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The Authority of the Public Prosecutor in Confiscating Evidence of Corruption Crimes at the Prosecution Stage

Arie Prasetyo
Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: ar13prasetyo@gmail.com

Abstract. *This study aims to determine and analyze the legality of the confiscation of evidence of corruption by the Public Prosecutor at the Prosecution stage and to determine and analyze the authority of the Public Prosecutor in confiscating evidence of corruption at the Prosecution Stage. The research method used is a normative legal research approach, namely an approach carried out by examining the approach of theories, concepts, reviewing laws and regulations related to the implementation of the authority of the Public Prosecutor in confiscating evidence of corruption at the Prosecution Stage. Based on the research that the legal process of confiscation of evidence of corruption by the Public Prosecutor at the Prosecution Stage, if at the time of the trial legal facts are found related to the defendant's property that has not been confiscated at the investigation level, then the Public Prosecutor can submit a request for a confiscation permit to the Panel of Judges then after being granted the Panel of Judges issues a Determination of a Confiscation Permit from the Panel of Judges, Furthermore, the Public Prosecutor in following up on the determination makes a Minutes of the Implementation of the Judge's Determination and Minutes of the Implementation of the Confiscation which are then attached to the case file and stated in the indictment related to evidence. In practice, confiscation by the Public Prosecutor at trial has been carried out in handling cases of convicts of Corruption Crimes on behalf of Defendant Honggo Wendratno (in absentia) and the Crime of Money Laundering of Jiwasraya Insurance on behalf of Defendant Heru Hidayat and Defendant Benny Tjokrosaputro.*

Keywords: *Authority; Evidence; Prosecutor.*

1. Introduction

Evidence is the central point of criminal procedure law. This can be proven from the beginning of the investigation, investigation, pre-prosecution, additional examination, prosecution, examination in court, judge's decision and even legal efforts, the issue of evidence is the subject of discussion and review of all parties and officials concerned at all levels of examination in the court process,

therefore in the interests of proving criminal cases, objects related to the crime that has occurred are needed or in other terms these objects are known as evidence or corpus delicti, namely evidence of a crime. In terms of proof, the role of evidence in the criminal case process in Indonesia plays a very important role where evidence can shed light on the occurrence of a crime and will ultimately be used as evidence to support the Judge's belief in the Defendant's guilt as charged by the Public Prosecutor in the indictment in Court. These items of evidence include objects that are objects of the crime, the results of the crime and other objects that are related to the crime.

The Criminal Procedure Code (KUHAP) expressly gives investigators the authority to carry out confiscations in order to maintain the security and integrity of these objects, however, such confiscations must be based on the conditions and procedures determined by law and such confiscations are intended for the purpose of providing evidence, especially as evidence in court.1. So that confiscation is a very important thing in handling Special Crimes, especially Corruption cases, not only for the sake of collecting evidence but also for a greater purpose, namely the confiscation of the property of the perpetrators of special crimes so that it can be used as a means to return the state financial losses/state economy from the perpetrators of the crime.

Literally, confiscation is a series of actions by investigators to take over and/or keep under their control movable or immovable, tangible or intangible objects for the purposes of providing evidence in investigations, prosecutions and evidence in court (Article 1 point 16 of the Criminal Procedure Code (KUHAP). Thus, from the description above, it can be seen that the confiscation effort is a legal action carried out by investigators against objects belonging to someone that are suspected of being the result of a crime. In addition, Article 38 Paragraph (1) of the Criminal Procedure Code emphasizes that confiscation can only be carried out by investigators with a permit from the Head of the local District Court. So based on the contents of this article, it can be concluded that the authority to confiscate lies only with investigators.[2]

The negative effects of technological developments have led to the modernization of the modus operandi which often causes difficulties for investigators at the investigation level in collecting all evidence or tools of evidence, so that the case files and evidence received by the Public Prosecutor are less complete even though they have met the minimum evidence and have been declared P-21 by the Public Prosecutor. Theoretically, the Public Prosecutor is the party burdened with the obligation to prove a crime (actori incumbit onus probandi) to seek material truth if during the trial examination legal facts are found that there is other evidence that is relevant to prove the defendant's guilt,

[1]Yahya Harahap, 2014, Discussion of Problems and Application of Criminal Procedure Code; Investigation and Prosecution, Sinar Grafika, Jakarta, p. 265.
[2] Ibid, p. 265.

but the evidence has not been confiscated during the investigation stage so that the investigator does not use the evidence as evidence or evidence that can strengthen the proof. Therefore, Article 38 paragraph (1) of the Criminal Procedure Code as a guideline in court proceedings expressly states that the authority to confiscate is only with the investigator and not with the Public Prosecutor,[3] So, can the formal legal procedure for confiscation at the prosecution level also be carried out by the Public Prosecutor to confiscate goods/objects/assets/documents that are directly or indirectly related to the criminal act charged and examined in court?

