

# The Practical Barriers to Auction of Confiscated Objects for Corruption Crime

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Article	Abstract.
Keywords: Auctions; Corruption; Crimes; Penalty.	This study aims to determine the implementation of the auction of confiscated objects of corruption carried out by the Kulon Progo District Attorney, as well as to find out the obstacles that exist in the process of auctioning confiscated objects of corruption. This study uses a research method with an empirical juridical approach, and a descriptive analytical research specification. This research was conducted at the Kulon Progo District Attorney's Office. The crime of corruption in recent decades has become an issue that has been widely discussed in both print and electronic media by all members of the public, because several persons suspected of committing a criminal act of corruption cannot be separated from office holders in Indonesia, consisting of executives, Legislative and even up to the Judiciary. Based on the research results, it is known that the auction implementation based on PMK No. 27/PMK.06/2016 concerning Instructions for Implementation of Auctions and PMK No. 13/PMK.06/2018 Concerning the Auction of Confiscated Objects, State Loot, or Executed Confiscated Objects Originating from the Prosecutor's Office of the Republic of Indonesia. The obstacles encountered by the Kulon Progo District Attorney's Office in the auction process, such as in the case of correspondence between the Prosecutor's Office and the KPKNL, the length of time the results of the trial came out which could result in a decrease in the value of the confiscated goods. Problems related to the implementation of electronic auctions are also still an obstacle.
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## 1. Introduction

Corruption comes from the Latin Corruption, corrupt in English; and the Netherlands, namely *corruptie (korruptie)*. So, I can venture that it was from the Dutch language that the word came down to Indonesian, namely "corruption". The literal meaning of the word is rottenness, ugliness, depravity, dishonesty, bribery, immorality, deviation from chastity.<sup>1</sup> In general, corruption is often called an extraordinary crime because corruption tends to be carried out by several people in a systematic and planned manner.<sup>2</sup> In criminology, corruption is often referred to as a white-collar crime committed by people who are considered to have positions and are quite influential in society, but they are the ones who actually do things that harm the community for their

<sup>1</sup> Sri Endah Wahyuningsih Sarwanto, 'The Role of the Government and Regional Security Safeguard Team Supervision (TP4D) In Prevention Criminal Corruption', *Jurnal Daulat Hukum*, 3.1 (2020), 155–162. P. 159.

<sup>2</sup> Kornelius Benuf Simanjuntak., Supriardoyo, 'Relevansi Nilai Ketuhanan Dan Nilai Kemanusiaan Dalam Pemberantasan Tindak Pidana Korupsi', *DIVERSI : Jurnal Hukum*, 6.1 (2020), 22–46. P. 25.

positions. Corruption is an act that is against the law which is contrary to the basic character of the Indonesian nation which has taken root and is inherent in every human being and the culture inherent in it.<sup>3</sup> Meanwhile, the nature of corruption will form a moral that tends to be capitalist and individualistic and does not think about the surrounding environment. This trait does not reflect the personality, character and greatness of the nation.

The duties and functions of the State Prosecutor's Office in this case are to carry out judges' decisions and court decisions that have permanent legal force, one of which is to carry out auctions of objects confiscated by criminal acts of corruption. If the judge's decision determines that the confiscated object can or can be handed over to the owner, then the owner can receive the confiscated object back. However, if the confiscated object is not taken care of or taken until a predetermined or determined schedule, then the object will be confiscated by the state or it can be taken by the public through the mechanism or auction regulations. The confiscated objects were auctioned off by the Kulon Progo District Attorney's Office, where the purpose of the auction itself was to return state assets. The auction mechanism that will be carried out at the Kejari is in the form of a 'Loot Execution Auction' based on a local District Court Decision through the Intermediary of the State Property and Auction Service Office (KPKNL). For example, goods confiscated by criminal acts of corruption, then the goods will be auctioned, from the auction sale of objects confiscated by criminal acts of corruption, the goods will be auctioned, from the sale proceeds will be entered into the state account as state treasury. Based on data from the Directorate General of Corrections at the Ministry of Justice and the Attorney General's Office, it is known that the crime rate in Indonesia is increasing. This conclusion is drawn based on the data, that the crime cases (law violations handled throughout Indonesia in 1987 amounted to 60,300, while in 1988 it was 71,097. So the increase is 71,097 minus 60,300 = 797 (17.90 percent). Departing from the description of the problem above, this study will specifically discuss how the auction of confiscated objects of corruption by the Kulon Progo District Attorney's Office is carried out?

