

# **Implementation of Prosecutor's Asset Confiscation Regulations in the Framework of Corruption Criminal Acts Recovery Based on Legal Certainty (Case Study of the Subang District Attorney's Office)**

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**Abstract.** *Corruption is a serious issue confronting Indonesia, including Subang Regency, with significant repercussions on regional economic growth, public trust, and equitable resource distribution. Asset forfeiture, as an anti-corruption strategy, plays a pivotal role in recovering state losses, deterring corrupt practices, and fostering national development. However, the implementation of asset forfeiture must ensure justice, utility, and legal certainty for all stakeholders. This study aims to analyze and understand the implementation of asset forfeiture regulations by the Prosecutor's Office in recovering assets derived from corruption, focusing on legal certainty and the effectiveness of asset recovery. Specifically, this research will address questions regarding the implementation of asset forfeiture regulations by the Prosecutor's Office, the weaknesses of such implementation, and the implementation of asset forfeiture regulations based on legal certainty. This research employs a socio-legal research method, encompassing the examination of legal norms and the context of law enforcement. Using a descriptive-analytical approach, this study analyzes the implementation of asset forfeiture regulations by the Prosecutor's Office in recovering assets derived from corruption. Secondary data is obtained through literature review and analyzed qualitatively to understand the data's meaning. Based on the research findings and discussion, it can be concluded that the implementation of asset forfeiture regulations by the Prosecutor's Office in recovering assets derived from corruption in Indonesia still faces several challenges. Firstly, the implementation of asset forfeiture regulations currently relies on scattered legal foundations, including the Criminal Procedure Code, the Corruption Eradication Law, and the Money Laundering Law, and can be pursued through both criminal and civil mechanisms. Second, the weaknesses of implementing asset forfeiture regulations by the Prosecutor's Office in recovering assets derived from corruption in Indonesia still face various issues, such as a lack of resources and technology, difficulties in proving the origin of assets, and a lack of public*

*awareness and legal compliance. Thirdly, the implementation of asset forfeiture regulations by the Prosecutor's Office in recovering assets derived from corruption based on legal certainty is still hindered by the absence of a specific and comprehensive Asset Forfeiture Law, resulting in inconsistencies in the application of the law.*

**Keywords:** Asset; Certainty; Corruption; Forfeiture; Legal.

## 1. Introduction

Corruption has a significant impact on regional economic growth. Research shows that corruption hinders effective budget allocation, undermines investor confidence, and reduces the fiscal capacity of local governments.<sup>1</sup> Previous studies have found that corruption impacts the quality of public spending, particularly on public services and infrastructure, which are crucial for economic growth. Corruption at the regional level can lead to wasted funds, fraudulent infrastructure projects, and mark-ups in procurement costs, which in turn lead to decreased local revenue and inefficiencies in budget implementation.

Research also shows that corruption increases legal uncertainty and transaction costs, which lowers business quality. Studies in Indonesia have found that local economic growth is significantly affected by corruption, and that fiscal decentralization can open up opportunities for corrupt practices if not balanced by effective oversight mechanisms.<sup>2</sup>

Recovering state assets recovered from corruption remains a challenge in Indonesia. According to 2018 data from Indonesia Corruption Watch (ICW), state losses reached Rp 9.2 trillion, yet asset recovery was only Rp 847 billion, indicating a very low recovery rate.<sup>3</sup> Another case, the Rp 2.3 trillion e-KTP corruption case, demonstrates that the recovery of state assets remains far from ideal. Although several perpetrators have been sentenced to pay restitution, only around Rp 500 billion has been recovered. A similar situation occurred in the Riau Regional People's Representative Council (DPRD) fictitious SPPD corruption case, which resulted in Rp 130 billion in state losses. However, only 5%, or around Rp 6.45

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<sup>1</sup> Muhammad Rizky Akbar, Dea Pratama Putri, and Nor Sapitri, "Corruption and Regional Economic Growth: A Literature Review," *Socius: Journal of Social Sciences Research* 2, no. 11, 2025, p. 7.

<sup>2</sup>Ibid, p. 9.

<sup>3</sup> Sigit Prabawa Nugrah, "Policy on Confiscation of Assets Proceeding from Criminal Acts of Corruption," in *Proceding: Call for Paper National Conference For Law Studies: Legal Development Towards the Era of Digital Society*, Veteran National Development University Jakarta, Jakarta, 2020, p. 988.

billion, was recovered by the end of 2024.<sup>4</sup> These cases demonstrate that recovering state losses through asset confiscation mechanisms remains ineffective. Possible causes include the lack of law enforcement capacity to track and seize assets, as well as lengthy and complex court processes.

Asset confiscation is urgent and a crucial component of efforts to recover state financial losses resulting from corruption in Indonesia. Furthermore, in the context of asset recovery, the strategy for confiscating corrupt assets must be implemented with consideration of fairness for all parties.<sup>5</sup> While regulating the confiscation of assets resulting from corruption is a crucial step in efforts to recover state financial losses, confiscation efforts are often hampered by lengthy and complex legal procedures and legal substance.

Based on the Amendments to the Law on the Attorney General's Office of the Republic of Indonesia, Article 30A regulates the Attorney General's Office's role in asset recovery. This article consists of two paragraphs that regulate the Attorney General's Office's authority to rescue, secure, and return state assets illegally controlled by other parties. This authority is exercised through the tracing, confiscation, and return of assets to the state.