Based on the description of the background, the author is interested in writing a research in the form of a Thesis with the title "The Authority of the Public Prosecutor in Confiscating Evidence of Corruption at the Prosecution Stage". This research is important to be conducted to determine and analyze the legality of the confiscation of evidence of corruption by the Public Prosecutor at the Prosecution stage. In addition, to determine and analyze the authority of the Public Prosecutor in confiscating evidence of corruption at the Prosecution Stage.

2. Research methods

The method used in this paper is normative juridical, which means the approach is carried out by examining theoretical approaches, concepts, and reviewing laws and regulations related to the research.

This study uses descriptive analysis research specifications or those that are descriptive of the research object. The purpose of descriptive research specifications is to obtain a complete picture of the legal conditions that apply in a particular place and at a particular time. Legal events that apply at a particular time are very dependent on the situation and dynamics of the developing society.

The collection of legal materials is carried out by identifying and inventorying laws and regulations, examining library materials (writings and scientific works) and other sources of legal materials that are relevant to the legal issues in this study.

Analysis of legal materials is carried out by means of legal interpretation and legal construction methods, namely by discussing and explaining the legal materials used based on the legal norms used, theories and doctrines related to the material being studied, by using deductive logic, namely drawing conclusions from a general problem to the concrete problems faced.

[3]Sumaidi, S "Study of Confiscation as Coercion Permitted by Law. Legality", Journal of Law, 8 (1), pp. 220-244.

3. Results and Discussion

3.1 Review of the Criminal Justice System in the Criminal Procedure Code (KUHAP)

The concept of the criminal justice system in the Criminal Procedure Code as we know it adheres to the principle of functional differentiation where in the implementation of the enforcement of Criminal Procedure Law in accordance with the functions and authorities given by law to each level of the case handling process in an integrated system/Integrated Criminal Justice System (ICJS).[4]. The principle of functional differentiation in the Criminal Procedure Code lays down a principle of clarification, modification of functions and authorities between law enforcers to create a mechanism for mutual supervision (checking) within the ICJS series, so that a relationship and coordination are established in the process of law enforcement that is related and sustainable between law enforcers.[5] Starting from the investigation by the Police to the implementation of the court decision by the Prosecutor's Office. The purpose of the functional differential principle is:

1) Eliminate overlapping investigation processes between the Police and the Prosecutor's Office
2) Ensuring legal certainty in the investigation process
3) Helps simplify and speed up the settlement process
4) Facilitates supervision from superiors[6]

The principle of functional differentiation in ICJS in its implementation is still of a pragmatic functional nature, each law enforcer has different views, perceptions and interpretations, making it difficult to realize a unified and integrated criminal justice system.[7]. There are often conflicts of interest and differences in interpretation between law enforcement components, so that the judicial product has not met the expectations of the community. Therefore, at each stage, it is still possible to carry out excavations and additional evidence, including through confiscation facilities, to be able to meet the expectations of public justice.

The application of this functional differentiation principle apparently underlies the issuance of the Technical Guidelines for Administration and Technical Procedures for General and Special Criminal Justice Book II by the Supreme Court, namely that if in a trial the Judge deems it necessary to confiscate an item,

[4]M. Yahya Harahap, Discussion of Problems and Application of Criminal Procedure Code, Investigation and Prosecution. Second Edition, Sinar Grafika, Jakarta, pp. 1-2
[5]Ibid
[6]Aridona Bustari, 2020, Legal Certainty of Functional Coordination between Police Investigators and Public Prosecutors in Pre-Prosecution (Study of Article 138 Paragraph (2) of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law), p. 1
[7]Achmad Budi, 2018, Implementation of the Criminal Justice System in the Perspective of Integration, Journal of Legal Sovereignty UNISSULA Semarang, Vol. 1 No. 1, March 1, 2018, p. 288

then the Judge's order to carry out the confiscation is addressed to the Investigator through the Public Prosecutor.[8].

