

# Return of Confiscated Property to Victims of Crime of Fraud in Indonesia's Legal System

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**Abstract.** Property confiscated in cases of fraud can be returned. The return mechanism has been regulated in the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Laundering. Victims who get their property back according to the value of the loss is a form of recovery to the victim. The purpose of this study is to analyze the legal rules related to confiscated property in the Indonesian legal system and analyze the mechanism for returning confiscated property to victims of fraud in the Indonesian legal system. The results of the study show that the confiscation of objects is part of an additional crime for criminal actors including the confiscation of certain goods, this is very clearly regulated in Article 10 of the Criminal Code. The purpose of confiscation is for evidentiary purposes, especially as evidence before a court hearing. Article 39 of the Criminal Procedure Code itself has outlined the "legal principle" in the confiscation of objects which limits the objects that can be subject to confiscation. The asset recovery mechanism for victims of predicate crimes who are not state actors cannot be carried out through the asset confiscation mechanism. In the Money Laundering Law, one of the mechanisms for returning assets to victims of criminal acts of fraud can be implemented through a judge's decision which states that these assets are returned to those named in the decision.

**Keywords:** Mechanism, Returns, Fraud

## 1. Introduction

Fraud as a financial crime has developed in various modes, ranging from simple to complex scales, even involving organized or corporate actors. This happens, because fraud is easy to do. Fraud is the act of one party deceiving or taking unfair (unfair) advantage from another party [1]. Fraud generally includes abuse of trust, including violations of the duties and responsibilities of a party and deviations from actual legitimate activities [2]. Fraud crimes are often preceded by civil relations in various forms of interest, such as agreements or contracts for business interests or employment relationships in corporations. The existence of a business relationship or work relationship character in this actor confirms fraud as a white-collar crime because the perpetrators have certain professional positions, abilities, or knowledge. More serious problems will arise if the perpetrators of fraud are business actors or corporate owners who are responsible for business relationships with a large number of customers or consumers and assets owned by customers or consumers [3].

Assets originating from criminal acts of fraud are generally not directly spent or used by criminals because if they are used directly, it will be easy for law enforcement to track down the source of the assets obtained. Moreover, it is supported by the rapid development of science and technology which has led to the integration of the financial system including the banking system

by offering a mechanism for the flow of funds on a national and international scale that can be carried out in a relatively short time [4].

In this criminal case with the victim's loss in the form of property, what the victim is basically hoping for is his property back, not a matter of punishment [5]. The perpetrator who is unable to provide compensation to the victim, then the demands are given by the judge are imprisonment. In the absence of any effort to compensate the victim, in this case, the interests of the victim have been neglected [6]. A victim of a crime will suffer again as a result of the legal system itself because the victim of a crime cannot be actively involved as is the case in civil proceedings and cannot directly submit a criminal case to the court but must go through a designated agency (Police and Prosecutor's Office). 7]. Criminal confiscation is the confiscation of a person's assets related to a criminal case, which is used as material for investigation and evidence in court with the aim of not being destroyed or eliminated by the suspect or defendant [8]. If the confiscated property is proven to be used in a criminal act, the property can be returned to the person or to them according to the judge's decision. However, the judge can decide on the property to be confiscated by the state, destroyed or damaged [9].

Property confiscated in a fraud case can be returned to the rightful party. The victim is one of the parties who are entitled to receive property according to the number of victims. However, there must be a mechanism that proves that the person is entitled to receive it. If the confiscated property has no owner, it will be confiscated for the state. The mechanism for returning confiscated assets from criminal acts of fraud has been regulated in the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Laundering. There is no difference and the mechanism is the same as for corruption. From this regulation, it is known that the confiscated evidence can later be returned or confiscated to be destroyed or used as a substitute money sentence, in accordance with the decision of the panel of judges.

It is explained from the point of view of victimology that victims who get their property back in accordance with the value of the loss suffered are a form of recovery for the victim [10]. The return of property to the victim is the victim's right to be paid, especially by the perpetrator. The return of property to victims by perpetrators of criminal acts of fraud is not impossible. The return of property in the form of compensation, in this case, can be carried out by combining criminal and civil cases. Based on the description of the background of the problem, the problems in this study can be formulated, namely: What are the legal rules regarding confiscated assets in the Indonesian legal system?, and What is the mechanism for returning confiscated assets to victims of fraud in the Indonesian legal system?