The authority held by prosecutors, as stipulated in Law Number 11 of 2021, must serve as a guideline for prosecutors as active players in implementing asset recovery to improve the state economy. In accordance with established regulations, prosecutors must actively carry out the tracing, confiscation, and return of assets obtained from criminal acts. This will ensure the recovery of state losses can be fulfilled properly. If a prosecutor fails to carry out their duties and obligations as stipulated in the relevant laws and regulations, there are sanctions that will be received as stated in Prosecutor's Regulation Number 67 of 2012 concerning the Prosecutor's Code of Conduct. Article 12 of the provisions concretely states that prosecutors are obliged to respect and comply with the prosecutor's code of conduct. If a prosecutor is proven to have committed a violation, administrative action will be imposed, namely release from prosecutorial duties and/or transfer to another work unit. Thus, this provision demonstrates the important role of the Prosecutor's Office in handling corruption cases and the recovery of state assets.

Based on the above explanation, it can be concluded that the analysis of the implementation of asset confiscation regulations in Subang Regency is very important to ensure that the asset confiscation process is effective, fair, and

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<sup>4</sup> Lisa Dwi Fitriyanti and Agus Suwandono, "Asset Confiscation as an Additional Sanction: Analysis of State Loss Recovery in Handling Corruption Crimes in Indonesia," JAKSA – Journal of Law and Political Science 3, no. 3, 2025, p. 15.

<sup>5</sup> Yogi Yasa Wedha, Made Hendra Wijaya, and Kadek Apriliani, "Analysis of Legal Confiscation of Corruption Assets from the Perspective of Justice and State Financial Recovery," Jurnal LITIGASI 26, no. 1, 2015, p. 480.

transparent, and can recover state losses and support national development. Therefore, the researcher will examine "The Implementation of the Prosecutor's Office's Asset Confiscation Regulations in the Context of Legal Certainty-Based Recovery of Corruption Crime Assets (Case Study of the Subang District Prosecutor's Office)". This study aims to analyze the implementation of asset confiscation regulations by the Subang District Prosecutor's Office in an effort to recover assets from corruption crimes. The focus of this study is on legal certainty and the effectiveness of asset recovery, as well as identifying challenges and opportunities in the asset confiscation process. By analyzing corruption cases in Subang Regency and the implementation of asset confiscation regulations by the Prosecutor's Office, this study is expected to provide a comprehensive picture of the effectiveness of asset confiscation in recovering state losses and supporting national development. The results of this study are also expected to provide recommendations for improving and increasing the effectiveness of asset confiscation in the future.

## 2. Research Methods

This research will be conducted using a research method that requires several scientific applications to facilitate systematic and accurate research. Research in legal science encompasses all activities based on scientific disciplines to collect, clarify, analyze, and interpret facts and relationships in the legal field relevant to legal life. The research method used is socio-legal research.<sup>6</sup> Socio-legal research is both descriptive and analytical in nature. It's not limited to text but also delves deeper into the context, encompassing all processes, from lawmaking to implementation. Socio-legal research is an effort to explore and deepen a problem by not only examining related legal norms or doctrines but also examining the full context of these norms and their application.

## 3. Results and Discussion

### 3.1. Implementation of the Regulation on Confiscation of Prosecutor's Office Assets in the Context of Asset Recovery from Corruption Crimes

Conventional economic crimes such as theft, fraud and embezzlement have evolved into more complex crimes, involving educated perpetrators and being transnational in nature.<sup>7</sup> These crimes generate huge amounts of wealth and require significant funds to finance their operations, making them more complex and challenging for law enforcement.

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<sup>6</sup> Johnny Ibrahim, *Normative Legal Research Theory & Methodology*, (Malang: Bayumedia Publishing, 2012), p. 11.

<sup>7</sup> Irwan Hafid, "Asset Confiscation Without Criminal Punishment from the Perspective of Economic Analysis of Law," *Lex Renaissance* 1, no. 6, 2021, p. 466.

Economic crimes aim to maximize wealth. Because assets are the fuel for these crimes, the most effective approach to stopping them is to confiscate the proceeds and tools used in the crime. While imprisonment remains important, focusing on asset confiscation is considered crucial, as corporal punishment alone has been shown to be insufficient to deter perpetrators.

Corruption is a social phenomenon that represents deviant behavior in social interactions, which has a significant impact on society and the state. Therefore, this behavior is categorized as a criminal act and regulated by law. In the context of Indonesian criminal law, corruption is considered an extraordinary crime that requires special handling and severe sanctions. This aligns with the global perspective that considers corruption a serious crime committed systematically, involving various parties, and having far-reaching destructive consequences. Corruption has become a complex issue and affects various aspects of society.<sup>8</sup>

Corruption is an unlawful act committed by individuals or groups for personal gain, causing state losses and impacting the economy and public trust. Corruption harms the state and its citizens, with corruptors exploiting the state as a victim.<sup>9</sup> Corruption has also been proven to negatively impact human life, both economically and on societal norms and culture. To this day, corruption remains a chronic problem common to both developed and developing countries worldwide.

