and the judge has the authority to decide all or part of the assets are seized for the state."

The provisions as mentioned above authorize the State Attorney or the injured institution to file a civil suit against the convicted and / or heirs at the level of investigation, prosecution or examination at a court hearing.

## 2. CONCLUSION

Based on the explanation above, the writer concludes that:

1. The characteristics of confiscation of assets resulting from money laundering from corruption are different from the confiscation of assets of general criminal acts, in the case of confiscation carried out in the legal process, namely regarding confiscation of assets belonging to the suspect / defendant if the confiscation of general criminal acts of confiscation is only carried out against proceeds of crime. Because deprivation is a type of punishment the act of deprivation is always related to the judge's decision to be carried out by the prosecutor as the executor. According to the Anti-Corruption Law, additional punishment can be in the form of seizure of tangible movable or immovable property, which

[40] *Ibid*.
[41] *Ibid*.
[42] *Ibid*.

is categorized as used to commit a criminal act of corruption, the results of a criminal act of corruption, a company owned by a convict where a criminal act of corruption is committed.

2. Legal considerations of judges or ratio decidendi are arguments / reasons used by judges as legal considerations which are the basis before deciding cases. Legal considerations or known as ratio decidendi, are legal reasons or rationale used by a judge in deciding a case. The legal considerations or ratio decidendi are contained in the consideration considering the main case, which starts with the opinion of experts (doctrine), evidence, and jurisprudence which must be arranged systematically, logically, and interconnected (samenhang) and complementary. Concrete legal considerations must be set forth as an analysis, argumentation, opinion, and conclusion of the judge. In making legal considerations before issuing a judge's decision based on the facts of the trial revealed in the trial as well as the evidence presented in the trial, in addition to deciding the judge also considers the opinions of experts (doctrina), evidence, and jurisprudence which must be arranged systematically, logically, and are interconnected (samenhang) and complement each other so that the court's decision can be accounted for and fulfill a sense of justice for the community. In making legal considerations related to the decision of a criminal offense the judge must also pay attention to the evidence in the trial in order to obtain certainty that an event / fact that was submitted actually happened, in order to obtain the judge's decision accordingly and fairly. Then the judge cannot render a decision before it is real for him that the event / fact really happened, that is proven first, so that a legal relationship between the parties appears.

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