3.2 Overview of the Public Prosecutor

1. Definition of public prosecutor

The Criminal Procedure Code provides a description of the meaning of prosecutor and public prosecutor in Article 1 points 6a and b and Article 13. In the Criminal Procedure Code, details of the prosecution duties carried out by prosecutors can be found. The Criminal Procedure Code distinguishes between the meaning of prosecutor in the general sense and public prosecutor in the sense of a prosecutor who is currently prosecuting a case.[9] In Article 1 point 6 it is emphasized as follows:

a) A prosecutor is an official who is authorized by this law to act as a public prosecutor and to implement court decisions that have permanent legal force;

b) The public prosecutor is a prosecutor who is authorized by this law to carry out prosecutions and implement judges' decisions.

Looking at this formulation, it can be concluded that the meaning of "prosecutor" concerns the position, while "public prosecutor" concerns the function.[10]A prosecutor is a functional official who is appointed and dismissed by the Attorney General.

2. Duties and Authorities of the Public Prosecutor

In the Criminal Procedure Code, the authority of the public prosecutor is stated, namely in Article 137 in conjunction with Article 84 paragraph (1) of the Criminal Procedure Code and 14 of the Criminal Procedure Code. Prosecutors or public prosecutors in Indonesia do not have the authority to investigate cases, from the beginning or continuation. This means that prosecutors or public prosecutors in Indonesia never examine suspects or defendants.

The provisions of Article 14 can be called a closed system, meaning that there is no possibility for the prosecutor or public prosecutor to conduct an investigation, even if only incidentally, in serious cases, especially in terms of evidence and legal technical issues.[11]

3. Prosecution

Prosecution is regulated in Chapter XV, Articles 137-144 of the Criminal Procedure Code. As is known, examination at the investigation level is the

[8]Yadi, et al, 2024, The Authority of the Public Prosecutor in Confiscating the Proceeds of Corruption in the Perspective of Legislation, Journal of the Faculty of Law, Malikussaleh University, Vol 12 No 1, April 1, 2024, p. 104
[9]Andi Hamzah, 2022, Indonesian Criminal Procedure Law, Ghalia Indonesia, Jakarta, p. 71
[10]Ibid, p.72
[11]Andi Hamzah, Op.,cit, p. 70

beginning of the criminal process. The purpose of the investigation is to obtain a decision from the public prosecutor, whether the requirements for prosecution are met. The criminal process is a series of integrated law enforcement actions. The Criminal Procedure Code in Article 1 point 7 provides the following limitations:

"Prosecution is an action by the public prosecutor to refer a criminal case to the competent district court in the case and according to the method regulated in this Law with a request that it be examined and decided by a judge in a court hearing."[12]

According to Wirjono Prodjodikoro, prosecuting a defendant before a criminal judge is submitting a defendant's case with case files to the judge with a request that the judge examine and decide the criminal case against the defendant. In short, it can be said that prosecution is the act of the public prosecutor submitting a criminal case to the judge to be examined and decided.[13]

After the public prosecutor receives or receives back the case files resulting from the investigation which are complete or have been completed by the investigator, he/she will immediately determine whether the case files meet the requirements or whether or not they can be submitted to the court according to Article 139 of the Criminal Procedure Code.[14]If the public prosecutor has taken steps to prosecute, then by this action he has expressed his opinion positively, even if only temporarily, that there are sufficient grounds to charge that the defendant has committed a crime and should be sentenced to criminal punishment.[15]

Even though the case has been referred to the district court, it is still possible for the public prosecutor to change the indictment, this is regulated in Article 144 of the Criminal Procedure Code.16So, the actions that a prosecutor must take before prosecuting a criminal case in court can be described as follows:[17]

(a) Studying and examining the criminal case files received from investigators. Is it strong enough and is there enough evidence that the accused has committed a crime. If in his opinion, the case file is incomplete, then he immediately returns the case file to the investigator to be completed.

(b) After obtaining a clear and definite picture of the crime committed by the accused, the prosecutor will then make an indictment on that basis.

[12]Ibid, p. 4
[13]Andi Hamzah, Op., cit, p. 157
[14]Gatot Supramono, 1998, Indictment and Judge's Decision that is Void by Law, Djambatan, Jakarta, p. 7
[15]Soedirjo, Op.,cit, p. 4
[16]Leden Marpaung, 1992, Criminal Case Handling Process Part One Investigation and Prosecution, Sinar Grafika, Jakarta, pp. 19-20
[17]Djoko Prakoso and I Ketut Murtika, 1987, Getting to Know the Prosecutor's Office in Indonesia. Bina Aksara, Jakarta, p. 28

Furthermore, to prepare his charges, the prosecutor must prove his indictment in court. If the charges are proven, then the prosecutor will prepare his charges.

