

Optimization of Victim Losses Recovery in Handling Cases of Embezzlement and Money Laundering of Umrah Costs (Case Study: Decision 1235/Pid.B/2018/Pn.Mks)

Dermawan Wicaksono¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: dermawanwicaksono.std@unissula.a.c.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstract. *Indonesia as a country of law guarantees the rights of victims to recover losses due to criminal acts, but in practice, victims of property crimes such as in the Abu Tours case which lost more than IDR 1.2 trillion, often have to take civil action to recover their rights because criminal sanctions do not automatically restore losses. The purpose of this study is to determine and analyze the optimization of victim loss recovery in handling cases of embezzlement and money laundering of umrah costs; to analyze obstacles and solutions to victim loss recovery in handling cases of embezzlement and money laundering of umrah costs. The approach method used in compiling the thesis is empirical legal research. Specifications in this study descriptive analysis. The theories used include the theory of justice and the theory of the legal system. The results of this study are (1) Optimizing the recovery of victim losses in the case of embezzlement and money laundering of Umrah costs in the Abu Tours case, requires synergy between various legal instruments. The defendant HM and his colleagues were proven to have embezzled funds amounting to more than one trillion rupiah belonging to around 96,976 prospective Umrah pilgrims, which were diverted for personal interests and fictitious investments with the mode of offering cheap travel promos. The prosecutor's office charged the perpetrators with multiple charges based on Articles 372 and 378 of the Criminal Code and Articles 3 and 5 of the TPPU Law, and after the verdict had permanent legal force, the process of confiscation and handing over hundreds of assets to the curator to be auctioned and distributed to the victims.*

Keywords: Asset; Embezzlement; Recovery.

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), clearly states "Indonesia is a State of Law". If the provisions are interpreted grammatically, then there will be consequences of a state of law, namely that all forms of decisions, actions of state apparatus, all attitudes, behavior and actions including those carried out by citizens, must have a legal basis or in other words all must have legal legitimacy.¹

Indonesia has many legal domains, two of which are civil law and criminal law. These two legal domains cannot be mixed or combined, because the public knows them as separate legal fields. However, the codification of law has brought a number of new mechanisms into the judicial system in Indonesia, one example of which is the incorporation of compensation claims into cases involving criminal acts. Compensation is an effort to regain one's rights after experiencing losses caused by others. The definition of compensation etymologically comes from two words, namely replace which means exchange or replace, and loss which means something that is not good or less profitable. If these etymological definitions are combined into a new meaning, then compensation can also be interpreted as replacing or exchanging something due to something that is not good or less profitable.²

Although the perpetrator has been sentenced to prison, this does not necessarily provide the recovery expected by the victim, especially in cases such as fraud, embezzlement, money laundering, and receiving, where the evidence that is the object of the crime often cannot be returned because it has been transferred, lost, or disguised. In such situations, the victim must take civil legal action to file a lawsuit for compensation, which is often time-consuming and expensive. This problem becomes more complex when the crime is carried out in an organized manner, where the proceeds of the crime are not only enjoyed by the perpetrator, but are also used as capital to finance further crimes. As emphasized by Sultan Remy Shahdaini, funds from previous crimes are often used as capital injections to finance subsequent criminal activities, including the purchase of goods and services that strengthen the continuity of illegal activities. Therefore, the failure to return the victim's assets not only has an impact on individual justice, but also contributes to a wider and more organized cycle of crime.³

¹ Muhammad Adiel Aristo, Umar Ma'ruf, Criminal Law Policy against Actor of Criminal Performance Persecution. *Jurnal Daulat Hukum*, Volume 3, No. 1, 2020, pp. 139-156

² Iza Hanifuddin, Compensation from the Perspective of Economic Fiqh, *Muslim Heritage*, Vol. 5, No. 1, 2020, pp. 17-29

³ Erdianto Effendi, Imposition of Compensation as the Principal Criminal Penalty in Crimes Against Property, *USM Law Review Journal*, Vol. 5, No. 2, 2022, pp. 617-632