The impact of corruption as a crime is detrimental to the sustainability of a nation, both qualitatively and quantitatively. Quantitatively, the increasing number of corruption cases will undoubtedly lead to a decline in the quality of public welfare. In this regard, the state has an obligation to improve public welfare. The impact of corruption is so significant that it is placed as a shared responsibility by all elements of the nation without exception. Therefore, it is also the public's responsibility to participate alongside the government in combating corruption. Qualitatively, corruption intentionally harms the general behavior of society within a nation. In this regard, corruption can be seen as a contagious disease that, if left untreated, will lead to a widespread decline in the quality of human behavior and life.<sup>10</sup>

Corruption is the abuse of public office for private gain through bribes or illegal commissions, according to Marella Buckley. Indriyanto Seno Adji added that corruption is a "white collar" crime with a dynamic and invisible modus operandi,

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<sup>8</sup> Jawade Hafidz, "The Effectiveness of Implementing the Reverse Burden of Proof System in Corruption Cases in Realizing the Rule of Law in Indonesia," Sultan Agung XLIV, no. 118, 2009, p. 42.

<sup>9</sup> Agus Wibowo et al., *Basic Knowledge of Anti-Corruption and Integrity*, CV Media Sains Indonesia, Bandung, 2020, p. 1.

<sup>10</sup> Nandha Risky Putra and Rosa Linda, "Corruption in Indonesia: The Challenge of Social Change," *Integritas: Journal of Anti-Corruption* 8, no. 1, 2022, p. 14.

thus requiring a specific criminal law policy.<sup>11</sup>Corruption is very familiar in Indonesia, and is legally defined in Law No. 31/1999 in conjunction with Law No. 20/2001 concerning the Eradication of Criminal Acts of Corruption, which states that corruption must fulfill the element of causing harm to state finances.

The Indonesian government has undertaken various efforts to address and eradicate corruption, such as updating relevant laws and regulations. The global community frequently discusses corruption and its prevention efforts at international conferences, and considers corruption a new dimension of crime within the context of development. Corruption eradication currently focuses on three aspects: prevention, eradication, and the recovery of corrupt assets. However, proving corruption is not easy and requires a long time and high costs, thus requiring serious attention.<sup>12</sup>

The current criminal justice system in Indonesia still focuses on uncovering crimes, identifying perpetrators, and imposing criminal sanctions, such as imprisonment or confinement. However, issues such as the confiscation and forfeiture of proceeds of crime have also been addressed.<sup>13</sup>and criminal instruments have not become a priority in the Indonesian criminal law system, even though they have become a concern in the international sphere.

The return of corruption proceeds to the state is also hampered by several factors. The Corruption Eradication Law limits the amount of compensation that can be imposed to the amount obtained from the corruption crime or to the amount that can be proven in court. Furthermore, the process of proving corruption is very detailed and time-consuming.<sup>14</sup>This provides an opportunity for corruptors to conceal their criminal assets. The average time to resolve a corruption case is 2-3 years, allowing corruptors to cover their criminal assets.

The recovery of corrupt assets in Indonesia remains ineffective. Assets taken abroad, as in the cases of Edy Tansil, Bank Global, and the Bank Indonesia Liquidity Assistance (BLBI), remain difficult for law enforcement to trace and seize. This is

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<sup>11</sup>Nandha Risky Putra and Rosa Linda, *Ibid*.

<sup>12</sup> Transparency International, *Corruption Report in Indonesia*, Transparency International, Jakarta, 2022, p. 89.

<sup>13</sup>The proceeds of crime are assets that are directly or indirectly obtained from a criminal act (*—Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence*). Meanwhile, the definition of wealth is all movable or immovable objects, both tangible and intangible. (“Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets). See Article 2 Use of Term, United Nations Convention Against Transnational Organized Crime 2000, p. 2.

<sup>14</sup> Joko Hermawan Sulistyo and Jawade Hafidz, “Application in Lieu of Money Penalty to Corruption Actors Based on Act No. 31 of 1999 jo. Act No. 20 of 2001 on Combating Crime of Corruption,” *Journal of Daulat Hukum* 1, no. 4, 2018, p. 986.

due to weak legal frameworks and the absence of regulations governing international cooperation for the forfeiture of criminal assets.

The use of criminal law to suppress crime still has limitations. Some crimes or violations of the law cannot be prosecuted under criminal provisions. For example, unlawful acts that cause state losses cannot be prosecuted under corruption provisions. Methods used in Indonesia to conceal the proceeds of crime by perpetrators of corruption include:<sup>15</sup>

- (1) *Real Estate/Immovable property*: Corrupt officials or criminals who make a lot of money tend to use the funds obtained from their crimes to purchase immovable property in the name of the true owner or by involving a third party in the name of a relative or associate. Property transactions can be manipulated to use the apparent capital gains to disguise these illicit funds.
- (2) Purchase of valuables (gold), corruption funds can be used to purchase valuables such as cars, precious metals and jewelry, so investigators and prosecutors must determine the ownership, value and source of funds used to purchase these items.
- (3) Domestic stocks, publicly listed domestic stocks, can be bought and sold by a stockbroker. Orders are placed with the broker, who seeks partners to trade shares with clients. When two parties agree to buy or sell shares, the buy-sell order is signed by both parties. Once the transaction is concluded, a document is registered with the stock exchange. This document contains details of the buyer and seller, as well as the terms and conditions of the sale. A separate deed of sale is also signed by the seller. The normal commission paid to brokers is 1.5% of the total sale price. Taxes may also be payable. Shareholders will issue a receipt to both the buyer and seller specifying the details of the transaction. The documentation involved in this process includes detailed profiles of the buyers and sellers. These details include their names, addresses, signatures, titles, telephone numbers, and the names of their fathers and grandfathers. The company maintains detailed records of its shareholders.