## 2. Research Methods

The approach method used in this study is to use a sociological juridical approach with an emphasis on law as a social institution that is in real terms associated with other social variables. This research is important to do to find out the auction implementation of confiscated objects of corruption as well as to find out the obstacles in carrying out the auction of confiscated objects of corruption and efforts to overcome them. The results obtained are expected to be useful as an input or opinion in the context of legal guidance and for the authorized institution to be able to manage the confiscated objects resulting from the criminal act of corruption in accordance with applicable regulations and to maintain the confiscated objects properly and correctly.<sup>4</sup>

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<sup>3</sup> KPK, *Tindak Pidana Penyusutan Korporasi* (Jakarta) <<https://acch.kpk.go.id/id/jejak-pemberantasan/932-penanganan-perkara-pidana-korporasi>>.

<sup>4</sup> Amiruddin & Zainal Asikin, (2010), *Pengantar Metode Penelitian Hukum*, Depok: PT. Rajagrafindo Persada, P. 31.

### 3. Result and Discussion

#### 3.1. Implementation of Auction for Confiscated Objects for the Crime of Corruption by the Kulon Progo District Attorney

The auction of the confiscated goods for the crime of corruption by the Kulon Progo District Attorney's Office was carried out based on the Decision of the Supreme Court of the Republic of Indonesia No. 51/K/PID.SUS/2014 dated March 19, 2014 the Kulon Progo District Attorney with the assistance of the State Property and Auction Service Office (KPKNL), conducted an auction of confiscated corruption objects in the form of a motorcycle and a plot of land in the form of a rice field covering an area of 422 m<sup>2</sup> which The auction was held on October 28, 2014 at the Kulon Progo District Prosecutor's Office, from the data obtained that the perpetrators of the criminal act of corruption were required to compensate the state for their actions. Auction itself is the sale of goods in public, including through electronic media, by verbal bidding at increasing prices or decreasing prices, and/or by prior written price offers in an effort to gather interested people.

Juridically the definition of auction has been regulated in the *vendureglement* provisions: auction or sale of goods made to the public by offering an increased or decreased price or by entering the price in a closed envelope or to people who were invited or previously notified of the auction or sale or allowed to participate and given the opportunity to bid, agree on the price offered or enter the price in a closed envelope.<sup>5</sup> Then in the Ministerial Regulation concerning Auction Implementation Guidelines, it is stated that auction is "the sale of goods open to the public with a written and/or verbal price offer that is increasing or decreasing to reach the highest price, which is preceded by the announcement of the auction.

The auction itself was carried out based on the Decree of the Head of the Kulon Progo District Attorney No. 16/0.4.12/Cu.3/07/2014 which contains the granting of permits to conduct an auction of confiscated goods for criminal acts of corruption at the Kulon Progo District Attorney's Office, in 2014 each auction used a manual system and did not use an electronic system, the auction was open to general. From this case, a serious threat to the person/corporation as the subject of a criminal act of corruption awaits, in Article 2 paragraphs (1) and (2) of Act No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which states: Any person who unlawfully commits an act of enriching himself or another person in a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 1.000.000.000,00 (one billion rupiah). In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

In this case, Hendri Utomo, as the Head of Sub Division of Guidance for the Kulon Progo District Attorney, has contributed to the handling of the case, which, according to

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<sup>5</sup> Lukman Farid Agus Yudha Hernoko Bahtiar, 'Perlindungan Hukum Bagi Kreditor Dalam Pengikatan Obyek Jaminan Berupa Surat Kuasa Jual Saat Debitor Wanprestas', *Jurnal Komunikasi Hukum*, 4.2 (2018), 114–127. P. 117.

reports of corruption crimes being submitted to the Kulon Progo District Attorney's Office, according to him, corruption in the Kulon Progo area itself has become a bad culture which is very detrimental for the country. Such conditions were expressed by Hibnu Nugroho who stated that:

This condition then causes a transmutation effect. This effect is a further psychological effect of the occurrence of corruption where people who commit corruption think that the action benefits themselves or partly so that people do it together. If it is related to the events above, this doctrine can be the background for people to commit criminal acts of corruption.”

Items confiscated by criminal acts resulting from corruption will be auctioned, in the interest of saving or returning state assets.<sup>6</sup> The importance of confiscated objects at the proof stage, namely if there are no confiscated items, it is very likely that a case cannot be brought before a court session. Therefore, confiscated objects of corruption are very important as evidence in court.