4. Pre-prosecution

Pre-prosecution is the stage where the public prosecutor provides instructions to the investigator to complete the case file after the prosecutor receives the Letter of Notification of Commencement of Investigation, then also when receiving the submission of the case file at the first stage; when the prosecutor considers extending the detention at the request of the investigator and when the prosecutor conducts additional examination, will complete the case file if the case file received from the investigator after being examined by the prosecutor turns out to be incomplete and the investigator is no longer able to complete it, that is pre-prosecution, meaning the stage before the prosecution stage.[18] Pre-prosecution is an action taken by the public prosecutor to provide instructions for the purpose of perfecting the investigation by investigators.[19]

This pre-prosecution is the authority of the public prosecutor as referred to in Article 14 letter b, namely in the case where the public prosecutor receives the case files of the investigation from the investigator (Article 8 paragraph (3) letter a of the Criminal Procedure Code) and is of the opinion that the results of the investigation are considered incomplete and imperfect, then the public prosecutor must immediately return them to the investigator accompanied by the necessary instructions and in this case the investigator must conduct additional investigations in accordance with the instructions given by the public prosecutor (Article 110 paragraph (3) of the Criminal Procedure Code) and if the public prosecutor does not return the results of the investigation within fourteen days, then the investigation is considered complete (Article 110 paragraph (4) of the Criminal Procedure Code). And this also means that pre-prosecution may not be carried out again.[20]

This pre-prosecution is a very important stage for the public prosecutor, who wants the prosecution task to be successful. The fact proves that the success of the public prosecutor in pre-prosecution will greatly affect the public prosecutor in making the indictment and the success of the evidence in court.[21]

3.3 Confiscation of Evidence in Criminal Cases

1. Confiscation Authority in Criminal Procedure Code

The definition of confiscation is formulated in Article 1 point 16 of the Criminal Procedure Code which reads "Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable objects,

[18]Ibid, p. 2
[19]Andi Hamzah, Op., cit, p. 154

[20]Djoko Prakoso, 1985, The Existence of Prosecutors in the Midst of Society, Jakarta: Ghalia Indonesia Jakarta, p. 35
[21]Bambang Waluyo, 2002, Legal Research in Practice, Sinar Grafika, Jakarta, p. 62

tangible or intangible, for the purpose of evidence in investigations, prosecutions, and trials". From the definition of confiscation referred to in the Criminal Procedure Code, at least several things are known related to confiscation, namely:

a. **First**, confiscation is an act of the investigator. As stated in Article 1 point 1 of the Criminal Procedure Code defines the investigator is an official of the Republic of Indonesia National Police or a certain Civil Servant Official who is given special authority by law to conduct investigations. The function of investigation in the criminal justice system has a very important role. Investigations carried out by Investigators are the initial gateway to the start of criminal justice. Furthermore, Article 7 paragraph (1) letter d of the Criminal Procedure Code states that Investigators because of their obligations have the authority to carry out confiscations. It is emphasized in Article 38 paragraph (1) that confiscations can only be carried out by investigators with a permit from the Head of the local District Court. From a series of these norms, confiscations from the perspective of the Criminal Procedure Code can only be carried out by investigators.

b. **Second**, confiscation is carried out by taking over and or storing under his control movable or immovable, tangible or intangible objects. The act of confiscation is a pro justisia act carried out based on a court order or decision. The act of taking over and or storing under his control of evidence is an attempt to seize someone's property rights. Confiscation in the sense of criminal procedure law outlined in the Criminal Procedure Code is a coercive measure (dwangmiddelen) that can violate human rights, which is carried out by investigators to:

1) taking or seizing certain goods from a suspect, holder or custodian, but the seizure is justified by law and is carried out according to statutory regulations and is not illegal seizure in an unlawful manner (wederechtelyk), and

2) After the goods are taken or confiscated by investigators, they are placed or stored under their control.[22] The purpose of confiscation is for the sake of proof, especially intended as evidence in court. Most likely without evidence, the case cannot be submitted to court. Therefore, in order for the case to be declared complete with evidence, investigators conduct confiscation to be used as evidence in the investigation, in the prosecution and examination of the court trial.[23]

c. **Third**, objects that can be confiscated are movable or immovable objects, tangible or intangible. Article 39 of the Criminal Procedure Code explicitly states that items that can be confiscated are:

[22]M. Yahya Harahap, 2000. Discussion of Problems and Application of Criminal Procedure Code Investigation and Prosecution, Jakarta: Sinar Grafika, p. 261.
[23]Ibid p. 260

1) objects or bills of the suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or as the result of a criminal act;

2) objects that have been used directly to commit a crime or to prepare for it;

3) objects used to obstruct the investigation of a crime;

4) objects specifically made or intended to commit a crime;

5) other objects that have a direct relationship to the crime committed.