## **2. Method**

This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials [11]. The approach used in this research is the legal approach. A legal approach is an approach that uses legislation and regulation [12]. Sources of data used in this study in the form of secondary data. Secondary data are data obtained from official documents, books related to the object of research, and research results in the form of reports, theses, theses, dissertations, and laws and regulations [13]. This research data collection technique was carried out through conventional and online literature searches. Conventional library searches are carried out by searching for library materials, purchasing books, and journals and attending scientific activities. Searching online is done by searching on the internet. The data analysis method used in this research is qualitative.

Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic units of description so that themes can be found that are presented in narrative form [14].

### **3. Result & Discussion**

#### **3.1 Legal Rules Regarding Confiscated Assets in the Indonesian Legal System**

Confiscation is defined as the process, method, act of seizing or taking private property by the government without compensation. The law enforcement process validates the existence of an action in the form of confiscation. Therefore, confiscation is a legal action in the form of taking over from possession for a while of goods from the hands of a person or group for the purposes of investigation, prosecution and trial.

The definition of confiscation itself is formulated in Article 1 Number 16 of the Criminal Procedure Code which 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 purpose of proof in investigations, appointments and trials. The act of confiscation is legalized by law for the purpose of criminal proceedings but cannot be carried out arbitrarily but in ways that have been determined or determined by law must not violate human rights.

The purpose of confiscation is for evidentiary purposes, especially as evidence before a court hearing. It is very likely that without evidence the case cannot be submitted to a court session, therefore in order for the case to be complete with evidence the investigator shall confiscate it to be used as evidence in the investigation, in the prosecution and in the examination of the court trial. Article 39 of the Criminal Procedure Code itself has outlined the "legal principle" in the confiscation of objects which limits the objects that can be subject to confiscation. a. confiscated goods or confiscated goods as an additional crime (according to Article 10 of the Criminal Code). The confiscated objects have a limited scope, which is only related to property or wealth (vermogenstraf) [15]. Even in strafrecht (Sr) it is also regulated in Article 33 that objects that can be confiscated include:

1. Objects owned by the convict in whole or in part which are used alone or obtained from the deed crime
2. Objects used for crime
3. Items with assistance for a crime
4. Objects with assistance to hinder investigation
5. Objects to be used for crime
6. Right to property. So this can happen the transfer of ownership from personal to state.

Confiscation of objects is part of an additional criminal offense for criminal actors, including the seizure of certain goods, this is very clearly regulated in Article 10 of the Criminal Code. The booty includes animals, besides that, among others, are in the form of goods :

1. Obtained by crime, for example, counterfeit money obtained by committing a crime of counterfeiting money, a crime of bribery, and others. If obtained by the violation, the goods can only be confiscated in certain cases, for example:
  - a) Livestock on other people's land (Article 549 Paragraph (2))
  - b) Making counterfeit money (Article 519 Paragraph (2))
  - c) Hunting without a permit (Article 502 Paragraph (2)).

2. Intentionally used to commit a crime, for example machetes or firearms used to commit murder on purpose, tools used to abort a pregnancy, and so on. These goods can also be confiscated but must meet the conditions that the goods belong to the convicted person and are used to commit crimes intentionally. In the case of unintentional crimes and violations, the goods can only be confiscated if it is specifically determined, for example in the following actions:
  - a. Use of dangerous goods (Article 205 Paragraph (3)).
  - b. Hunting without a permit (Article 502 Paragraph (2)).
  - c. Making counterfeit money (Article 519 Paragraph (2)).
  - d. Livestock on other people's land (Article 549 Paragraph (2)).

Confiscated goods which in the provisions of criminal procedure are also referred to as confiscated goods as regulated in Article 1 point 4 of Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. As regulated in Article 39 Paragraph (1) of the Criminal Procedure Code, the scope of the confiscated goods is:

1. Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as a result of a criminal act.
  - a. Objects that have been used directly to commit a crime or to prepare it.
  - b. Objects used to hinder the investigation of criminal acts.
  - c. Objects specially made or intended to commit a crime.
  - d. Other objects that have a direct relationship with the crime committed.