According to Hendri Utomo, confiscated objects which are managed by the Prosecutor's Office in the early stages will be auctioned off by the Kulon Progo District Attorney's Office, along with the auction procedure or mechanism from the registration stage to the settlement of the auction, along with explanations from resource persons, confiscated items obtained from a corruption crime, begins with a search accompanied by an investigation by the investigator and the authority to confiscate. Then, after going through the examination process, the confiscated object will be determined whether it will be stored in the RUPBASAN or at the Prosecutor's Office. Then the confiscated objects will be identified and investigated, after that the confiscated objects are registered by the administrative officer. After the judge's decision, for example the content of the decision states that the object must be auctioned, an auction application will be submitted to the KPKNL by attaching the confiscated object document, as for the procedure for applying for an auction based on PMK No. 27/PMK.06/2016, which are as follows; An auction applicant who wishes to conduct an auction, declares his intention to conduct an auction to the Head of the Auction Office at KPKNL or Class II Auction Officer through the Auction Hall. An application for tender submission is submitted in writing accompanied by a description of the desired day and date for the auction, determining the desired bidding method, the required auction documents (general documents and special documents) in the case of a PUPN auction, an official note from the head of the State Receivables Section as applicable. The auction application letter, and the auction official or book holder then registers the application, written in the auction application register book.

After the formation of the auction committee, the District Attorney will then write to the KPKNL regarding the auction. Then it will be announced through daily newspapers, leaflets, stickers that are easy to read by the public, and or through electronic media including the internet on the KPKNL website. Based on Article 52 paragraph (1) PMK No. 27/PMK.06/2016 there is also an auction announcement containing; identity of the seller, day, date, hour and place of the auction being held,

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<sup>6</sup> Agung Basuki Prasetyo, 'Penyelesaian Sengketa Tanah Masyarakat Adat Karuhun Urang ( AKUR ) Di Desa Cigugur Kuningan Melalui Lembaga Peradilan', *Law, Development & Justice Review*, 2.1 (2019), 72–84 . P. 78.<<https://ejournal2.undip.ac.id/index.php/lj/article/view/5003>>.

name, type and quantity of goods, amount and method of depositing the auction bid security deposit, and location, area of land, and type of land rights, especially immovable property in the form of land.

In the implementation of the auction there is an auction guarantee deposit, where the auction participant before participating in the auction will deposit it to the auction committee if it is still using a manual auction, but if it is already using the Electronic auction system, the payment of the auction guarantee deposit is made by depositing a certain amount of money through a bank that has been determined. In this case it is clearly regulated in Article 1 paragraph (26) PMK No. 27/PMK.06/2016, which states that the Auction Bid Guarantee Deposit is the amount of money deposited to the KPKNL Receipt Treasurer or Auction Hall or Auction Officer by prospective Bidders prior to the auction as a condition of becoming a Bidder<sup>7</sup>.

Viewed from the point of view of the way in which bids are made, auctions can be made in writing and open auctions, written auctions in this case bids are made in writing in closed envelopes, while open eagles or oral bids are made verbally with up-and-down or up-and-down bidding, in addition to There are also other auction methods, namely exclusive auctions and inclusive auctions, auctions with limit prices and auctions without limit prices. Auction bids made by auction participants are determined in several ways, namely by way of bidding auctions are determined by auction officials by taking into account the seller's proposal, by bidding must be announced in front of prospective buyers before the auction is carried out, and by bidding: verbally up and down, down and down or verbally, written.

The bid is valid for direct auction, if the mechanism of Electronic auction bidding that distinguishes is only the means or method of submitting it through electronic media. In the example case that the author took the highest bid of IDR 31,250,000 (thirty one million two hundred fifty thousand rupiah) which was won by Mr. Sarman as the buyer of a motorbike and Mrs. Sri Ambar Purwanti as the buyer of a plot of land in the form of rice fields.

Based on Article 79 of PMK No. 27/PMK.06/2016 which states that: "payment of the Auction Price and Auction Fee must be made in cash or check or giro no later than 5 (five) working days after the auction." Payments outside the provisions of these regulations can only be justified after obtaining permission from the Director General on behalf of the Minister of Finance. After payment of the auction and settlement of the auction goods along with the documents of the goods can be taken by the auction winner by bringing proof of payment of the auction payment, then the Minutes of Auction will be issued from the KPKNL. This Minutes of Auction is an auction report made by the auction official, in this case the KPKNL which is an authentic deed and has perfect evidentiary power. Based on Article 1 PMK No. 27/PMK.06/2016 Minutes of Auction are made in several forms, each of which has its own function.