The proceeds of property originating from crime such as food to survive a person who commits a crime are individual and organized. A criminal, especially an organized one, in committing his crime requires operational funds to carry out the planned crime, the proceeds of previous crimes become capital or funds to commit the next crime. As stated by Sultan Remy Shahdaini, fresh cash injections from previous crimes are used to commit the next crime and to spend on the necessary goods and services.⁴

Money laundering crime is a difficult legal problem in Indonesia that has not been resolved. Money laundering crime is known as money laundering, embezzlement, panning or in other words hiding assets resulting from illegal transactions. In a broad sense, "Money Laundering" is someone who commits an illegal act by "disguising" or "hiding" the proceeds of someone's crime from an illegal act (TP) that originated from the proceeds of crime into legal tender. Law No. 08 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, in general, explains that the act of someone who places (Placement), transfers (Layering), and uses assets (Integration) and crimes related to proceeds of crime that are known or suspected to be proceeds of crime is regulated in Article 2 paragraph (1) stating that disguising proceeds of crime is threatened because of the crime of money laundering (TPPU). The concept of Money Laundering Crime is that the suspect and the assets from the proceeds of crime are monitored and controlled by an Institution that analyzes the flow of money and assets of a person carried out by the Financial Transaction Reports and Analysis Center (PPATK) is a state institution that aims to analyze suspicious transactions such as Money Laundering (TPPU). And the assets from the crime are returned and handed over to the injured party.⁵

In the implementation of the recovery of victim losses in handling cases of embezzlement and money laundering by the Makassar District Attorney's Office in the Abu Tours case where the losses reached approximately Rp. 1,214,091,220,242, - (one trillion two hundred and fourteen billion ninety-one million two hundred and twenty thousand two hundred and forty-two rupiah). Abu Tours offered an umrah package at a price much lower than the market price, and promised departure in the near future. Tens of thousands of people were interested in this offer and paid the umrah costs through Abu Tours. However, after the payment was made, many prospective pilgrims were not sent off according to the promised schedule. In practice, the money received from prospective pilgrims was not used to facilitate their umrah departure, but was used to cover operational costs and to send off other pilgrims who had previously registered, a mode similar to a ponzi scheme. In addition, the money

⁴Sultan Remy Shahdaini, *The Ins and Outs of Money Laundering Crimes*, Pustaka Utama Grafiti, Jakarta, 2007, p. 4

⁵Achmad Firdaus and Handoyo Prasetyo, *Asset Recovery in Transnational Money Laundering Crimes*, JUSTITIA: Journal of Law and Humanities, Vol. 8 No. 3 2021, pp. 301-309

was also used for personal interests, purchasing land, buildings, jewelry, and opening and financing other business units that were unrelated to the interests of sending Umrah pilgrims.

2. Research Methods

In an effort to solve the problems that have been formulated, a clear and systematic research method is needed. In this regard, there are several stages that need to be determined, including: In writing this research, the author uses an empirical legal method or a sociological legal method, namely an approach taken to applicable legal norms connected with the facts in the field. The research conducted by the author is descriptive research, aimed at providing data that is as detailed as possible regarding the problem being researched. To obtain the data needed in this research, the author used two types of data sources, namely secondary data and primary data,

3. Results and Discussion

3.1. Optimization of Victim Loss Recovery in Handling of Embezzlement and Money Laundering Cases for Umrah Costs

Victims of criminal acts who suffer material losses, such as in cases of fraud and embezzlement, have the legal right to recover their property. This recovery can be done by returning the goods directly if they are still in the possession of the perpetrator, or through payment of compensation if the goods have been changed in form, so that the victim is still entitled to compensation commensurate with the value of the loss they experienced. In the realm of victimology, this asset return is a form of recovery or restoration of physical, moral, material losses, and the rights of victims caused by criminal acts.⁶

The main characteristic of this asset return reflects the legal responsibility of the perpetrator to fulfill the demands for criminal restitution. In the context of victimology, asset return is not only about the material aspect, but also becomes an instrument of comprehensive recovery for the impacts experienced by the victim, both physically, morally, economically, and the legal rights violated due to the criminal act.⁷

The return of assets to victims by perpetrators in cases of criminal acts of embezzlement of property in the legal system in Indonesia is carried out through a judge's decision in court based on the regulations contained in the Criminal

⁶N. Utami, "Legal Protection for Victims of Property Fraud Crimes." COMSERVA Indonesian Journal of Community Services and Development Vol. 2, No. 11, 2023, pp. 2610-2619.