Asset confiscation aims to protect assets most likely to be used as proceeds of corruption or as a means to commit corruption. This is intended to divert, conceal, or dispose of these assets. Criminals will ultimately allow these assets to be confiscated to compensate for state financial losses. The legal basis for asset segregation in corruption cases is specifically regulated by the following provisions:

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<sup>15</sup> Lalola Easter, Kurnia Ramadhana, and Diky Anandya, "Research Summary: The Urgency of Arranging Confiscation of Collateral in Handling Corruption Cases," Indonesia Corruption Watch, Jakarta, 2022, p. 11.

- 1) Article 38 of the Criminal Code, which regulates the confiscation of property, is regulated in Law No. 8 of 1981 concerning the Criminal Code (KUHP). These items include goods or objects directly involved in corruption case files, or those suspected of being used in corruption case files.
- 2) Law No. 20 of 2001 concerning the single crime of corruption or better known as Law No. 31 of 1999, investigators and public prosecutors have more authority to confiscate assets obtained from corrupt fraudulent acts, including assets belonging to defendants involved in the embezzlement, which is regulated in Article 18 of the Corruption Crime Law to compensate state losses.
- 3) Based on Law No. 8 of 2010 concerning the Eradication and Prevention of Money Laundering Crimes (TPPU Law), assets originating from money laundering crimes related to corruption crimes can also be confiscated.

The act of confiscation of assets is a legal act that forces either immobility or movement as a result of a criminal act in the form of stages or examination of assets or objects. Money or objects with nominal value can also be included in this category. Criminal law. According to Article 38 paragraph (1) of the Criminal Procedure Code, "investigators can revoke the permission of the head of the district court." Article 38 paragraph (1) of the Criminal Procedure Code states that "investigators only" have the authority to carry out confiscation. This means that confiscation "only investigators" can be carried out in certain ways in accordance with applicable laws and regulations. The Indonesian National Police, the Indonesian Attorney General's Office, and KPK investigators are investigators who can handle corruption crimes. Confiscation allows investigators to use various techniques and procedures that have been explained in criminal cases.

The Attorney General's Office of the Republic of Indonesia, as one of the law enforcement institutions authorized by law to conduct investigations, prosecutions, and enforce judges' decisions in corruption cases, plays a central role in asset confiscation. The Attorney General's Office is currently actively implementing corruption eradication efforts by emphasizing the recovery of state financial losses, even from the investigation stage, one of which is through asset confiscation instruments. Since 2014, the Attorney General's Office has established an Asset Recovery Center (PPA) based at the Attorney General's Office. In addition, the Attorney General's Office has also issued Attorney Regulation Number 7 of 2020, which regulates asset recovery guidelines. The asset recovery process, which begins with asset tracing, confiscation, and asset confiscation, is a benchmark for the success of handling corruption cases at the Attorney General's Office. However, this has not yet had an effect on the prosecutor's office at the regional level as a whole because the Asset Selection Center work unit does not exist at the High Prosecutor's Office or the District Prosecutor's Office level.

The primary objective of asset confiscation in the context of state financial recovery is to ensure the recovery of state losses arising from corruption or other crimes detrimental to the state. Various aspects of asset confiscation as an effort to restore state finances.

- 1) State financial recovery is not merely symbolic, but also a concrete action to confiscate assets. The goal is to locate, seize, and ultimately distribute assets used in the activities of criminal activity. The proceeds from the distribution of these assets will go to the injured party or the country's Ministry of Finance.
- 2) The deterrent effect, coupled with the expansion of asset confiscation from corruption, clarifies that the state will not punish those convicted with imprisonment. However, all assets or property obtained from corruption will be confiscated or seized to reimburse the state if the state suffers losses due to the corruption.
- 3) Increased public trust Efforts to eliminate trust and corruption in law enforcement can be increased if the state is successful in collecting government money by seizing assets.
- 4) The public will see the state firmly opposing perpetrators of corruption and trying to recover state losses.

The confiscation of assets resulting from corruption in Indonesia is carried out in accordance with Law No. 11 of 1999 concerning the Confiscation of State Officials' Assets (UU PTPK). The purpose of confiscation is to restore state financial losses and restore the country's economy. There are two main mechanisms: fulfilling obligations in asset confiscation through criminal and civil channels.

#### 1) Criminal Path

Asset confiscation through criminal channels begins with investigators conducting asset tracing, asset blocking, and confiscation of assets controlled or owned by the perpetrator of corruption. The process then continues with the presentation of evidence in court, both in proving the criminal offense committed and in proving the connection between the seized assets and the criminal act.

The confiscation of assets related to corruption is also regulated in Law No. 8/2010 concerning the Prevention and Eradication of Money Laundering, in addition to the provisions in the PTPK Law. This law criminalizes the actions of individuals or corporations that place, transfer, divert, spend, pay, grant, deposit, or change the form of assets suspected of being the proceeds of crime with the aim of hiding or disguising their origin. In addition, the act of hiding or disguising the origin of assets suspected of being the proceeds of crime, as well as receiving or controlling assets suspected of being the proceeds of crime are also subject to sanctions under this law.