Minutes of Auction are original Minutes of Auction consisting of the head, body and legs of the Minutes of Auction complete with attachments. Important points in the Minutes of Auction Minutes include; verzet of the auction results;, the buyer defaults, the publication of Grosse Minutes of Auction, the seller who does not sign the Minutes

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<sup>7</sup> Jimly Asshiddiqie, (2018), *Konstitusi Keadilan Sosial : Serial Gagasan Konstitusi Sosial Negara Kesejahteraan Sosial Indonesia*, Jakarta: Penerbit Buku Kompas, 2018, ISBN 978-602-412-514-1

of Auction, the issuance of a substitute for the Quotation of the Minutes of Auction. An excerpt of the Minutes of Auction is a derivative of the Minutes of Auction given to the buyer which contains the head section, the agency specifically concerning the buyer in question and the foot of the Minutes of Auction. The extract of the minutes of the auction was given by the KPKNL to the auction winner as evidence for the transfer of names. An excerpt from the Minutes of Auction is a derivative of the Minutes of Auction that is sent to the superintendent as a report containing the head and foot parts of the Minutes of Auction. A Quotation Document is known as an authenticated document relating to the sale of an auction object and issued only to interested parties by the Auctioneer. Issuance of these documents is also not an obligation for the Auctioneer, but is based on the request of certain parties.

A copy of the Minutes of Auction is a derivative or verbatim copy of the entire Minutes of Auction provided to the seller. Grosse Minutes of Auction is a copy of Minutes of Auction which contains references "For Justice based on the One Godhead" and is published at the request of the buyer or his proxies. Auction is a special buying and selling mechanism where the auction is carried out or in the presence of the auction official, the auction official is the mediator and bridges the sale and purchase transaction between the seller and the buyer in the auction. The creation of the Minutes of Auction must reflect the balance between the interests of the seller and the buyer.

Minutes of Auction are made according to the rules that have been set and adapted to their function. The Minutes of Auction has a function regarding the validity of legal actions which are an agreement between the seller and the buyer of the auction in written form, namely as evidence that has perfect legal force which provides the basis for rights and legal protection for the sale and purchase of goods in the auction. The minutes of the auction contain a sale and purchase that is based on an agreement between two parties, so that the minutes of the auction can be used as a substitute for the deed of sale and purchase, considering that the auction is included in an agreement named outside the Civil Code which is not specifically regulated in the Book of Law. -Civil Law but subject to the Civil Code as stated in Article 1319 of the Civil Code. The Minutes of Auction is also an authentic deed because it is made by an official who is authorized to make it, besides that the Minutes of Auction is made in Indonesian and given a serial number. In Article 1869 BW the proving power of the Minutes of Auction does not depend on the auction official as the maker. In this case the evidentiary power of the Minutes of Auction decreases. In the article it states; A deed which cannot be treated as an authentic deed, either because of the inability or incompetence of the public official concerned or because of a defect in its form, has the power as a handwritten note if it is signed by the parties.

### **3.2. Obstacles in Carrying Out Auctions for Confiscated Objects for Criminal Acts of Corruption and How to Overcome Them**

The implementation of the duties and authorities of law enforcement officers must be in accordance with the Standard Operating Procedures (SOP) that have been carefully prepared. In practice, sometimes it does not comply with the rules that have been made. This is due to several factors originating from internal or external factors of the agency whose presence is felt consciously or unconsciously. These factors

sometimes interfere with the law enforcement process which will also affect the expected results.

The main problem of law enforcement actually lies in the factors that may influence it, this is in line with the progressive legal view which states that the law does not exist in a vacuum, there are many things that influence it, namely economic aspects, political aspects, religious aspects and other aspects that are loaded with various interests.<sup>8</sup> The influencing factors include legal factors, law enforcement factors, facilities or facilities factors, community factors and cultural factors.<sup>9</sup> From these factors, it can be explained that the Legal Factor is a rule of law if studied in depth, so that the law functions, every rule of law must meet juridical, sociological, and philosophical elements, because if the rule of law only applies juridically, then there is a possibility The rule of law is a dead rule, if it only applies sociologically according to the theory of power, then the rule will become a coercive rule, whereas if it only applies philosophically, then it is possible that the rule of law is only a law that is aspired to.<sup>10</sup> The output intended by the Prosecutor's Office in the auction of confiscated objects for criminal acts of corruption is to restore state assets. The confiscated objects are of high value, in which the rescue of state assets is carried out in accordance with the judge's decision. However, due to waiting for the trial process from prosecution to decision, sometimes the value of the confiscated object may decrease.