⁷Supanto, Supanto, et al. "The Rights of Victims to Demand Restitution Due to Certain Corruption Crimes." Kosmik Hukum Vol. 22, No. 1, 2022, pp. 89-102.

Procedure Code. The rights of victims in criminal acts of fraud and embezzlement are to get their goods back.⁸

Recovery of assets belonging to victims of crime takes place through several stages, namely tracing, securing, maintaining, confiscating, and returning assets. Asset tracing includes systematic actions in the form of searching, requesting, obtaining, and analyzing information to identify the origin, existence, and ownership status of the assets. This process begins at the investigation stage and continues through investigation by law enforcement officers and PPATK. The security stage allows investigators to confiscate based on the results of tracing assets related to criminal acts. Asset security includes administrative and legal efforts aimed at protecting assets from being transferred to other parties, lost, reduced in value, or changed in form. This security measure also ensures that assets that have been successfully traced remain in legal control as evidence. Criminals are not given room to hide or transfer assets obtained illegally. Security can be carried out through temporary suspension of transactions, delaying transaction processes, blocking accounts, and carrying out confiscation.

The actions of the defendant and his colleagues are described as a violation of Article 372 of the Criminal Code on embezzlement and can be expanded to the element of fraud as in Article 378 of the Criminal Code, because their actions were proven to use trickery and a series of lies to convince the public to hand over money. In the indictment, the entire series of actions is viewed as an ongoing act (continuing crime), thus strengthening the unity of the perpetrators' evil intentions to benefit themselves unlawfully in a structured, systematic manner, and involving many parties.

The Criminal Procedure Code and the Attorney General's Law stipulate that the Indonesian Attorney General's Office is tasked with prosecuting criminal cases and implementing court decisions that have permanent legal force. After investigators detain and submit files, the investigating prosecutor checks the formal and material completeness (P-21 stage). In the Abu Tours case, the South Sulawesi High Prosecutor's Office stated that the files were complete and ready to be submitted to the Makassar District Court. With a central position as *dominus litis*, the prosecutor then presents evidence and witnesses at the trial to prosecute the perpetrator. After the judge has issued a verdict, the Attorney General's Office is obliged to execute the decision, including orders for restitution or execution of evidence in accordance with legal provisions. In carrying out this task, the Attorney General's Office acts in accordance with the mandate of Article 30 of Law No. 16/2004 in conjunction with Article 28 paragraph (2) of the Attorney General's Law, so that its main focus is on law enforcement and legal certainty.

⁸ Erdianto Effendi. "Imposition of Compensation as the Principal Criminal Penalty in Crimes Against Property." *Usm Law Review Journal* Vol. 5, No. 2, 2022, pp. 618-632.

As a prosecutor, the Prosecutor's Office must trace assets related to money laundering. The TPPU Law (Law No. 8/2010) requires law enforcement officers, including prosecutors, to find and seize the proceeds of crime, then process the assets to recover the victim's losses.

In the trial, the Public Prosecutor charged the President Director of Abu Tours, HM, The charges were filed cumulatively and alternatively, namely covering Article 372 and Article 378 of the Criminal Code concerning embezzlement and fraud, as well as Article 3 and Article 5 of Law Number 8 of 2010 concerning the Crime of Money Laundering. In the formulation of Article 372 of the Criminal Code, the prosecutor stated that the defendant had unlawfully taken control of money that did not belong to him, but to prospective pilgrims, and in bad faith did not use it as originally intended. In this case, the defendant's actions fulfill the element of "taking control unlawfully" which is the core of the crime of embezzlement.

That Article 372 of the Criminal Code (KUHP) states:

"Anyone who intentionally, unlawfully, takes possession of something, all or part of which belongs to another person, but which is in his control not because of a crime, is threatened with embezzlement, with a maximum sentence of four years or a maximum fine of nine hundred rupiah."

That Article 378 of the Criminal Code (KUHP) states:

"Anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by trickery or a series of lies, induces another person to hand over something to him, or to grant a loan or write off a debt, is threatened with a maximum prison sentence of four years for fraud."