Sometimes the confiscated goods do not belong to the suspect. Sometimes they are other people's goods that he/she has illegally controlled, or they are indeed the suspect's goods but they were obtained illegally or without legal permission according to the law.[24]

d. **Fourth**, confiscation is carried out for the purpose of providing evidence in investigations, prosecutions and trials. The evidence obtained from the confiscation is a source of evidence but its evidentiary power is different from the evidence. Evidence can only be used as one of the materials to form indicative evidence and can be used to strengthen the formation of the Judge's belief.[25]for the purpose of investigation, the evidence confiscated by the investigator is used to convince the Public Prosecutor that the results of the investigation by the investigator are complete. For the Public Prosecutor to convince the Judge that the defendant has indeed committed the crime charged. For the Judge, namely to obtain the conviction that the defendant has indeed committed the crime as charged by the Public Prosecutor.

2. Confiscation Authority Outside the Criminal Procedure Code

The authority of the Public Prosecutor to carry out confiscation is not expressly regulated in the Criminal Procedure Code, however, for the purposes of providing evidence in order to seek material truth and in efforts to recover state losses and/or state revenue losses in special criminal cases, the following laws and regulations can be used as a basis and study for the Public Prosecutor to carry out confiscation at the prosecution stage of special criminal cases.

a. Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

The authority of the Prosecutor's Office to carry out prosecution is regulated in Article 30 paragraph (1) letter a In this case, the Public Prosecutor as the case controller (dominus litis) can prosecute all criminal acts, both general crimes and special/specific crimes.

b. Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

[24]Ibid p. 263
[25]Colin Evans, 2010, Criminal Justice : Evidence, Chelsea House Publishers, New York, p. 31-32

c. In the Corruption Crime Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the procedural law still refers to the Criminal Procedure Code as referred to in Article 26 of Law Number 31 of 1999 which states that investigation, prosecution, and examination in court of corruption crimes are carried out based on the applicable criminal procedure law, unless otherwise specified in this Law. As long as the Corruption Eradication Law does not regulate the criminal procedure, the Criminal Procedure Code applies as the criminal procedure law.

d. Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism.

The authority to confiscate the Public Prosecutor is not explicitly regulated in this law. The explanation of Article 18 Paragraph (3) of the KKN Law, paragraph three, states that what is meant by "authorized agency" is the Financial and Development Audit Agency, the Attorney General's Office, and the Police.

3. Islamic Law Perspective on Evidence

From the perspective of Islamic Law, evidence means a tool that can be used as a basis for judges to decide a case, so that by relying on the evidence, the dispute between them can be ended.

There are 9 (nine) types of evidence used in Islamic criminal law, namely witnesses, confessions, signs, expert opinions, judge's knowledge, writings/letters, oaths and specifically qasāmah and li'an. As for the evidence (hujjah), it is something that justifies a lawsuit. The fuqaha' are of the opinion that there are 7 (seven) types of evidence, namely:[26]

a. Iqrar (Confession)
b. Witness (Syahadah)
c. Oath (Yamin)
d. Refusing the oath (Nukul)
e. Expert witness
f. Judge's Belief
g. Qarinah and evidence based on visible indications.

3.4 Legality of confiscation of evidence of corruption by the Public Prosecutor at the Prosecution Stage

The confiscation of the prosecution stage by the Public Prosecutor as described is indeed not expressly regulated in the Criminal Procedure Code, thus causing its own problems in law enforcement along with the development of technology and socio-economics in handling Corruption Crimes when the Public Prosecutor faces a situation in his trial where it is only discovered that there are

[26]Abdul Aziz Dahlan, 1996, Encyclopedia of Islamic Law, Jakarta: Ichtiar Baru Van Hoeve, p. 14.

goods/objects/property belonging to the defendant that have not been confiscated by the Investigator. In contrast, in handling money laundering cases, the Public Prosecutor can use the provisions of Article 81 of the TPPU Law as a basis for confiscation during the trial examination stage.

From this, the Criminal Procedure Code as one of the legal institutions must also adjust to the reality of the needs of society. Law enforcement can no longer apply the Criminal Procedure Code rigidly which results in the failure to realize substantive justice.[27]. The functional differentiation adopted in the Criminal Procedure Code makes the Public Prosecutor who is required to provide evidence in court never see the reality of the investigation facts in their entirety but is only limited to the pages of the case files resulting from the investigation. The evidence that appears in the trial facts is deemed necessary to meet the minimum of evidence to prove the defendant's guilt. However, if no confiscation is carried out, the evidence does not have the power of proof.

