



## Implementation of the Confiscation and Auction of Assets Convicted in the Jiwasraya Corruption Case to Recover State Losses

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### **Abstract**

This research aims to examine one of the corruption cases at Asuransi Jiwasraya LLC which focuses on confiscating and auctioning the assets of convicts in recovering state losses. The method used in this research is a normative legal research method with a statute approach and a case approach. The results of this research show that in the corruption crime of Benny Tjokrosaputro Asuransi Jiwasraya LLC Number: 2937K/Pid.Sus/2021, the panel of judges handed down the decision to confiscate all properties along with the profits obtained by the convict from the criminal act. The confiscation of assets and auction of property is carried out based on applicable legal provisions as per the court decision. The obstacles experienced by the prosecutor's office in efforts to recover assets resulting from criminal acts of corruption include: assets from the criminal acts of corruption are obscured or transferred to other parties, assets or properties from the criminal acts of corruption are used up, assets from the criminal acts of corruption are in a position as collateral to other parties, and assets from the criminal acts of corruption have been transferred abroad.

**Keywords:** *Corruption; Crime, Recovery; State Losses; Asset Confiscation*

### **Introduction**

Corruption comes from Latin *corruptio*. In Dutch, it is called *corruptie* which was then adapted in Indonesian to become the word *korupsi* (Hamzah, 1991, p. 7). Corrupt means rotten, bad; likes to accept bribes (using their power for their own interests, and so on) (Poerwadarminta, 1982, p. 524). Corruption is a bad act (such as embezzling money, accepting bribes, and so on) that causes poverty and perpetrators of corruption must be subjected to the crime by paying compensation. In Indonesia, corruption occurs systematically and extensively, which not only harms the state, but also violates various social and economic rights (Andrew Ashworth, 2020, p. 76). The criminal act of corruption is regulated in Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Prinst, 2002, p. 32), which states: "Every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy shall be punished with imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least 200 million rupiah and a

maximum of 1 billion rupiah." Furthermore, Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes states: "Every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or because of a position that can harm the state's finances or the state's economy shall be sentenced to life imprisonment, or imprisonment for a minimum of 1 year and a maximum of 20 years and/or a fine of at least 50 million rupiah and a maximum of 1 billion."

The aim of issuing the criminal law on corruption is to ensure that those convicted of corruption are sentenced to sentences that have a deterrent effect on those convicted of corruption, but in order to recover state losses resulting from criminal acts of corruption, the confiscation and auction of assets of those convicted of corruption cases is carried out. Compensation in cases of the criminal acts of corruption is included in additional penalties as referred to in Article 10 of the Criminal Code. There are also additional penalties in the form of confiscation of certain goods in which the perpetrator of the criminal act of corruption is subject to payment of confiscation of certain goods in a maximum amount equal to the property obtained. from criminal acts of corruption. This is as stated in the provisions of Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. In Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, a provision is formulated which reads: Regarding additional types of crimes, there are new types of crimes which are not recognized according to Article 10 of the Criminal Code, and are contained in Article 18 of Law Number 31 of 1999 concerning Eradication Corruption Crimes (Undang-Undang Nomor 31 Tahun 1999 Pemberantasan Tindak Pidana Korupsi , 1999) which reads:

1. Confiscation of tangible or intangible movable property or immovable property used for or obtained as a result of the criminal acts of corruption, including companies owned by convicts where the criminal acts of corruption were committed, as well as goods that replace such goods.
2. Payment of compensation money in the maximum amount equal to the assets obtained from the criminal act of corruption.
3. Closure of all or part of the company for a maximum period of 1 (one) year.
4. Revocation of all or part of certain rights or elimination of all or part of certain benefits that the government has or can provide to convicts.
5. If the convict does not pay the replacement money no later than 1 (one) month after the court decision has obtained permanent legal force, his property can be confiscated by the prosecutor and auctioned to meet the replacement money.