Therefore, Article 55 and Article 64 of the Criminal Code on involvement and continuing acts are also included in the indictment as a legal basis to reach all perpetrators who participate and assist in carrying out the crime. All indictments are based on written evidence, witness statements, experts, and company financial documents and bank statements that have been examined by investigators and auditors. In connection with the existence of Article 55 and Article 64 of the Criminal Code, the crime of involvement can be explained as follows:

1) Actor (Pleger)

Pleger is a person who materially and personally clearly carries out an act that perfectly fulfills all the elements of the formulation of the crime that occurred. According to Zamhari Abidin, *plegen* (carries out) the implementation by: a) oneself; b) instrument (tool); and c) natural forces (*natuurkracht*). The

perpetrator is a person who carries out an act that fulfills the formulation of the crime and is considered most responsible for the crime.⁹

Article 55 of the Criminal Code (KUHP) explicitly explains who is considered to have committed a crime directly and perfectly. Even though someone is not part of the participating parties (*deelnemer*), their existence as the main perpetrator (*pleger*) is still important to mention. The main perpetrator will be sentenced together with other individuals who are involved in the crime, and the form of participation and criminal responsibility will be determined based on the level of their involvement in the crime committed. Therefore, the main perpetrator (*pleger*) is someone who fulfills all the elements of the crime, including if the crime is committed through an intermediary, subordinate, or other party directed by the perpetrator.¹⁰

In general, criminal law only contains criminal liability for a person who commits an act that has been regulated in the provisions of the law. In other words, a person can only be held criminally responsible if he has fulfilled all the elements of a crime as formulated in the law. Some legal experts define the perpetrator of a crime (*pleger*) as an individual who directly carries out the act included in the formulation of the crime, and is therefore considered most responsible for the crime. In the case of a crime formulated materially, then the perpetrator is considered to be anyone who causes the legal consequences as referred to in the formulation of the crime, which is determined through the theory of causality.¹¹

In relation to this view, distinguishing criminal acts into two forms, namely criminal acts that are formally structured and criminal acts that are materially structured. The consequence of this distinction is the fulfillment of the elements of a criminal act that determine a person as a perpetrator (*pleger*) of a criminal act does not always have to fulfill all the elements of a criminal act, but also a person who is the cause of the criminal act.

While in everyday language we often hear that what is meant by an actor or perpetrator is a person who carries out an action. In the context of discussing criminal law, the term perpetrator is always associated with the elements of a criminal act. So, according to criminal law, what is meant by an actor is a person who carries out an action, while the person who does it is called the perpetrator. Between the perpetrator and an action that occurs, there must be a psychological relationship, so that an action is realized.

⁹Siswantari Pratiwi, *The Crime of Participation in the Criminal Code (KUHP)*, Binamulia Hukum, Vol. 11, No. 1, 2022, pp. 69-80

¹⁰J Rimmelink, *Introduction to Material Criminal Law 1: Prolegomena and Description of Basic Doctrinal Theory*, Maharsa Publishing, Yogyakarta, 2014, p. 393.

¹¹Yuhendrilus, "Legal Review of Involvement in the Criminal Act of Murder Accompanied by Theft Against Children in Kuantan Singingi Regency (Case Study of Decision Number 06/Pid.B/2019/PN.Tlk)," *Juhanperak* 2, no. 3 (2021): p. 971,

2) The One Who Orders to Do (Doenpleger)

The definition of Doenpleger is a person who does an act through another person, while the intermediary is only used as a tool. Thus, there are two parties, namely the direct maker and the indirect maker. The elements of Doenpleger are:¹²

- a) The tool used is humans;
- b) As a tool used to act; And
- c) The tools used cannot be accounted for.

