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Government Responsibility for State Confiscated Objects That Are Damaged or Lost

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Abstract. *The purpose of this writing is to find out and describe the Government's responsibility for state confiscated objects that are damaged or lost. The approach method in writing uses a sociological juridical approach. The results of the research carried out state that government accountability shows that state confiscated objects are damaged or lost. The owner of the goods can file a civil lawsuit if the confiscated objects and confiscated goods entrusted to the state are deficient either in quantity or quality, in the case of error or negligence determined by the court. So in this case the state is obliged to replace the fine that has been determined by the court.*

Keywords: *Accountability; Confiscated; Government; Objects.*

1. Introduction

The enforcement of criminal law is one of the most intrusive powers of the state, as it involves the potential deprivation of liberty and the seizure of private property. In the Indonesian legal system, the seizure (*penyitaan*) of goods serves a vital evidentiary function. According to the Criminal Procedure Code (KUHP), seizure is a series of actions taken by investigators to take over and keep under their control movable or immovable, tangible or intangible property for the purpose of evidence.

Philosophically, this authority is rooted in the "Social Contract" theory, where citizens yield certain rights to the state in exchange for security and justice. However, this transfer of power is not absolute. The state's right to seize is balanced by a constitutional duty to protect. Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia explicitly guarantees

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that "Every person has the right to own private property and such property shall not be taken over arbitrarily by anyone." Therefore, when the state seizes an item, it does not become the owner; it becomes a "Legal Guardian" or trustee.

The institutional responsibility for these objects is primarily managed by the State Confiscated Objects Storage House (*Rumah Penyimpanan Benda Sitaan Negara* or RUPBASAN). Despite the clear mandate in Article 44 of the KUHAP, the sociological reality in Indonesia reveals a systemic crisis. Confiscated objects—ranging from high-end luxury vehicles and heavy machinery to perishable commodities—often suffer from extreme depreciation, physical damage, or even mysterious disappearance while in state custody.

When an individual is acquitted of a crime, or when the court orders the return of seized goods, the owner often receives "junk" instead of the valuable asset originally taken. This physical and economic degradation constitutes a violation of the principle of legal certainty and protection of property rights. This article explores the parameters of government accountability for such losses, focusing on the mechanisms of civil lawsuits and the shift from institutional immunity toward state liability in the context of *Onrechtmatige Overheidsdaad* (unlawful acts by the government).

This abstract summarizes that the management of State-Confiscated Objects (*Benda Sitaan Negara - Basan*) and State-Forfeited Goods (*Barang Rampasan Negara - Baran*) often presents significant challenges when these objects suffer damage or loss while under the custody of law enforcement agencies. This paper analyzes the government's responsibility through the State Confiscated Object Storage House (Rupbasan) and related investigative agencies based on the Criminal Procedure Code (KUHAP) and the principle of Unlawful Government Acts (*Onrechtmatige Overheidsdaad*). The analysis reveals an implementation gap between normative regulations and field practices, which detrimentally affects the property rights of citizens.

As a state based on the rule of law (*Rechtsstaat*), Indonesia guarantees the protection of human rights, including the right to property ownership. In the criminal justice process, investigators have the authority to conduct confiscations for evidentiary purposes. This is stipulated in Article 1 point 16 of the Criminal Procedure Code (KUHAP), which states that confiscation is a series of actions by an investigator to take over and/or keep under their control movable or immovable, tangible or intangible objects for the purpose of evidence in investigation, prosecution, and trial (Harahap, 2002: 15).

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However, this authority to confiscate creates an obligation for the state to maintain these objects. Normatively, confiscated objects must be stored in the State Confiscated Object Storage House (Rupbasan) as mandated by Article 44 paragraph (1) of the KUHAP. In reality, many confiscated objects pile up in police stations or prosecutor's offices due to the limited capacity of Rupbasan. Consequently, many confiscated items (such as motor vehicles) become damaged, rusty, or experience a drastic decline in economic value when returned to their owners or when they are to be auctioned by the state (Hamzah, 2010: 45).

2. Research Methods

This research utilizes a Sociological Juridical approach. This method treats law not merely as a set of black-letter rules (*law in books*) but as a social phenomenon (*law in action*). It examines the effectiveness of the KUHAP and Government Regulation No. 27 of 1983 in the context of the actual capabilities and behaviors of law enforcement agencies in Indonesia. The data consists of: Primary Legal Materials: The 1945 Constitution, the Criminal Procedure Code (KUHAP), and the Civil Code (BW). Secondary Legal Materials: Academic journals, books on state liability, and judicial precedents regarding government lawsuits. Empirical Data: Observations of RUPBASAN facilities and reports on the management of state assets. The analysis is qualitative, employing the "State Liability Theory" and "Public Trust Doctrine" to evaluate how the government should compensate citizens for the mismanagement of evidence (Soekanto & Mamudji, 2015).