Additional criminal impositions in the form of confiscation of tangible or intangible movable assets or immovable property used or obtained from the criminal acts of corruption by the convict are a consequence of the acts of corruption which have resulted in losses to state finances or the state economy, so as to restore state financial losses or the country's economy, juridical means are needed in the form of confiscation of the convict's assets. Asset confiscation is an anticipatory step aimed at saving or preventing the transfer of assets of those convicted of corruption. However, basically carrying out this action is not easy, it is not uncommon for the execution of compensation payments to be carried out for years. This is based on the reality on field that of the many cases of criminal acts of corruption handled by law enforcement officials, it is very difficult to find the proceeds of corruption from the perpetrators of corruption in the form of money because through various efforts the perpetrators of corruption have spent the proceeds of corruption or used and diverted them in other forms, including on behalf of other people who are difficult to reach by the law.

Thus, it is clearly difficult to trace the money or wealth obtained from corruption as in the corruption case of Asuransi Jiwasraya LLC Number: 29/Pid.Sus-TPK/2020/PN.Jkt.Pst dated 26 October 2020, High Court Decision Number: 07/Pid.Sus-TPK/2021/PT. DKI dated 26 February 2021 and Supreme Court Decision Number: 2937K/Pid.Sus/2021 dated 24 August 2021 on behalf of Benny Tjokrosaputro, where in their decision the panel of judges handed down a decision to confiscate all

property along with the profits obtained by the convict from the criminal act, with the consideration that the convict has been proven to have obtained assets from the proceeds of criminal acts of corruption along with all the profits. Asuransi Jiwasraya LLC is the oldest life insurance and the largest local life insurance company in Indonesia. The Financial Supervisory Agency of the Republic of Indonesia (BPKRI) explained in detail the facts of the incident that occurred that Asuransi Jiwasraya LLC insolvent the insurance policy or defaulted. There are several allegations that are the causes of AJS LLC's insolvent, including the products are at a loss and the price is too cheap, poor asset management, the liquidity of investment and non-investment assets is of low quality, the company's control system is still weak and it has poor Good Corporate Governance, weak information systems, unproductive branch offices, inefficient operational costs, limited capital, less innovative products and services, limited quality insurance human resources, the existing work culture is less professional and the facilities and infrastructure available are not modern (Ulya, 2020). Case of insolvency by Asuransi Jiwasraya LLC was turned into a criminal corruption case which was then handled by the Attorney General's Office. The brief chronology begins with the investment invested by Jiwasraya in the capital market reaching IDR 20.6 trillion (as of December 2018), which is divided into IDR 5.7 trillion in stock investments and IDR 14.9 trillion in mutual fund investments. This value reached 81.5% of the company's total financial assets. Meanwhile, the company's assets touched IDR 45.68 trillion at the end of December 2017. However, they drastically reduced to IDR 36.23 trillion as of December 2018 and IDR 25.68 trillion as of September 30 2019 after cases of insolvent emerged. Meanwhile, liabilities continued to increase from IDR 40.11 trillion (December 2017) to IDR 47.03 trillion (December 2018), then IDR 49.60 trillion (September 30<sup>th</sup> 2019) due to an increase in claims debt. As a result, equity becomes minus, as does risk based capital (RBC). The company's audited financial report for the 2019 financial year recorded an equity deficit of IDR 34.61 trillion. This happened because the asset position at the end of 2019 was IDR 18.13 trillion, while the liabilities reached IDR 52.74 trillion.