In addition, Paragraph (2) also states that objects that are in confiscation due to a civil case or due to bankruptcy can also be confiscated for the purposes of investigating, prosecuting and adjudicating criminal cases, as long as they fulfill the provisions of Paragraph (1). In the Regulation of the Minister of Justice of the Republic of Indonesia No. M.05.UM.01.06 of 1983 concerning Management of State Confiscated Goods and State Confiscated Goods in the House for the Storage of Confiscated Goods, gives the definition of confiscated objects and confiscated goods, namely seized objects or state confiscated objects (abbreviated as *basan*) are objects confiscated by investigators, public prosecutors or officials who because of their positions have the authority to confiscate goods for the purposes of evidence in the judicial process. State booty or looted goods (abbreviated as *baran*) are evidence that has obtained permanent legal force, confiscated for the state which is then executed by:

- a) Destroyed.
- b) Auctioned for the state.
- c) It is submitted to the designated agency for use.
- d) Submitted to the confiscated object storage house (*Rupbasan*) for evidence in other cases.

Article 39 of the Criminal Procedure Code has actually outlined the legal principle in the confiscation of objects which limits the objects that can be subject to confiscation. Article 39 of the Criminal Procedure Code contains:

- a) Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as a result of a criminal act.
- b) Objects that have been used directly to commit a crime or to prepare.
- c) Objects used to hinder the investigation of criminal acts.
- d) Objects specifically made or intended to commit a crime.
- e) Other objects that have a direct relationship with the crime committed.

- f) Objects that are in confiscation due to a civil case or due to bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of criminal cases.

Regarding goods that can be confiscated are from intentional crimes, the explanation in Article 39 of the Criminal Code also explains that confiscated goods under certain conditions are facultative (may be confiscated) and imperative (must be confiscated). There is also an emphasis on items that may be confiscated, for example a car purchased from the proceeds of a crime even though it is indirect as described in Supreme Court Decision No. 12 K/Kr 1960 on 13 November 1962 [16]. In addition, HR June 2, 1933 also mentioned the same thing, namely goods purchased from the proceeds of crime. Likewise with legal entities in the form of firms or limited liability companies even though they are not owned in their entirety.

It has been previously described that based on Article 44 of the Criminal Procedure Code, confiscated objects are stored in the state confiscated object storage house (Rupbasan). In the Rupbasan, the storage of confiscated objects is carried out in the best possible way and the responsibility for it rests with the authorized official in accordance with the level of examination in the judicial process and the object is prohibited from being used by anyone. Storage is carried out properly and in an orderly manner in accordance with the Implementation Guidelines (Juklak) and Technical Instructions (Juknis) for the management of state confiscated objects and state confiscation so that at any time it is needed by interested parties, it is easy and fast to obtain them. Carrying out maintenance of state confiscated goods and state confiscated goods means taking care of these objects and goods so that they are not damaged and do not change in quality or quantity from receipt to release.

### **3.2 The mechanism for Returning Confiscated Assets to Victims of Fraud in the Indonesian Legal System**

Victims of criminal acts of fraud who get their property back in accordance with the value of the loss experienced is one form of recovery to the victim. In the existing literature in Indonesia, the recovery of the victim's assets is often also referred to as the return of assets. Asset recovery is a series of activities carried out by law enforcement starting at the time of tracking to recovery, so that asset recovery is one stage or the final stage in asset recovery. Asset recovery efforts also include all actions taken with preventive purposes to keep the asset value from decreasing.

Asset recovery in addition to providing a deterrent effect for potential criminals, returning assets to crime victims is the final stage of the asset recovery process, thus asset recovery for crime victims must be an indicator of the success of implementing asset recovery mechanisms by law enforcers at each stage. Thus, the mechanism for asset recovery in criminal acts of fraud is in principle different from criminal law enforcement in general. The interests and roles of victims in a crime are often not considered because criminal law is more focused and pays great attention to the perpetrators compared to the victims, even though the victim is the object who suffers as a result of the crime.

### **3.3 The return of confiscated objects is regulated in Article 46 of the Criminal Procedure Code.**

Objects subject to confiscation are returned to the person or to them and to whom the object is confiscated, or to the person or to those who are most entitled if:

1. The interests of investigation and prosecution are no longer needed.

2. The case is not prosecuted because there is insufficient evidence or it is not a criminal act.
3. The case is set aside for the public interest or the case is closed for the sake of law, unless the object is obtained from a criminal act or is used to commit a criminal act.

If the case has been decided, then the object subject to confiscation is returned to the person or to those named in the decision unless according to the judge's decision the object is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or if the object is still needed as goods. evidence in other cases. Based on the asset recovery handbook: A Guide for Practitioners issued by the Stolen Asset Recovery Initiative in collaboration with The World Bank and UNODC, the recovery process from stolen assets is asset tracing, securing the assets, and court proceedings. process), execution (enforcing orders), and return of assets. There are various handbooks issued by UNODC and The World Bank that focus on returning assets to the country of origin of the assets, this is motivated by money laundering methods which often transfer assets resulting from crimes abroad.