The form of involvement known as "ordering to do" requires the involvement of at least two parties in the crime. On the one hand, there is an individual who acts as the orderer (called *manus domina*, *onmiddelijke dader*, or *intellectueele dader*), and on the other hand, there is a person who carries out the act on orders, namely as the executor (*onmiddelijke dader*, *materiele dader*, or *manus ministra*). The involvement of these two roles is an absolute requirement in order to be categorized as a form of involvement "ordering to do." Without the existence of the orderer or the executor of the order, the legal construction of this involvement is considered incompletely fulfilled."¹³

3) Who Participated in Carrying Out (Medepleger)

Medepleger (jointly responsible and responsible and) must fulfill the elements of the crime. whereas according to Martiman, helping to do, namely "If several participants together carry out an act that is prohibited and threatened with punishment." Whereas for Medepleger according to MvT is a person who intentionally participates in or helps make something happen. Therefore, the quality of each participant in the crime is the same. Participating in doing something, namely:¹⁴

- a. Those who have fulfilled the offense formula;
- b. One who has fulfilled the formulation of a crime; and
- c. Each only partially fulfills the definition of a crime.

¹²Fransiska Novita Eleanora, "Legal Study of the Implementation of Sanctions Against Children Who Commit Criminal Acts According to Law No. 3 of 1997 concerning Juvenile Courts," ADIL: Jurnal Hukum Vol. 6, No. 2, 2015, p. 132

¹³Ronald FC Sipayung et. al., "Legal Analysis of the Role of the Police in Handling the Crime of Counterfeiting Currency Related to Law Number 7 of 2011 concerning Currency," USU Law Journal, Vol. 4, No. 3, 2016, p. 169

¹⁴Martiman Prodjohamidjojo, *Understanding the Basics of Indonesian Criminal Law*, Pradnya Paramita, Jakarta, 1998, p. 55.

The main purpose of the concept of participation in criminal law is to allow a person who does not fulfill all the elements of a crime to still be held criminally responsible for his/her involvement in the realization of the crime. In the case of participation, which is one form of participation, active participation of a person in the implementation of the crime is required. However, it is not explicitly explained in the law whether every person who participates must have the same level of intent or legal quality as the main perpetrator. Its meaning is more elaborated by criminal law experts.

Roeslan Saleh stated that those who are categorized as parties who participate in committing a crime are people who together and intentionally participate in committing a crime. However, he also emphasized that it should not be misunderstood that all participants in the crime must carry out the execution directly. The essence of participation lies in the existence of close cooperation between the perpetrators in realizing the crime, and this element is the core of the meaning of "participating in doing."¹⁵

According to Loebby Luqman, that in providing conditions for the formation of participation in doing, namely the conditions required for participation in the form of participation are: a) There must be cooperation from each participant; and b) Cooperation in a crime must be physical. Thus, in participating in doing this, there must be physical cooperation between each perpetrator.¹⁶

4) Organizers (Uitlokkers)

The term *uitlokker* in criminal law is interpreted by a number of experts in Indonesia as "persuasion", although there are variations in its use. Moeljatno, for example, prefers the term "*penganjuran*" to translate *uitlokking*, while Lamintang understands the term as the act of "moving others". Meanwhile, Andi Zainal Abidin and Andi Hamzah provide a broader interpretation, namely including the act of baiting, promising something, abusing power or position, using violence, threats, or misleading by providing assistance, means, or information. Encouragement is understood as a form of involvement carried out before the crime actually occurs. This means that before the main perpetrator carries out his actions, the advocate has first carried out actions that encourage or influence the perpetrator to commit the crime.¹⁷

According to Moeljatno, in the case of *uitlokken* there are two or more people who each have the position of the person who recommends or auctor

¹⁵Saleh Roeslan, *Participation Crime*, Faculty of Islamic Law, Riau, Pekanbaru, 1989, p. 98

¹⁶Latifah Auliyansya, "Review of the Doctrine of Participation in the Crime of Murder in Case Number 85/Pid/B/2012/PN.Br," *Al-Qisthu: Journal of Legal Studies* Vol. 16, No. 1, 2018, p. 11

¹⁷Ramelan, *Expansion of the Teachings of Participation in the Eradication of Transnational Terrorism Crimes*, Secretariat General of the Department of Defense, Legal Bureau, Jakarta, 2009, p. 43

intellectuallis and the person who is recommended (auctor materialis or materiele dader). The form of recommending, means the auctor intellectuallis or the intellectual perpetrator), recommends another person (materiele dader) to commit a criminal act. Between the efforts used by the auctor intellectuallis and the criminal act committed by the auctor materialis there must be a causal relationship.¹⁸

According to Roeslan Saleh, the proponent recommends that someone else commits an offense (criminal act), for which the other person is threatened with a crime. If another person commits an offense, then of course he must fulfill the elements of the offense, there must be no reason for the abolition of the crime. This opinion explains that the form of recommendation is different from ordering. In the case of giving orders to someone who is being ordered cannot be punished, but on the other hand encouraging someone who is being advised to commit a criminal act can be punished. This is a sharp boundary between ordering and advocating.