The deficit continues to increase because the main cause, the JS Savings Plan product, continues to record new overdue claims every day, while revenues are nil. Insolvent becomes inevitable. As of February 17 2020, the total claims debt had reached IDR 16.7 trillion, of which IDR 16.3 trillion was contributed by the JS Savings Plan product (Hidayat, 2021, p. 5). The BPK stated the calculation of state losses due to the Jiwasraya case. The value reached IDR 16.81 trillion, this amount is higher than the Attorney General's initial estimate of IDR 13.7 trillion (RI, 2020). The Jiwasraya case was also called a mega scandal because it involved a number of names and corporations known to be active in the capital market. On January 14<sup>th</sup> 2020, the Attorney General appointed Benny Tjokrosaputro (Bentjok) as the Managing Director of Hanson International Heru Hidayat (Main Commissioner of Trada Alam Minera LLC Tbk/TRAM), Hary Prasetyo (Financial Director of Jiwasraya for the period January 2013-2018), Hendrisman Rahim (Main Director of Jiwasraya for the 2008-2018 period), and Syahmirwan (former Head of Jiwasraya's Investment and Finance Division) as a suspect. Another individual suspect, the Director of Maxima Integra LLC Joko Hartono Tirto, was named a suspect on February 6<sup>th</sup> 2020 (Hidayat, *Penegakan Hukum yang Mengganggu Roda Ekonomi Kasus Jiwasraya dan dampaknya terhadap Pasar Modal Indonesia*, 2021, p. 7) .

Based on this criminal case, Supreme Court Decision Number 2931 K/Pidsus/2021 asset recovery is one of the options for the Jiwasraya case resolution scheme, the Attorney General's Office has begun confiscating and auctioning off the assets of those convicted of corruption and money laundering cases at PT Asuransi Jiwasraya, the assets being auctioned worth IDR 520.83 billion. The auction, which was held by the Attorney General's Office through the Indonesian Prosecutor's Office's Asset Recovery Center, was carried out to resolve and recover state losses. Judging from one of the Asuransi Jiwasraya LLC's corruption cases, one of the convicts, Heru Hidayat, was charged with causing state financial losses of up to IDR 16.8 trillion, and obtained profits from the Asuransi Jiwasraya LLC corruption case of up to IDR 10.7 trillion (Tasdikin, 2022, pp. 7-8).

## **Research Methods**

The research method is a way of thinking to achieve research objectives. Researchers may not be able to formulate, find, analyze, or solve problems without research methods (Soekanto, 2014, p. 43). This research uses a normative research method or what is commonly known as doctrinal research with a statute approach and case approach (Peter Mahmud Marzuki, 2005, p. 55). These two types of approaches are carried out by examining all laws and regulations that are related to the problem (legal issue) at hand. In addition, the data collection technique in this research method is a literature study, namely the collection and identification of legal materials obtained through references, scientific essays, official documents, papers, journals, mass media, the internet and other legal materials that have a relationship with those studied by researchers.

## **Discussion**

### **Implementation of the Confiscation and Auction of Assets Convicted in the Jiwasraya Corruption Case to Recover State Losses**

The return of assets resulting from criminal acts of corruption is a new thing and occupies an important position in Indonesian law because the increase in criminal acts of corruption is not balanced by the return of assets resulting from the criminal acts of corruption. Efforts to return state assets that were "stolen" as a result of criminal acts of corruption are also not easy to implement. Perpetrators of criminal acts of corruption have quite extensive and complex choices in maintaining the proceeds of their criminal acts of corruption.

Regulations on the return of state assets resulting from the criminal acts of corruption are still unclear, especially regarding the procedures for returning assets or the mechanism for returning these assets, meaning that there is no definite detail regarding the procedures for returning assets or the mechanism for returning assets, who has the authority to take over state assets resulting from the criminal acts of corruption in the trial process, which assets can be confiscated to compensate state losses, and which institutions are authorized to receive or store and manage state assets from the proceeds of criminal acts of corruption (Nugraha, 2020). The impact of the proceeds from criminal acts of corruption are taken by law enforcers such as the Prosecutor's Office. In the Jiwasraya corruption crime case against one of the convicts, Benny Tjokrosaputro, in whose decision the defendant was found guilty of committing criminal acts of corruption and money laundering. The goods belonging to the defendant that were confiscated by investigators are used as evidence in court based on article 39 paragraph (1) of the Criminal Procedure Code which states that objects that can be confiscated are basically objects obtained from the proceeds of a crime, used to commit a crime and objects that are has a direct relationship with the crime of confiscation for the state. The confiscation of assets owned by the convict was carried out by the Attorney General's Asset Recovery Center (PPA) (Muzer, 2023).