Considering the definition of confiscation formulated in Article 1 point 16 of the Criminal Procedure Code which reads "Confiscation is a series of actions by investigators to take over and/or store under their control movable or immovable objects, tangible or intangible, for the purpose of evidence in investigations, prosecutions, and trials. In the norm of Article 1 point 16 of the Criminal Procedure Code, it can at least be known that:

a. confiscation is carried out for the purposes of providing evidence at the investigation level;

b. confiscation is carried out for the purposes of providing evidence at the prosecution level; and

c. Confiscation is carried out for the purpose of providing evidence at the trial level or for examination in court.

from the norm at least it provides an illustration that confiscation as a coercive measure is carried out not only for the purposes of investigation, but also for the purposes of prosecution and trial as implied in Article 39 Paragraph (2) namely "...can also be confiscated for the purposes of investigation, prosecution, and trying criminal cases, as long as it meets the provisions of paragraph (1)" and in accordance with the Decree of the Chief Justice of the Republic of Indonesia Number: KMA/032/SK/IV/2006 concerning the Implementation of Technical Guidelines for Administration and Technical Procedures for General and Special Criminal Courts, Book II 2007 Edition, Supreme Court of the Republic of Indonesia, 2008 Pages 53-54, regarding confiscation in No. 3 states "If in the trial the Judge deems it necessary to confiscate an item, then the Judge's order to

[27]Cekli Setya. 2013. Failure to Realize Procedural and Substantial Justice in the High Court Judge's Decision in the Psychotropic Crime Case Number: 25/PID/B/2010/PT SBY. Faculty of Law, University of Muhammadiyah Malang, p. 167

carry out the confiscation is addressed to the Investigator through the Public Prosecutor".

The interesting thing in the Supreme Court Decision No. 032 of 2006 is whether it is then permissible to carry out confiscation first without waiting for the Determination of the Chief Justice of the District Court or the Determination of the Panel of Judges due to very necessary and urgent circumstances, according to Article 34 paragraph (2) in conjunction with Article 38 paragraph (2) in conjunction with Article 7 (1) point d of the Criminal Procedure Code. In the author's opinion, because based on Article 1 point 16 of the Criminal Procedure Code which states that confiscation is carried out for the purposes of prosecution and trial or examination in court, then all circumstances regulated in the procedures for confiscation at the investigation level mutatis mutandis also apply to the Public Prosecutor when carrying out confiscation at the prosecution stage, namely additional examination or the trial stage or examination in court. This is solely to find material truth. The confiscation carried out by the Public Prosecutor without going through the investigator can also be carried out considering that the Public Prosecutor is a Prosecutor who is based on Article 30 paragraph (1) letter a of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia can act as an investigator who has the authority to conduct investigations into certain criminal acts.

The authority to investigate certain criminal acts in this case corruption is an extraordinary measure because the object of the pro justitia action is an extraordinary crime. Thus, technically and in terms of experience, the Public Prosecutor also has the skills and understanding to confiscate evidence. These skills and understanding legitimize the public prosecutor to carry out confiscations professionally based on the provisions of statutory regulations.

Confiscation by the Public Prosecutor has also been regulated in Chapter XL Articles 1061 - 1064 of the Regulation of the Attorney General of the Republic of Indonesia Number Per-017/A/JA/07/2014 concerning Amendments to the Regulation of the Attorney General Number Per-039/A/JA/10/2010 concerning Administrative and Technical Governance for Handling Special Criminal Cases. However, in practice, the Public Prosecutor Team only accepts objects to be confiscated, in other words, the public prosecutor is passive in carrying out confiscation in the provisions of confiscation by the Prosecution Team as described, that this confiscation procedure, although the Prosecution Team is still passive and such actions have not been expressly regulated in the Criminal Procedure Code, but the confiscation is very effective in accommodating the increasing number of defendants in corruption cases who deposit money from crimes as stated in the indictment.

The Decree of the Chief Justice of the Republic of Indonesia Number: KMA/032/SK/IV/2006 concerning the Implementation of the Technical

Guidelines for Administration and Technical Procedures for General and Special Criminal Justice which in material terms regulates general matters so that it has binding force as a statutory regulation as referred to in Article 8 paragraph (1) and (2) of Law of the Republic of Indonesia No. 12 of 2011 concerning the Formation of Statutory Regulations at least opens up opportunities for public prosecutors to conduct confiscations both at the prosecution level, namely additional examinations, and at the trial level or examinations in court. The confiscation is carried out directly by the public prosecutor.