Assets obtained through criminal acts, including corruption, may be subject to money laundering under Law No. 8/2010. These assets include movable or immovable, tangible or intangible objects, obtained directly or indirectly. The Financial Transaction Reports and Analysis Center (PPATK) has the authority to temporarily halt transactions suspected of being the proceeds of crime. If there are no objections within 20 days, the PPATK will hand over the assets to investigators. Investigators can file a petition with the court to declare the assets state assets or return them to their rightful owners if the perpetrators are not identified within 30 days.

The mechanism for confiscation of assets is also regulated in Article 79 Paragraph (4) and Article 81 of the Money Laundering Law. If the defendant dies before the verdict, the judge can decide to confiscate the confiscated assets if there is strong evidence of involvement in money laundering. If there are other assets that have not been confiscated, the judge can order further confiscation. For corporations, confiscation of assets or takeover by the state can be carried out as an additional punishment (Article 7 Paragraph (2)). If the corporation does not pay the fine, its assets can be confiscated as a replacement (Article 9 Paragraph (1)).

## 2) Civil Path

In addition to using assets or criminal asset channels, citizens can also use them for criminal acts of corruption. Asset confiscation or criminal corruption channels, also known as constitutional asset confiscation, is a legal act carried out by the state for the public interest or to ensure there is no discrimination against debts. Asset confiscation is not a punishment for a criminal act. If the main purpose of this asset confiscation is to ensure that the assets are not lost or transferred, and the court decision is to ensure that the assets have permanent legal force, then the assets can be used to fulfill the rights of the ruler. The PTPK Law regulates civil lawsuits to confiscate the assets of corruptors to recover state financial losses in several articles, namely Article 32 Paragraph (1), Article 33, Article 34 and Article 38 C.

If the investigator does not find sufficient evidence of elements of a criminal act of corruption, but there is a state loss, the file is submitted to the State Attorney for a civil lawsuit (Article 32 Paragraph (1) of the PTPK Law). If the suspect or defendant dies, the investigator or public prosecutor submits the case to the State Attorney for a civil lawsuit against the heirs (Articles 33 and 34 of the PTPK Law). If there are assets of the convict that have not been confiscated, the state can sue in a civil lawsuit (Article 38 C of the PTPK Law).

In this position, the Prosecutor's Office plays a central role in the confiscation of assets from corruption crimes, both through criminal and civil proceedings, as stipulated in the PTPK Law and the Money Laundering Law. Under these laws, the Prosecutor's Office has broader authority than other institutions such as the Police

and the Corruption Eradication Commission (KPK). According to Law No. 11/2021 concerning the Prosecutor's Office, this institution is tasked with exercising state power in the field of prosecution and other authorities. The Prosecutor's Office structure consists of the Attorney General's Office, the High Prosecutor's Office, the District Prosecutor's Office, and the District Prosecutor's Office Branches that carry out these functions.

The duties and authorities of the Prosecutor's Office in the criminal field are regulated in Article 30 Paragraph (1) of the Law concerning the Prosecutor's Office as follows:

- a. conduct prosecution;
- b. implementing judge's decisions and court decisions that have obtained permanent legal force;
- c. supervise the implementation of conditional criminal decisions, supervised criminal decisions and conditional release decisions;
- d. conduct investigations into certain criminal acts based on the law;
- e. complete certain case files and for that purpose can carry out additional examinations before being submitted to the court, the implementation of which is coordinated with investigators.

The authority of the Prosecutor's Office in confiscating assets for corruption and money laundering crimes is regulated in several laws, such as Law No. 26/2000 concerning the Human Rights Court, Law No. 31/1999 in conjunction with Law No. 20/2001 concerning the Eradication of Criminal Acts of Corruption, and Law No. 30/2002 concerning the Corruption Eradication Commission. In addition, Law No. 8/2010 concerning the Eradication of Criminal Acts of Money Laundering also gives the Prosecutor's Office the authority to investigate criminal acts of money laundering, as regulated in Article 74 and its explanation. Then, Article 30 Paragraph (2) of Law No. 11/2021 concerning the Prosecutor's Office provides authority in the civil and state administrative fields, the Prosecutor's Office with special powers can act both inside and outside the court for and on behalf of the state or government. This authority is the basis for the prosecutor's office in confiscating assets through civil channels as regulated in Article 32 Paragraph (1), Article 33, Article 34 and Article 38 C of the PTPK Law.

The Prosecutor's Office has attribution authority granted by Law No. 11/2021 concerning the Prosecutor's Office, namely exercising state prosecutorial powers and other authorities, including investigation, prosecution, and the implementation of judges' decisions in corruption cases. In the context of asset recovery, the Prosecutor's Office has the authority to conduct asset tracing, account freezing, asset seizure, and asset confiscation.

To conduct asset tracing, the Prosecutor's Office has two methods. First, asset tracing can be conducted through relevant agencies, such as the National Land Agency for land, banks for accounts, and the vehicle registration office (Samsat) for vehicles. If the assets are successfully identified, a report will be prepared for further analysis by the special criminal investigations unit to determine confiscation. The second method is to implement a P-48A warrant, in which the tracing is carried out directly by the executing prosecutor without the support of the intelligence unit. Once all assets are collected, they are auctioned off, and if the auction proceeds cover the state's losses, the convict will not have to serve a subsidiary sentence.