Law enforcement factors are subjects who carry out the law, the mentality or personality of law enforcement plays a very important role, because if the law is good but the quality of law enforcement is not good, then it will cause problems.<sup>11</sup> According to Hendri Utomo as Head of Sub Division of Guidance for the Kulon Progo District Attorney, the Prosecutor's Office in determining the next steps for confiscated objects requires a copy of the letter relating to confiscated objects after the judge's decision, from here sometimes in the initial process of holding an auction the Prosecutor will definitely coordinate with the party or relevant agencies regarding the auction of confiscated objects. For example, related to the process of making the Minutes of Auction, which was felt by the sources for the process of making the Auction Minutes sometimes long by the KPKNL, however, the Kulon Progo District Attorney itself has made great efforts to get the Minutes of Auction out quickly by coordinating with the KPKNL properly. And also problems in terms of correspondence between the Prosecutor's Office and the KPKNL. The output intended by the Prosecutor's Office in the auction of confiscated objects for criminal acts of corruption in order to restore state assets. The confiscated objects are of high value, in which the rescue of state assets is carried out in accordance with the judge's decision. However, due to waiting for the trial process from prosecution to decision, sometimes the value of the confiscated object may decrease. One of the keys to success in the auction of confiscated objects is in the

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<sup>8</sup> Hwian Christianto, 'Penafsiran Hukum Progresif Dalam Perkara Pidana', *Jurnal Mimbar Hukum*, 23.3 (2011), 483–485. P. 491.

<sup>9</sup> A. Sukris Smadi, 'Membebaskan Positivisme Hukum Ke Ranah Hukum Progresif (Studi Pembacaan Teks Hukum Bagi Penegak Hukum)', *Jurnal Dinamika Hukum*, 12.2 (2012), 331–43. P. 337.

<sup>10</sup> Ahmad Kamil, (2008), *Kaidah-Kaidah Hukum Yurisprudensi*, Jakarta: Kencana, P. 34.

<sup>11</sup> Muhaimin Muhaimin, 'Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan', *Jurnal Penelitian Hukum De Jure*, 3.4 (2019), 23–45 . Hlm, 31. <<https://doi.org/10.30641/dejure.2019.v19.185-206>>.

law enforcers themselves, but in practice law enforcers often have problems in terms of correspondence for copies to the relevant agencies.

Facilities or facilities factor, meaning that confiscated objects that have been entered in the Prosecutor's Office which will still be waiting for the results of the trial, will then be placed first in the storage area at the Attorney General's Office, but sometimes in the Prosecutor's Office the storage space is limited. According to Hendri Utomo, he also added that the Kulon Progo District Prosecutor's Office itself has provided evidence, which later will manage if there are confiscated goods or goods for general crimes or special crimes, but it has not been established in detail with the arrangements and main tasks at the Kulon Progo District Attorney's Office. The Prosecutor's Office will conduct the auction with the procedures that have been regulated, but using this electronic system is actually good or bad, it's good that the auction process is simpler and very easy, but it's not good because through electronic means, in the auction process supporting tools are needed, and sometimes also An error occurred in the tool used because of many factors related to this auction tool, for example because it uses electronic media where supports such as the internet network must be smooth and also function properly.

On the other hand, the auction participants must also be like that too, in the auction relying on electronic media, of which there must be an inhibiting factor. According to the informant also said that if in an electronic auction, the enthusiast would want to know first the condition of the item or object, then the interested person must first come and see before the auction is held to see it, which the author feels is not in line with the expectations of holding an auction through an electronic auction. , namely the auction in an easy way. Because through this electronic auction system, participants can actually see the goods or objects that will be auctioned through the available sites where the goods or objects have sample images.

Community Factors, in auctions that use ALE there are still many who do not know and understand how to participate in auctions, because not everyone knows that auctions are now using an electronic system. Cultural factors, according to Soerjono Soekanto, have a very large function for humans and society, namely to regulate so that humans can understand how they should act, act, and determine their attitudes when dealing with other people. People in this factor often assume that the sale value of auctioned goods or objects has dropped and sometimes there are still those who associate it with things beyond reason and are ultimately reluctant to buy it.

Based on the factors mentioned above, it is an obstacle in the implementation of the auction of confiscated goods. Objects confiscated for criminal acts of corruption that the author took from the example of the auction case at the Kulon Progo District Attorney's Office in the form of motorbikes and rice fields, and in order to save state assets, the auction of objects confiscated for criminal acts of corruption must be carried out as well and as soon as possible so that the value of the goods or objects does not decrease and the state's money is saved.

#### **4. Conclusion**

The obstacles encountered by the Kulon Progo District Attorney's Office in the auction process, such as correspondence between the Prosecutor's Office and the



KPKNL, are still obstacles. Also, in terms of the length of time the results of the trial came out which could result in a decrease in the value of the confiscated goods. Problems related to the implementation of electronic auctions are also still an obstacle, namely about the facilities and facilities supporting the auction process, which must be complete and supportive.

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