There are efforts made by the Prosecutor's Office to return assets resulting from the criminal acts of corruption, including:

1. Conducting asset tracking and tracing of assets resulting from criminal acts of corruption.
2. Confiscating assets from the criminal acts of corruption as an effort to prevent the assets from the criminal acts of corruption from being transferred to other parties.
3. Transferring assets to the state where the assets resulting from the criminal acts of corruption are transferred to the state as victims of criminal acts of corruption.
4. Confiscating assets from the criminal acts of corruption. Whether tangible or intangible movable goods or immovable goods used for or obtained from the criminal acts of corruption, including

companies owned by convicts where criminal acts of corruption were committed, as well as goods that replace these goods, assets are confiscated.

5. Conducting auctions of assets from the criminal acts that have been confiscated in order to recover state losses arising from criminal acts of corruption.

If the results of the auction turn out to be greater than the state's losses, then the remainder of the auction proceeds are returned to those entitled to them, conversely, if the auction results are less than the state's losses, they are replaced with the corruptor's assets which are not the proceeds of criminal acts of corruption to cover existing state losses. (Winandita, 2016). Thus confiscating the assets of convicted Jiwasya on behalf of Benny Tjokrosaputro Central Jakarta District Prosecutor's Office carried out by :

- a. Carrying out an inventory of goods of economic value by dividing the qualifications into movable goods, for example cars, motorbikes and securities, and immovable goods, for example land and buildings.
- b. Next, making a legal opinion regarding the confiscation of these assets.
- c. Preparing administration for the resolution of confiscated items to be handed over to the PB3R (Evidence and Confiscated Property Management) section which will then be continued to the PPA (Asset Recovery Center) unit as per PERJA No. 10 of 2019 concerning Amendments to Attorney General Regulation Number PER-002/A/JA /05/2017 concerning Auctions and Direct Sales of Confiscated Objects or State-Confiscated Goods or Execution Confiscated Objects (Ristamana, 2022).

However, in principle, this action is not easy to implement, it is not uncommon for compensation payments to take years. This is an inhibiting factor in restoring the state's rights as a result of the criminal acts of corruption. The Prosecutor's Office, in its efforts to return assets from the criminal acts of corruption, often experiences obstacles, as follows:

1. Assets from the criminal acts of corruption are obscured or transferred to other parties. These assets are obscured by being in the names of other people and it is difficult to know their whereabouts or the person who controls them. The person who controls the assets also tries to defend, protect and admit that the assets they own are the result of that person's hard work and ask for protection from the local District Court where the objects or assets are located.
2. The assets or property from the criminal acts of corruption are used up or. The assets or objects obtained have been used up or the assets have been sold first to finance the case, such as when a person who is suspected of having committed an act of corruption must be accompanied by a professional legal advisor.
3. Assets from the criminal acts of corruption are pledged as collateral to other parties. In particular, fixed assets in the form of land and buildings as well as non-fixed assets in the form of vehicles or other assets have become collateral for other parties, namely bank financial institutions or non-bank financial institutions.
4. The perpetrator of the criminal act of corruption has died. The assets of the criminal act of corruption are still controlled by the perpetrator but the perpetrator of the corruption has died, making it difficult for investigating prosecutors and investigators to trace these assets. This can happen because all forms of assets in the name of the deceased perpetrator have been transferred to another unknown party or if it is in the form of a bank account it is difficult to trace because it has been closed.
5. Assets from the criminal acts of corruption have been transferred abroad. In order to store and protect assets resulting from criminal acts of corruption, the perpetrator deliberately takes assets in the form of money or fixed objects or securities abroad which are considered safer than being stored at home. This makes it difficult for prosecutors and investigators because uncovering corruption cases is more difficult and investigation time is limited (Winandita, 2016).