The authority as above is regulated in Law No. 31/1999 in conjunction with Law No. 20/2001 concerning the Eradication of Criminal Acts of Corruption and Law No. 8/2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. The Attorney General's authority in asset recovery can be categorized as attribution authority, because it is granted directly by law. In addition, the Attorney General's Office also has delegation authority, namely authority granted by other institutions, such as the Police and the Corruption Eradication Commission (KPK), to conduct investigations and prosecutions in corruption cases.

The Prosecutor's Office has a significant responsibility in exercising its authority, namely by adhering to applicable legal principles. The principles of legal certainty, justice, and expediency must guide every action taken. Furthermore, collaboration with other institutions such as the Police and the Corruption Eradication Commission (KPK) is crucial to increasing the effectiveness of asset recovery. Therefore, the Prosecutor's Office's authority in asset recovery stems not only from the law but also from collaboration with other institutions that share the same goal of improving justice and public benefit.

The Prosecutor's Office, as one of the agencies tasked with confiscating the assets of corruptors, has established an Asset Recovery Center (PPA) through the Regulation of the Attorney General of the Republic of Indonesia Number: Per - 013 / A / JA / 06/2014 as a working unit specifically functioning to recover state financial losses. The Prosecutor's Office has also issued Asset Recovery Guidelines several times, most recently through the Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020.

The Prosecutor's Office, as an agency authorized to investigate, prosecute, and enforce judges' decisions, plays a crucial role in confiscating assets related to corruption cases in order to recover state financial losses and provide a deterrent effect to perpetrators and prevent corruption. The legal framework for confiscating assets is enshrined in existing law, Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001, Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, and other implementing regulations. Asset confiscation can be pursued through both

criminal and civil legal mechanisms. In addition to these existing regulations, the government has also drafted a Draft Law on Criminal Asset Confiscation, which specifically regulates asset confiscation, including its procedural provisions.

### **3.2. Weaknesses in the Implementation of the Prosecutor's Office's Asset Confiscation Regulations in the Context of Asset Recovery from Corruption Crimes**

Corruption is a very serious and complex problem, with far-reaching impacts on various aspects of society. The root causes of corruption can stem from internal factors such as weaknesses in oversight systems, lack of transparency, and low individual integrity, as well as external factors such as economic and social pressures. The impacts of corruption are extensive, ranging from state financial losses and a decline in public trust to the deterioration of society's moral fabric. The social impacts of corruption include rising public service costs, slow poverty alleviation, increased crime, and the erosion of social solidarity. Meanwhile, in the political sphere, corruption can lead to the emergence of corrupt leadership, the strengthening of plutocracy, and the decline of government authority and public trust. All of these are negative consequences of corruption that affect various aspects of society, the nation, and the state. Therefore, efforts to eradicate corruption require a comprehensive and collaborative approach from various parties, including the government, law enforcement agencies, and civil society.

According to Jeremy Pope, as quoted by Widyo Pramono, there are two main factors causing corruption to become increasingly rampant in various areas of life. First, the erosion of social values, which prioritizes individual interests over the public interest, and the dominance of the individualistic ethic that underpins the social behavior of the majority of society. Second, the absence of transparency and accountability in the public integrity system.<sup>16</sup>

Meanwhile, the social impacts include high public service costs, slow poverty alleviation, increased crime, and the erosion of social solidarity. The political impacts include the emergence of corrupt leadership and the strengthening of plutocracy (a system of government that bases power on wealth), which ultimately undermines the government's authority and public trust. All of these are negative impacts of corruption that occur in various aspects of social, national, and state life.

For asset recovery, law enforcement often faces challenges before maximizing their gains in handling corruption cases. For example: 1) no asset tracking/tracing was conducted from the initial stage, so that by the time the execution process entered, the assets were no longer found; 2) law enforcement did not immediately block non-corporate delicti/instrumental delicti assets; 3) limitations on

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<sup>16</sup> Widyo Promono, *Eradication of Corruption and Other Crimes: A Prosecutor's & Professor's Perspective*, Kompas Books, Jakarta, 2017, pp. 134-141.

confiscation based on the Criminal Procedure Code; 4) proof of the nexus between nominee assets and the crime of corruption; 5) illusory verdicts because no asset confiscation occurred, while state financial losses have been proven.

The Attorney General's Office of the Republic of Indonesia, as one of the law enforcement institutions authorized by law to conduct investigations, prosecutions, and enforce judges' decisions in corruption cases, plays a central role in asset recovery. It can be said that the Attorney General's Office is the leading sector in asset recovery. This can be seen in Article 30A of Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, which states that in asset recovery, the Attorney General's Office is authorized to conduct activities to trace, confiscate, and return assets obtained from criminal acts and other assets to the state, victims, or those entitled to them.

Following the addition of duties and authorities, namely asset recovery, law enforcement officials have realized the importance of asset recovery for the national economy. With these duties and authorities providing legal certainty for the Prosecutor's Office, there will also be issues that will hinder the duties and authorities of services in asset recovery in the future. The issue of asset recovery becomes increasingly complicated if the hiding place of the assets has exceeded the jurisdiction of state power. At the very least, it requires time, access, and international cooperation with the country where the assets are hidden. The issue of international cooperation is an integral part of the effort to recover assets obtained from crime because it requires time and coordination between governments. Once cooperation is agreed upon, law enforcement can implement it.