3.5 The Authority of the Public Prosecutor in Confiscating Evidence of Corruption Crimes at the Prosecution Stage

Procedurally, the act of confiscation by the Public Prosecutor in the prosecution subsystem is not specifically regulated in the Criminal Procedure Code, Confiscation as per Article 1 number 16 of the Criminal Procedure Code. As dominus litis, the Public Prosecutor is not given space by the Criminal Procedure Code to resolve the issue if in fact it is only discovered in the trial that there are assets/objects that are related to the defendant's crime.

If we look closely at the provisions of Article 39 Paragraph (1) letter a which states that goods that can be confiscated are objects or bills that do not only belong to the suspect but confiscation can also be carried out on objects or bills belonging to the defendant. Therefore, we can understand that what can be confiscated is not only the suspect's property but also the defendant's property at the prosecution level, confiscation can also be carried out.

Regarding such confiscation, it seems that the Criminal Procedure Code does not explicitly regulate who can carry out confiscation at the prosecution stage, however, with the phrase "the accused" it is appropriate if the Public Prosecutor carries out confiscation activities at the prosecution stage, especially when linked to the principle of functional differentiation, prosecution is the domain of the Public Prosecutor.

Legal review of the authority that can be carried out by the Public Prosecutor at the prosecution subsystem level is not only a matter of maintaining the results of the investigation in court, but as the controller of the case, the Public Prosecutor is certainly given the responsibility to improve the results of the investigation. Specifically, the authority to confiscate by the Public Prosecutor at the Prosecution stage to perfect the evidence from the results of the investigation is not explicitly found in the Criminal Procedure Code. However, Article 81 of Law Number 8 of 2010 concerning the Crime of Money Laundering explicitly states that the Public Prosecutor can carry out confiscation, which reads:

Article 81

"If sufficient evidence is obtained that there are still assets that have not been confiscated, the judge will order the public prosecutor to confiscate the assets."

It is clear that if the Defendant's Assets are still found that have not been confiscated during the Investigation stage, the Public Prosecutor, upon the order of the Judge, can confiscate the Assets as referred to. Of course, the confiscation carried out by the Public Prosecutor against goods obtained from corruption as an implementation of the deterrent effect must be preceded by confiscation so that it can be proven in court and determined regarding the status of the goods as referred to in the Public Prosecutor's indictment without any legal defects in its implementation.

In practice, the confiscation of the prosecution stage has been carried out by the Public Prosecutor's team in handling major cases at the Attorney General's Office of the Republic of Indonesia, carried out with procedures that are almost the same as those regulated in the Regulation of the Attorney General of the Republic of Indonesia Number Per-017/A/JA/07/2014 concerning Amendments to the Regulation of the Attorney General Number Per-039/A/JA/10/2010 concerning Administrative and Technical Governance for Handling Special Criminal Cases, namely:

1. The Public Prosecutor shall submit in writing to the Head of the Special Crimes Section that objects related to the crime or proceeds of crime or assets or claims as a result of company assets related to the crime charged have been found.
2. Furthermore, the Head of the Special Crimes Section reports this matter to the Head of the District Attorney's Office to then submit an application to the Head of the District Court and/or the Judge/Panel of Judges who are trying the case in question.
3. During the trial, the Public Prosecutor submits the application to the Judge and if the Judge approves it, the Judge reads out the confiscation decision in front of the court.

The practice as referred to has been approved by the Judge who tried the case:

Corruption Crime Case in the name of Honggo Wendratno Number 6/PID.SUS/TPK/2020/PN.JKT.PST (condensate).

Confiscation in the prosecution stage by the Public Prosecutor has been carried out by the Public Prosecutor Team in the case of convict Honggo Wendratno, Director of PT. Trans-Pacific Petrochemical Indotama, who has been found guilty of committing a criminal act of corruption resulting in state losses of USD 2,716,859,655.37 (two billion seven hundred and sixteen million eight hundred and fifty-nine thousand six hundred and fifty-five US Dollars and thirty-seven cents).

At the prosecution stage, based on the facts in the trial in the form of evidence of witness statements, letters and other documents, the public prosecutor found the fact that in principle the defendant in absentia Honggo Wendratno had money that was part of PT. Tuban LPG in the amount of Rp. 97,070,201,578,-

(ninety-seven billion seventy million two hundred and one thousand five hundred and seventy-eight rupiah) which came from funds/costs for implementing LPG management work. Based on these facts, the Public Prosecutor submitted a Letter of Request for Confiscation Permit to the Head of the Corruption Court at the Central Jakarta District Court through letter number B 1274/M.1.10/Ft./05/2020 dated May 16, 2020. Based on the Public Prosecutor's request, the Panel of Judges examining the case has granted the Public Prosecutor permission to carry out the confiscation by issuing a Determination of the Panel of Judges of the Corruption Court at the Central Jakarta District Court number 6/PID.SUS/TPK/2020/PN.JKT.PST dated June 5, 2020. In this case, the object of the confiscation material has been successfully executed on July 6, 2020.