According to Chuck Suryosumpeno, procedurally in Indonesia, "procedural asset recovery" includes "tracking, freezing, confiscation, confiscation, maintenance or management and return of stolen assets or proceeds of crime to victims of crime". In line with what was stated by Chuck Suryosumpeno, Paku Utama in his book describes the stages of asset recovery (using asset recovery terminology) which includes tracking (identification), freezing and securing assets, confiscation and repatriation. The value and spirit of asset recovery is clearly reflected in the Law on Money Laundering in force in Indonesia, the Law on Money Laundering provides facilities for law enforcement officers to trace assets to the stage of asset recovery. Even the Law on Money Laundering with the spirit of follow the money has facilitated the monitoring of transactions carried out by PPATK, it can be said that the asset tracking process has even been carried out before the investigation process.

Asset tracking activities are carried out by the intelligence work unit of the Prosecutor's Office after a warrant for asset tracking from the head of the PPA has been issued, the tracking of assets by the PPA can go hand in hand with coordination with related institutions such as PPATK and LTKM. After conducting a search and examination of the LTKM based on the Law on the Crime of Money Laundering, the investigator may coordinate with the PPATK to request a temporary suspension of all or part of the transaction. In this security stage, investigators can also confiscate related assets based on the results of the investigation by the officers. The asset recovery process carried out based on the results of the report from the PPATK is an entry point for the process of in rem seizure of assets or NCB asset forfeiture as regulated in the Money Laundering Law. The implementation of NCB asset forfeiture is fully regulated in PERMA 1 of 2013.

Article 10 Paragraph (1) PERMA 1 of 2013 explains that after an application for handling the price of assets is carried out by an investigator, the judge decides that the assets are state assets or are returned to those who are entitled. Furthermore, in Article 10 Paragraph (3) parties who feel they are entitled to the assets can file an objection. The party who feels entitled in Article 16 PERMA 1 of 2013 the judge orders the applicant to object to prove that the origin of the property for which the application for handling is submitted is not the result of a criminal act. Thus the party who feels entitled to PERMA 1 of 2013 does not refer to the victim of a crime but to the owner of the property that is proposed for handling and decided to be confiscated by the state. Asset recovery through the in rem forfeiture mechanism or NCB asset forfeiture is indeed a very good breakthrough to eliminate or prevent criminals from enjoying the proceeds of their crimes. However, it is too early to say that it can reach the interests of

crime victims because the actual victims of crime have not been identified at this stage and there is no mechanism regulated in the Money Laundering Law or in PERMA 1 of 2013 to identify victims.

However, the asset recovery mechanism regulated in the Money Laundering Law also provides facilities for law enforcement officers to perform asset recovery that can be optimized for asset recovery for crime victims. When we talk about asset recovery for crime victims, ideally the crime victim refers to the crime victim from the predicate crime because it is the victim of the predicate crime who is economically affected by the crime, even though the trial of money laundering is not required to first prove the original crime.

The asset recovery mechanism for victims of predicate crimes who are not state actors cannot be carried out through the asset confiscation mechanism. The rationale for this is that the application of the criminal act of confiscation of assets actually transfers ownership or rights to assets from the perpetrator to the state automatically. In the Money Laundering Law, one of the mechanisms for returning assets to victims of criminal acts of fraud can be implemented through a judge's decision which states that these assets are returned to those named in the decision. Considering in the NCB asset forfeiture mechanism where it is most likely that the actual victim has not been identified, assets that are known or reasonably suspected to be the proceeds of the crime can be confiscated. Therefore, the identification of the actual victim in a case is very important in order to realize justice for the victim as a whole, including the victims of crimes that are not state.

#### **4. Conclusion**

Based on the discussion, it can be concluded that:

1. Confiscation of objects is part of the additional punishment for criminal actors, including the confiscation of certain goods, this is very clearly regulated in Article 10 of the Criminal Code. The purpose of confiscation is for evidentiary purposes, especially as evidence before a court hearing. Article 39 of the Criminal Procedure Code itself has outlined the "legal principle" in the confiscation of objects which limits the objects that can be subject to confiscation.
2. The asset recovery mechanism for victims of predicate crimes who are not the state cannot be carried out through the confiscation of assets. In the Money Laundering Law, one of the mechanisms for returning assets to victims of criminal acts of fraud can be implemented through a judge's decision which states that these assets are returned to those named in the decision.

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