The Attorney General's Office has undertaken various efforts to recover assets from the proceeds of corruption. One such effort is the establishment of an Asset Recovery Center (PPA). The Asset Recovery Center, as the core of the Integrated Asset Recovery System, has primary responsibility for asset recovery and the ability to track these assets. It serves as a coordinator for the Attorney General's Office's work units involved in asset recovery and has direct authority to interact with various ministries, agencies, institutions, and formal and informal networks, both domestically and internationally.

The Attorney General's Office is currently aggressively implementing corruption eradication efforts by emphasizing the recovery of state financial losses, even from the investigation stage, one of which is through asset confiscation instruments. Since 2014, the Attorney General's Office has established an Asset Recovery Center (PPA) based within the Attorney General's Office. In addition, the Attorney General's Office has also issued Attorney Regulation Number 7 of 2020, which regulates asset recovery guidelines. The asset recovery process, which begins with asset tracing, confiscation, and asset confiscation, is a benchmark for the success of handling corruption cases within the Attorney General's Office.

The idea for the Asset Recovery Center (PPA) stems from the fact that Indonesian law enforcement tends to focus on perpetrators, while paying less attention to assets related to crime. This presents a challenge for the PPA to shift law enforcement's understanding to focus on asset recovery, rather than solely on perpetrators.<sup>17</sup> Therefore, the role of an asset recovery center is needed in accordance with the basic mandate of its formation. The Asset Recovery Center (PPA) is a work unit specifically tasked with managing the administration of confiscated criminal assets. Within the scope of the asset recovery center's work, there are the following activities: a) Administration; b) Asset Valuation; c) Disposal; d) Transfer; e) Use; f) Grants; g) Destruction; h) Asset Mapping.

The implementation of asset recovery by the Prosecutor's Office's Asset Recovery Center involves several stages, namely tracking, blocking, confiscation, and seizure. As is the case at the Subang District Attorney's Office, two methods are used in executing asset recovery. First, the prosecutor conducts an investigation and requests assistance from the intelligence section to trace the convict's assets. The intelligence section then formulates and searches for the convict's assets to be confiscated by the special criminal section. For example, in a corruption case involving a regional official, if the prosecutor discovers state financial losses, the intelligence section will search for the convict's funds to confiscate and return to the state.

The method for finding the defendant's assets is explained by conducting inquiries with relevant parties. For example, to obtain information about land assets, prosecutors will contact the National Land Agency. If the assets are money in the bank or deposits, they will be checked with the bank. If the assets are vehicles, they will be checked with the vehicle registration office (Samsat). Once all assets are collected, a report will be filed with the special criminal investigations section of the intelligence agency, which will then determine which assets can be seized to cover state financial losses. If the first method is ineffective, prosecutors will use the second method.

The asset tracing method at the execution confiscation stage is carried out by the executing prosecutor based on Law No. 11/2021 concerning the Prosecutor's Office. If the assets have not been recovered at the execution stage, the prosecutor will issue a P48A to trace the convict's assets. In this process, the executing prosecutor has the authority to conduct asset tracing independently, unlike the investigation stage, which is supported by the intelligence section. The asset tracing method includes data collection, examination of related parties, and sending letters to relevant agencies such as the National Land Agency, banks, and the vehicle registration office (Samsat). The collected assets will be auctioned, and

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<sup>17</sup> Syifa Vidya and Titin Sulastri, "The Role of Asset Recovery at the Bandung District Attorney's Office," *Journal of Accounting* 10, no. 3, 2019, p. 156.

the proceeds will be used to compensate state financial losses. If the auction proceeds are sufficient, the convict will not have to serve a subsidiary sentence.

A problem that arises in asset recovery efforts in corruption cases is that judges' decisions attempt to impose additional penalties in the form of restitution, but are always faced with the convict's economic situation, which is unable to pay the restitution in full. As a result, restitution as an asset recovery measure is subordinated to imprisonment, thus rendering the judge's decision unable to realize the hope of achieving economic justice.

The implementation of additional penalties, such as confiscation of movable property and restitution of state financial losses, is significantly influenced by the calculated value of state financial losses. Therefore, accurate and valid calculations are necessary through proper and legal procedures to determine how much the state should recover from these losses. In the asset recovery process, prosecutors play a crucial role and can intervene if the case has progressed to the investigation stage. This means that during the investigation stage, prosecutors are still determining whether the case constitutes a criminal act of corruption. If corruption and clear state losses are confirmed, the case will proceed to the investigation stage. At this stage, prosecutors can pursue asset recovery to recoup state losses.

The implementation of the Attorney General's Office's asset forfeiture regulations in efforts to recover assets from corruption crimes requires a comprehensive analysis based on Lawrence M. Friedman's legal system theory. Legal structure, legal substance, and legal culture are three interrelated elements that influence the effectiveness of law enforcement. Furthermore, the existing legal structure still has several weaknesses, such as a lack of resources and technology, and difficulties in proving the origin of assets. This hampers the asset forfeiture process and affects the success of asset recovery efforts. The existing legal substance also still has several weaknesses, such as a lack of clarity and consistency in legislation. This can lead to legal uncertainty and affect public trust in the legal system. The existing legal culture also still has several weaknesses, such as a lack of public awareness and compliance with the law. This can affect the effectiveness of law enforcement and asset recovery efforts. Therefore, efforts are necessary to improve the legal structure, legal substance, and legal culture to increase the effectiveness of the Attorney General's Office's asset forfeiture regulations. This can be done through increasing resources, technology, and expertise, as well as increasing public awareness and compliance with the law.