5) Assistance (Medeplichtige)

Assistance is part of the involvement regulated separately in Article 56, Article 57, and Article 60 of the Criminal Code. The term assistance as a translation of medeplichtigheid is a term used by Indonesian criminal law experts. In various criminal law literature, the term assistance is commonly used.²⁴ Assistance can occur at the time of the crime being committed. This is in accordance with the formulation of assistance "Those who intentionally provide assistance at the time the crime is committed." In addition, assistance can occur before the crime is committed. This is in accordance with Roeslan Saleh's opinion, that assistance is distinguished between two types, namely: assistance at the time of committing a crime and assistance that precedes the act, by providing opportunities, means or tools or information.

Jan Remmelink argues that the assistance provided by an assistant perpetrator (medeplichtige) does not have to absolutely have a big influence as is often assumed. In essence, the assistance must be significant enough or valuable in supporting the implementation of the main crime. For the main perpetrator, the assistance must have an important meaning, even in a simple form such as moral encouragement or a signal that the situation is safe to commit the crime. This is clearly seen when the perpetrator really benefits from the assistance provided. However, the assistance is not always crucial, because it is not necessary to prove that the crime would not have occurred without the assistance. Therefore, the standard used is sufficient on the possibility of adequate contribution.

¹⁸Ibid

The prosecutor detailed that the money of the congregation (96,976 people) was intentionally and unlawfully controlled by the defendant. With this indictment, the Prosecutor's Office emphasized the material aspect of the law (that the act of conspiring funds was clearly unlawful) and then requested the main criminal sentence and an order to compensate the victim if possible. However, in practice, the Prosecutor's Office's authority to directly order the return of losses is limited by the provisions of the Criminal Code (Article 14c of the Criminal Code only applies to probation), so the prosecutor's main focus is to ensnare the perpetrator and ensure that the assets resulting from the crime are confiscated according to legal procedures.

According to Nana Riana, SH, MH, CSSL., as the Head of the Gresik District Attorney's Office, stated that the biggest challenge in recovering assets of victims of economic crimes, including in cases such as Abu Tours, is the limitation in tracking assets across jurisdictions and the slow process of executing decisions involving third parties such as curators. He emphasized the importance of strong inter-institutional coordination, not only between units within the Attorney General's Office, but also with other institutions such as the Financial Transaction Reports and Analysis Center (PPATK), commercial courts, and bankruptcy and state auction institutions.¹⁹

of the perpetrator aims to prevent crime and provide a deterrent effect. However, this theory fails to provide satisfaction for the victims when the focus is only on the perpetrator and ignores the restoration of the rights of the injured party. Meanwhile, in the corrective justice approach, as explained by Aristotle, justice is achieved through correction of inequality due to unlawful acts. This correction should be present in the form of returning losses to victims through optimal asset management. Unfortunately, the position of victims as concurrent creditors in bankruptcy law means that they do not receive priority in the distribution of assets, so that correction of losses cannot be fully achieved adequately.

When the return of assets, which is the culmination of the recovery process, is actually hampered by complicated administrative mechanisms and the value of assets that is very low compared to the total loss, then justice is only present in a symbolic form. The implementation of the role of the Prosecutor's Office as an executor has indeed fulfilled the procedural law, but the substance of justice will only be achieved if the state actively guarantees the return of losses with additional instruments outside the regular auction process. One of them can be in the form of establishing a compensation fund for victims of economic crimes or strengthening the authority of the executor in prioritizing the recovery of victims over the interests of other parties.