4. Conclusion

In carrying out the legality of confiscation of evidence of corruption by the Public Prosecutor at the Prosecution Stage, the Prosecutor's Office has special standards in carrying out the confiscation process, namely if during the trial legal facts are found related to the defendant's property that has not been confiscated at the investigation stage, the Public Prosecutor can submit a request for a confiscation permit to the Panel of Judges, then after it is granted, the Panel of Judges issues a Determination of a Confiscation Permit from the Panel of Judges, then the Public Prosecutor in following up on the determination makes BA 15 (Minutes of Implementation of the Judge's Determination) and BA-13 (Minutes of Implementation of the Confiscation) which are then attached to the case file and stated in the indictment regarding the evidence. In terms of handling Corruption cases related to the authority to apply confiscation by the Public Prosecutor at the prosecution level, its implementation can be carried out without having to involve Investigators such as confiscation in court by the Public Prosecutor in Money Laundering cases as an implementation of the principle of fast and simple justice, in addition the purpose of Confiscation in Corruption cases is not only for the sake of material evidence in court, but also confiscation by the Public Prosecutor in court without going through Investigators is very much needed in order to accelerate the interests of saving state losses so that the procedural aspects of Criminal Procedure Law can be set aside to obtain substantive justice.

5. References

Books:

Abdul Aziz Dahlan, 1996, Encyclopedia of Islamic Law, Jakarta: Ichtiar Baru Van Hoeve.

Achmad Ali, 2009, Uncovering Legal Theory and Judicial Prudence Theory Including Interpretation of Legisprudence Laws, Kencana Prenada Media Group, Jakarta.

Ahmad Fathi Bahasyi, 1984, Theory of Proof According to Islamic Criminal Law, Translated by Usman Hasyim & Ibnu Rachman, Andi Offset, Yogyakarta.

Andi Hamzah, 1996, Indonesian Criminal Procedure Law, Sapta Artha Jaya, Jakarta.

Journals:

Achmad Budi, 2018, Implementation of the Criminal Justice System in the Perspective of Integration, Journal of Legal Sovereignty UNISSULA Semarang, Vol. 1 No.1, March 1, 2018.

Aridona Bustari, 2020, Legal Certainty of Functional Coordination between Police Investigators and Public Prosecutors in Pre-Prosecution (Study of Article 138 Paragraph (2) of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law).

Bagir Manan, The Authority of Provinces, Regencies and Cities in the Framework of Regional Autonomy, Paper at the National Seminar, Faculty of Law, Unpad, 13 May 2000, Bandung.

Cekli Setya. 2013. Failure to Realize Procedural and Substantial Justice in the High Court Judge's Decision in the Psychotropic Crime Case Number: 25/PID/B/2010/PT SBY. Faculty of Law, University of Muhammadiyah Malang.

Eddy Mulyadi Soepardi, 2010, The Role of BPKP in Handling Cases of Corruption Indications in the Procurement of Goods and Consulting Services of Government Agencies, National Seminar on Legal Issues in the Implementation of Consulting Service Contracts and Corruption Prevention in Government Agencies, Jakarta: Faculty of Law, University of Indonesia with INKINDO.

Philipus M. Hadjon, 1998, "On Authority", Paper on Administrative Legal Arrangement, Surabaya: Faculty of Law, Airlangga University.

Sudikno Mertokusumo, 2010, Understanding the Law, Atmajaya University of Yogyakarta, Yogyakarta.

Sumaidi, Study of Confiscation as Coercion Permitted by Law. Legality, Journal of Law.

Yadi, et al, 2024, The Authority of the Public Prosecutor in Confiscating the Proceeds of Corruption in the Perspective of Legislation, Journal of the Faculty of Law, Malikussaleh University, Vol 12 No 1, April 1, 2024.

Legislation:

Decree of the Chief Justice of the Republic of Indonesia Number: KMA/032/SK/IV/2006 concerning the Implementation of Technical Guidelines for Administration and Technical Procedures for General Criminal and Special Criminal Justice

Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia

Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs

Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism.

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise

Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009

Law Number 8 of 2010 concerning the Eradication of the Crime of Money Laundering