### **3.3. Implementation of the Regulation on Confiscation of Prosecutor's Assets in the Context of Legal Certainty-Based Recovery of Corruption Crime Assets**

Asset forfeiture under Indonesian law is a crucial instrument in the fight against corruption. Its primary goal is to recoup state losses and ensure that perpetrators

do not benefit from the proceeds of their actions. The return of state assets resulting from corruption is not new in Indonesian law, as evidenced by the increase in corruption cases that is not accompanied by the return of assets obtained from corruption. The asset forfeiture mechanism, which focuses on uncovering the crime, includes identifying the perpetrator, imprisoning the perpetrator, and confiscating assets as an additional penalty, has proven ineffective.

The state has the legitimacy to confiscate the defendant's assets to cover state losses.<sup>18</sup> The prosecutor's office has utilized asset forfeiture regulations to recover assets from corruption in Indonesia through criminal and civil proceedings, based on the principles of legal certainty and expediency. However, its implementation has been hampered by the absence of a specific and comprehensive Asset Forfeiture Law. The lack of a focus on asset forfeiture in the reform of economic crime laws allows criminals to control and enjoy the proceeds of crime, even repeating crimes with more sophisticated methods.

The prosecutor's office currently bases its asset confiscation efforts on several main legal bases, as follows:

- 1) Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP): The KUHAP provides a general basis for the confiscation and seizure of evidence in criminal proceedings, which is the initial operational basis in handling assets related to criminal acts.
- 2) Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (PTPK Law): This is the main basis for criminal proceedings, which includes a mechanism for reversing the burden of proof (Article 37 paragraph (4)). If the defendant cannot prove assets commensurate with his income, this information can strengthen the judge's conviction regarding the crime of corruption.
- 3) Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law): This law provides a broader legal framework for tracking, freezing, and confiscating assets resulting from crime, including corruption, through a "follow the money" approach.
- 4) Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia: This law strengthens the role and authority of the Attorney General's Office as a law enforcement agency in carrying out its duties, including in asset recovery efforts.

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<sup>18</sup> Bambang Tri Bawono, "The Strategy for Handling Corruption's Criminal Action Relationship to Saving of State Financial Losses," *Jurnal Pembaharuan Hukum* 7, no. 3, 2020, p. 223.

5) Civil Path: The Prosecutor's Office can also file a civil lawsuit (through the State Attorney) to recover state financial losses, regardless of the ongoing criminal process (Articles 32, 33, 34, and 38C of the PTPK Law).

6) Internal Prosecutor's Office Regulations: Attorney General Regulation Number 20 of 2017 concerning Procedures for Securing Confiscated and Confiscated Goods and Attorney General Regulation Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery, which serve as internal guidelines for carrying out tasks in the field.

Further studies show that the current Indonesian legal system (positive law) focuses more on identifying and punishing the perpetrator (follow the suspect), as stipulated in the Criminal Procedure Code (KUHAP) and the Corruption Law. However, this approach is ineffective in preventing crime because it emphasizes imprisonment, while asset confiscation and seizure are merely supplementary measures. However, confiscating and confiscating the proceeds of crime can restore public wealth and improve justice and legal certainty.

State asset confiscation plays a strategic role in recovering state losses, creating a deterrent effect for corruptors, and supporting national development. To achieve justice, benefits, and legal certainty, the government must pass the Asset Forfeiture Bill, adopt international best practices, and ensure consistent implementation. The proceeds from asset confiscation should be used for public welfare, such as financing social programs and compensating victims. A 2023 Kompas Research and Development survey showed that 61.3% of the public believed the Asset Forfeiture Bill would improve legal certainty in handling corruption crimes. However, asset forfeiture still relies on criminal sentencing mechanisms, which slows down the process.

#### **4. Conclusion**

The implementation of asset confiscation regulations by the Attorney General's Office in the context of recovering assets from corruption crimes currently relies on a diverse legal basis, including the Criminal Procedure Code (KUHAP), the PTPK Law, and the Money Laundering Law (TPPU), and can be pursued through both criminal and civil mechanisms. The Attorney General's Office's authority stems from attributions under the Law on the Attorney General of the Republic of Indonesia. This regulation mandates the Attorney General's Office to exercise state power in the field of prosecution and additional authority, including the investigation, prosecution, and execution of court decisions related to corruption crimes and asset confiscation. The Attorney General's Office acts in its capacity as the State Attorney (JPN) and coordinates through the Asset Recovery Agency, with a scope of activities that includes confiscation, freezing, and asset tracing. To improve the effectiveness of asset recovery, it is recommended that the government consolidate the various existing asset forfeiture regulations into a

single, comprehensive Asset Forfeiture Law. This step should be strengthened by optimizing the role of the Attorney General's Office as both Public Prosecutor and State Attorney, improving coordination with the Asset Recovery Agency, and investing in human resource and technological capacity to support the entire process of asset tracking, confiscation, and execution more efficiently.

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