¹⁹Interview with Mr. Nana Riana, SH, MH, CSSL., as Head of the Gresik District Attorney's Office, on May 5, 2025

3.2. Obstacles and Solutions to Recovering Victims' Losses in Handling Cases of Embezzlement and Money Laundering for Umrah Costs

Asset recovery is a form of appreciation from the criminal justice system to victims of investment fraud to restore the victim's condition and damaged social harmony. Asset recovery is defined as the process of handling assets resulting from crime that is carried out in an integrated manner at every stage of law enforcement, so that the value of the assets can be maintained and returned in full to the victims of the crime, including to the state. The history of the birth of asset recovery reflects the initial conditions of criminal law that dehumanize victims, such as discriminatory news reporting that corners and the use of impolite language by law enforcement when receiving complaints. The development of judicial policies is built on the partial truth that crimes are only recognized as violations of the law, forgetting the dimensions of crime as violations against victims, their families, and society that cause physical, financial, and relational losses. For the perpetrators, assets obtained from crimes are the "live blood of crime", which supports the crime itself, and is also the weakest point in a chain of crime.²⁰

Indonesia, represented by the Attorney General's Office, responded to this phenomenon by establishing the Asset Recovery Center (PPA) to assist in handling asset recovery both domestically and abroad, this is progress because only a few countries have the initiative to establish an institution like this. In short, the stages of asset recovery consist of tracking assets, confiscating them from the perpetrators, and returning the assets to their rightful owners. Thus, asset recovery makes the criminal justice system work more humanely, not only trapping the perpetrators but also considering the needs of the victims.²¹

The most important need of the victim is not to see the suffering of the perpetrator, but to get the return of their lost assets. The proceeds of crime are laundered for the benefit of the perpetrator, so they need to be confiscated so that they can be returned to the victim. An ideal anti-money-laundering regime should consider the benefit-cost principle, the benefits of this regime will be seen from asset recovery. Asset recovery is often challenged because the paradigm of case resolution in the justice system still often punishes the perpetrator without attempting asset recovery. Victims feel they have not received justice if the assets taken by the perpetrator cannot be returned through the criminal justice mechanism. The difficulty of meeting the needs of these victims makes plea bargaining (statements of guilt) and the perpetrator's cooperative attitude can be considered as incentives that can reduce the length

²⁰Prakoso, Aji. "Victimology Study in Embezzlement Crimes in Finance Companies." *Sivis Pacem* Vol. 1, No. 1, 2023, pp. 47-68.

²¹Dwiki Oktobrian et. al., "Projection of the Draft Law on Asset Confiscation Responding to Asset Recovery for Victims of Investment Fraud. *The Prosecutor Law Review* Vol. 2, No. 2, 2024

of imprisonment. Reducing wealth suspected of being the result of crime through asset recovery contributes to social equality and restores public trust. Referring to victims of financial fraud experiencing increased financial stress and complications after their victimization experience, asset recovery should be set as the main orientation when the criminal justice system responds to financial crimes.

Efforts to recover assets by the Prosecutor's Office in the case of embezzlement and money laundering involving Abu Tours' Umrah costs have encountered several obstacles. Friedman stated that the legal system consists of three main components, namely legal structure, legal substance, and legal culture. These three components interact with each other and determine the effectiveness of the legal system in carrying out the function of justice and protection for the community. When one component does not function optimally, the result is a dysfunction of the legal system, which is seen in the Abu Tours case through the slow restoration of the victim's rights. The following are the obstacles experienced by the Prosecutor's Office in efforts to restore the victim's losses in handling cases of embezzlement and money laundering for Abu Tours' umrah costs:

1) Legal Substance

The weakness of the legal substance of the Prosecutor's Office in recovering losses from victims of embezzlement and money laundering cases of Umrah costs by PT Amanah Bersama Ummat (Abu Tours) is clearly reflected in the lack of integration of legal norms governing the responsibility and authority of prosecutors in the execution phase of asset recovery. Although the Prosecutor's Office has been given the role of executor based on Article 30 of Law No. 11 of 2021 concerning the Prosecutor's Office, in practice there are no provisions that provide space for Prosecutors to act more proactively in ensuring that assets resulting from criminal acts are truly returned to victims. In the Abu Tours case, the Prosecutor only reached the point of handing over evidence to the curator after the decision had permanent legal force. Furthermore, the responsibility for distributing assets was transferred entirely to the curator in the bankruptcy process based on the Bankruptcy Law, without the active involvement of the Prosecutor's Office in supervising distribution to victims.

