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Reformulation of Asset Recovery Strategy Resulting from Corruption Crimes as an Effort to Recover State Losses*

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Abstract
It is time for the state to prioritise asset recovery for state losses resulting from criminal acts of corruption. Asset recovery must be an integral part of the series of actions taken against criminal acts of corruption. However, the arrangements for recovering criminal assets in Indonesia are not yet synergistic and overlapping. The asset recovery process is carried out by several agencies, giving rise to sectoral egos and lengthy coordination. This results in the recovery of criminal assets in Indonesia as an effort to recover losses from criminal acts is not optimal. This research recommends strategies for recovering criminal assets in Indonesia to produce efficient asset recovery. The research method used is normative juridical using a statutory approach, comparative analysis, concept analysis and case analysis. The research results found that the suboptimal asset recovery in Indonesia was caused by disharmony in the asset recovery arrangements. Indonesia can reflect on the criminal asset recovery mechanisms in the United States, United Kingdom, and Italy regarding harmonising asset recovery arrangements. This research also found that harmonising asset recovery arrangements in Indonesia should be accommodated through the amendment of KUHAP. Through the harmonisation of these arrangements, The Attorney General's Office of Indonesia, a law enforcement agency that has the authority to carry out investigations, prosecutions, and execution of court decisions that have a permanent legal force appointed as the coordinator of asset recovery for criminal acts so that the recovery of assets, especially those resulting from criminal acts of corruption, can be well synergised and state losses recovery to be optimal.
Keywords: Asset Recovery; Asset Forfeiture; Non-Conviction Based Asset Forfeiture

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A. INTRODUCTION

Efforts to recover state assets from corruption losses tend to be difficult. Corruptors often have extensive expertise and access and are difficult to reach. Efforts to recover assets become increasingly difficult because the hiding place of the proceeds of the crime can go beyond the borders of the country where the corruption crime was committed. Often, the failure of law enforcers to return state assets is due to several things, including the suspect not being found, the suspect fleeing, the suspect or defendant dying, and the heirs not being found to carry out a civil lawsuit. At the same time, there is an objective state financial loss, and the asset is not placed in criminal confiscation, the end of the criminal process and the defendant is acquitted, or insufficient evidence to initiate a criminal lawsuit. (Sudarto 2017, 110)

The term asset recovery was first discovered in the 2003 United Nations Convention Against Corruption (UNCAC) (UNCAC, BAB V n.d.). Then Indonesia ratified UNCAC through Law Number 7 of 2006 concerning the Ratification of UNCAC, 2003. At the international level, UNCAC is "the first legally binding global anticorruption agreement" which focuses on the principle of recognising equality in sovereignty, rights, and social integrity between countries and upholding the principle of non-intervention (Mulyadi 2020). The five main points regulated in UNCAC 2003 are preventive measures, criminalisation and law enforcement, *International Cooperation, Asset Recovery,* as well as technical assistance and information exchange. (UN, Convention against Corruption, General Assembly Resolution 2003)

The UNCAC Ad Hoc committee has an in-depth discussion on asset recovery. In the second session of UNCAC discussions, the UNCAC Ad Hoc Chair emphasised that asset recovery is one of the essential aspects of UNCAC and will serve as an indicator of the political will to join forces to protect the common good (Webb n.d.). UNCAC requires state parties to recover assets through international cooperation and mutual legal assistance. In UNCAC, it is determined that the state party uses asset forfeiture without criminalisation (Non-Conviction Based asset forfeiture). (Sudarto 2017)

The consequence of Indonesia's ratification of the UNCAC is that Indonesia is obliged to participate in asset recovery. Before UNCAC, the asset recovery mechanism was also found in the United Nations Convention Against Transnational Organized Crime (UNTOC). UNTOC, more popularly known as the Palermo Convention 2000, has been ratified by Indonesia through Law Number 5 of 2009 concerning the Ratification of UNTOC. In UNTOC, the term asset recovery is not found, but UNTOC regulates the legal stages in asset

recovery, namely asset identification, tracking, asset freezing or asset confiscation. (UN 2000, 20)