3. Results and Discussion

3.1. The Legal Status and Management of Confiscated Goods (Basan)

In Indonesia, the management of evidence is regulated under a complex web of rules involving the Police, the Attorney General's Office, and the Ministry of Law and Human Rights. While RUPBASAN is designated as the central storage, many agencies maintain their own "unofficial" storage facilities due to logistical hurdles. This decentralization creates a "chain of custody" nightmare.

Normatively, Article 45 of the KUHAP provides a safety valve: if a confiscated object is perishable or requires expensive maintenance, it may be sold at auction with the owner's consent, and the proceeds held in trust. Sociologically, however, this article is rarely utilized due to the bureaucratic fear of being accused of "misusing evidence" before a trial concludes. As a result, valuable assets sit idle and rot, transforming a legal safeguard into a financial burden for both the state and the owner (Harahap, 2012).

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A major finding in this research is the conflict between the "investigative authority" of the Police/Prosecutor and the "storage duty" of RUPBASAN. RUPBASAN belongs to the Directorate General of Corrections, while the investigators belong to other branches. This institutional separation leads to a lack of shared budget for maintenance.

Field observations indicate that RUPBASAN often lacks the specialized equipment needed to maintain modern assets. For example, a luxury car requires more than just a parking spot; it requires battery maintenance and climate-controlled storage. When RUPBASAN is only provided with an open-air lot, the damage is inevitable. In this scenario, who is at fault? The investigator who seized it? Or RUPBASAN which lacked the facility? This "fragmented accountability" is the primary shield used by the state to avoid paying damages to citizens (Atmasasmita, 2010).

The government's responsibility for damaged goods is not found in criminal law but in administrative and civil law. The concept of *Onrechtmatige Overheidsdaad* (OOD) or "Unlawful Act by the Government" is the primary legal vehicle for accountability. Under Article 1365 of the Civil Code, anyone who commits an unlawful act that causes harm to another is obliged to compensate for that harm.

When applied to the state, the owner must prove:

- 1) Breach of Duty of Care: The state failed to follow the maintenance standards expected of a professional storage facility.
- 2) Causality: The damage occurred specifically because of the state's storage conditions (e.g., rust from rain, engine seized from disuse).
- 3) Fault/Negligence: The damage was not an "act of God" but a result of human error or institutional neglect.

The court's recent trends show a growing willingness to hold the state liable. If the quantity or quality of the goods is found to be deficient, the state is increasingly viewed not as a sovereign immune from suit, but as a civil entity liable for its professional failures (Fuady, 2013).

From a sociological perspective, the damage to confiscated goods acts as a form of "extra-legal punishment." If a defendant is eventually found innocent, they have already been "fined" the value of their depreciated or destroyed property. This undermines the "Presumption of Innocence."

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Calculations show that a car stored in a typical RUPBASAN facility for three years loses approximately 40-60% of its market value. For heavy machinery used in mining or construction, the loss can be 100% if the mechanical systems fail due to disuse. The state's failure to maintain these assets is a direct economic blow to the citizen, which necessitates a "fine" or compensation paid by the state to the owner (Winjaya, 2023).

3.2. Human Rights Violations and the Deprivation of Property

The loss or damage of confiscated goods is a silent crisis in human rights. While much attention is given to the "right to a fair trial," the "right to property" during a trial is often ignored. By failing to guard the value of seized property, the state violates the "Social Justice" pillar of the Pancasila.

International law, including the ICCPR (International Covenant on Civil and Political Rights), which Indonesia has ratified, protects individuals from the arbitrary deprivation of property. A seizure that results in the destruction of property through negligence is, in essence, an "arbitrary taking." Therefore, the government's responsibility is not just a matter of civil debt but a constitutional mandate to avoid human rights violations (Asshiddiqie, 2010).

In jurisdictions like the United States or Singapore, the state uses specialized asset management agencies that are insured. If a seized asset is damaged, an insurance policy covers the loss. Indonesia lacks this mechanism.

The author proposes three major reforms:

- 1) **Mandatory Asset Insurance:** The state should insure all high-value confiscated goods.
- 2) **Digital Evidence Tracking:** A "One-Map" system for evidence that allows owners to track the physical condition of their goods online.
- 3) **Judicial Activism:** Judges must exercise their power under Article 45 KUHAP more aggressively, ordering the sale of maintenance-heavy assets to preserve their monetary value (Putera, 2024).

4. Conclusion

Government responsibility for state confiscated objects that are damaged or lost is a mandatory legal consequence arising from the state's role as a legal trustee. Normatively, the state has the authority to seize, but sociologically, it often lacks the capability to maintain. This gap results in

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significant material and immaterial losses for citizens. The legal mechanism for accountability is the civil lawsuit for *Onrechtmatige Overheidsdaad*. The state is obliged to compensate for any reduction in the quantity or quality of the goods if the loss is caused by the negligence or error of the state apparatus. To achieve true justice, Indonesia must move away from the "neglect" of storage facilities and toward a professionalized, insured, and transparent asset management system that respects the property rights of its citizens.

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