The absence of a strong protection mechanism for victims ultimately shows that the legal substance in the asset recovery system is still not integrated with the philosophy of restorative justice. The prosecutor's office as an institution in criminal law enforcement does not have a sufficient basis to bridge the needs of victims with the execution process.

2) Legal Structure

The legal structure in Lawrence M. Friedman's legal system theory refers to the institutions and apparatus that carry out legal functions, including law enforcement agencies such as the Police, Prosecutors, and Courts. The legal structure not only includes the institutions, but also the working methods, coordination, and functional effectiveness of these institutions in enforcing the law in real terms in society. When the legal structure does not run in an integrated manner, asset recovery, which should be an instrument of justice, actually turns into a slow process that does not favor the victims.

In the case of embezzlement and money laundering of Umrah costs by PT Amanah Bersama Ummat (Abu Tours), the weakness of the legal structure of the Prosecutor's Office is seen in the suboptimal synergy between institutions in the process of confiscation, management, and return of assets to victims. Although the Prosecutor's Office plays a role as executor after the verdict is final, in practice the implementation of the execution is often fragmented. After the assets are handed over to the curator, there is no adequate coordination system between the Prosecutor's Office, the curator, and the commercial court in ensuring that the assets that have been confiscated are truly maximized in value and returned to the injured party fairly. The absence of a special unit within the Prosecutor's Office to manage the recovery of victim assets also exacerbates this situation.

According to Mr. Nana Riana, structurally the Prosecutor's Office does not yet have a work unit that specifically handles the management of assets resulting from crime. In cases such as Abu Tours, the number of assets that must be confiscated and managed is very large and diverse, ranging from vehicles, property, to business entities. However, there is no team of prosecutors who have special training and work tools in assessing and following up on asset management optimally. This causes many assets to decrease in value before being auctioned, or not be fully monitored during the execution process. Every process of asset transfer, curator assistance, or request for cross-agency legal assistance must go through a long procedure that is often not in line with the urgency of restoring victims' rights.

3) Legal Culture

Legal culture, according to Lawrence M. Friedman, is the attitudes, values, perceptions, and expectations of society and law enforcement officers towards the law and its legal processes. Legal culture shapes the way individuals and institutions view the law: whether as a means to achieve justice or merely as an instrument of procedural formality. In practice, legal culture reflects the extent to which a society and legal institutions internalize the principles of justice and the supremacy of law in everyday actions.

Most victims in the Abu Tours case do not understand their legal rights, are not aware of the available loss recovery mechanisms, and do not understand the legal procedures that must be followed to register themselves as creditors or parties entitled to seized assets. This causes many victims to be passive and not take the right legal steps to fight for their rights.

Increasing public legal awareness must begin with the integration of restorative justice values in public legal education and socialization of the law on asset recovery. The prosecutor's office and judicial institutions are encouraged to build open communication, and encourage the formation of victim forums. This effort will encourage the formation of a new legal culture that makes the law a tool of protection that touches on moral aspects and social justice.

4. Conclusion

Optimizing the recovery of victim losses in the case of embezzlement and money laundering of Umrah costs in the Abu Tours case, requires synergy between various legal instruments. The defendant HM and his colleagues were proven to have embezzled funds amounting to more than one trillion rupiah belonging to around 96,976 prospective Umrah pilgrims, which were diverted for personal interests and fictitious investments with the mode of offering cheap travel promos. The Prosecutor's Office charged the perpetrators with multiple charges based on Articles 372 and 378 of the Criminal Code and Articles 3 and 5 of the TPPU Law, and after the verdict had permanent legal force, the process of confiscation and handing over hundreds of assets to the curator to be auctioned and distributed to the victims. The Prosecutor's Office plays an important role as an executor in securing assets resulting from crime and handing them over to the curator to be auctioned and distributed to the victims, but remains limited by the applicable positive legal regulations.

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