As for the obstacles faced in confiscating assets in Jiwasraya cases, especially in P.p. Benny Tjokrosaputro includes:

- a. Confiscation of assets located outside the Jakarta area requires assistance from the PPA (Asset Recovery Center) unit.
- b. There were still items that had not been auctioned at the time of the investigation, resulting in the economic value of these items decreasing thus the state losses were not met.
- c. Evidence in the form of securities that have economic value such as SIDs or shares for the auction process has not been regulated in regulations so it requires special rules which will later have to be stated in the draft Asset Confiscation Law.
- d. There is evidence that does not have a legal basis, for example a car or motorbike without ownership documents, so it requires cooperation with related agencies and parties to reissue documents as proof of ownership (Ristamana, 2022).

The success of eradicating the criminal acts of corruption is not only measured based on the success of convicting perpetrators of the criminal acts of corruption, but is also determined by the level of success in returning state assets that have been corrupted (Badan Pembinaan Hukum Nasional Departemen Hukum dan Hak Asasi Manusia RI ). In fact, the effort to return state assets from the proceeds of the criminal acts of corruption is not simple, as stated, there are many aspects that must be considered in supporting the implementation of returning assets from the criminal acts of corruption (Syahmin, 2013). However, the Draft Law (RUU) regarding Asset Confiscation as one of the breakthroughs to recover state losses has been initiated by the government. It is hoped that it will soon be submitted and passed to strengthen the legal system, especially the Corruption Crime Law and the Money Laundering Crime Law. In implementing the Asset Confiscation Bill, it is hoped that the government must at least emphasize that the mechanism used does not prove someone's guilt at all, but only shows that the property is the result of a crime. The 2008 Asset Confiscation Bill, which contains a more complete and clear formulation regarding the asset confiscation mechanism, divides the asset confiscation mechanism into two, namely criminal confiscation and civil confiscation. Therefore, the government is expected to immediately pass the Asset Confiscation Law to eradicate the criminal acts of corruption. So far, Indonesia has also used international instruments to eradicate corruption, especially regarding the return of assets. One of these international instruments is the United Nations Convention Against Corruption (UNCAC) 2003, where Indonesia has ratified the 13 UN Conventions on Anti-Corruption with Law no. 7 of 2006.

## **Conclusion**

Corruption is a bad act (such as embezzling money, accepting bribes and so on) that causes poverty and perpetrators of corruption must be subjected to the crime by paying compensation. The criminal act of corruption has been regulated, including in Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which is further regulated in Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the aim of the issuance of the corruption law is to ensure that corruption convicts are sentenced to a deterrent effect for corruption convicts, but in order to recover state losses resulting from corruption crimes, the confiscation and auction of assets of those convicted of corruption cases will be carried out. As with the criminal act of corruption by PT. Jiwasraya Insurance Number: 29/Pid.Sus-TPK/2020/PN.Jkt.Pst dated October 26<sup>th</sup> 2020, High Court Decision Number: 07/Pid.Sus-TPK/2021/PT. DKI dated February 26<sup>th</sup> 2021 and Supreme Court Decision Number: 2937K/Pid.Sus/2021 dated August 24<sup>th</sup> 2021 P.p. Benny Tjokrosaputro, where in their decision the panel of judges handed down a decision to confiscate all property along with the profits obtained by the convict from the criminal act, with the consideration that the convict had been proven to have obtained property from the proceeds of the criminal act of corruption along with all the profits. The confiscation of assets and auction of the perpetrator's property is carried out based on the applicable legal

provisions as determined by the court decision. The obstacles experienced by prosecutors in efforts to return assets resulting from criminal acts of corruption include: Assets resulting from criminal acts of corruption are obscured or transferred to other parties, Assets resulting from criminal acts of corruption are used up or the property is used up, Assets resulting from criminal acts of corruption are in a position as collateral to other parties and assets resulting from criminal acts of corruption have been transferred abroad. In principle, this action is not easy to implement and is not as simple as written, it is not uncommon for compensation payments to take years. This is an inhibiting factor in restoring the state's rights as a result of criminal acts of corruption. However, the Draft Law (RUU) regarding Asset Confiscation as one of the breakthroughs to recover state losses has been initiated by the government. It is hoped that it will soon be submitted and passed to strengthen the legal system, especially the Corruption Crime Law and the Money Laundering Crime Law.

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