There is no term asset recovery in the Old Criminal Code, the Criminal Code, and Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). In Indonesian law, the terminology of asset recovery was first found in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Article 30A of the Prosecutor's Law stipulates that "in the recovery of assets, the Prosecutor's Office is authorised to carry out activities of tracing, seizing, and returning assets obtained from criminal acts and other assets to the state, victims, or those who are entitled". (KPK 2022) The article means that the Prosecutor's Office is the institution authorised to carry out asset recovery.

In practice, so far, a series of asset recovery processes such as asset tracing, asset security, asset management, asset confiscation, and asset recovery have been carried out proportionally by the Police, the Prosecutor's Office, the Corruption Eradication Commission (KPK), and the Confiscated Goods Storage House of the Ministry of Law and Human Rights (Rupbasan Kemenkumham). As a result, each of these institutions makes regulations related to asset recovery that are not in line with other institutions or even contrary to higher laws and regulations. For example, in September 2022, the KPK inaugurated the KPK Rupbasan located in Cawang, East Jakarta (KPK 2022) The KPK rupbasin is a place to store confiscated objects and state loot belonging to the KPK. The KPK manages the KPK Rupbasan. This practice is contrary to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code because by using the word "Rupbasan", the KPK Rupbasan should be managed by the Ministry of Law and Human Rights (Peraturan Pemerintah Tentang Pelaksanaan KUHAP, PP Nomor 27 Tahun 1983, LN Tahun 1983 No. 36, TLN. No. 3258, selanjutnya disebut PP Pelaksanaan KUHAP, Pasal 30 ayat (1). n.d.).

There is a provision in the Criminal Procedure Code that confiscated objects are stored in the Rupbasan (Pasal 44 KUHAP n.d.). Then the Regulation of the Minister of Law and Human Rights (Permenkumham) requires confiscated objects and state loot to be stored in Rupbasan (Permenkumham Nomor 16 Tahun 2004, Pasal 2. n.d.). But in fact, the Ministry of Law and Human Rights Rupbasan does not exist in every city/district where there are Police and Prosecutor's offices. This resulted in an inoptimal function of the Ministry of Law and Human Rights in storing confiscated objects, so that the Prosecutor's Office formed its storage place called the Evidence Building.

It is not only the issue of where assets are stored; the auction implementation for the execution of confiscated objects based on Article 45 of the Criminal Procedure Code is also carried out based on the internal provisions of each authorised official. The Prosecutor's Office conducts an auction for the execution of confiscated objects under Article 45 of the Criminal Procedure Code based on Guideline Number 3 of 2022 concerning the Auction and Direct Sale of Confiscated Objects, Evidence, State Loot, and Confiscated Objects for Execution within the Prosecutor's Office of the Republic of Indonesia, while the KPK carries it out based on Government Regulation Number 105 of 2021 concerning the Auction of Confiscated Objects of the KPK. Even now, the Supreme Court is drafting a Draft Regulation of the Supreme Court (Perma) concerning Procedures for Handling State Confiscated Goods and Management of State Spoils from Criminal Acts, whose primary purpose is maintaining confiscated objects' economic value. Perma is recognised as one of the types of laws and regulations if regulated in laws and rules that are higher in hierarchy or arranged based on authority.

Seeing these juridical provisions leads the author to believe that one of the causes of the recovery of criminal assets in Indonesia is not optimal because the regulation of the recovery of criminal assets in Indonesia is still sectoral ego. At the beginning of this study, we will examine how the mechanism and conditions for regulating the recovery of criminal assets are spread across various laws and regulations in Indonesia. Furthermore, the author will discuss the mechanisms and arrangements for asset recovery in other countries with a comparative analysis of laws. The countries that will be the object of comparison are the United States, the United Kingdom, and Italy. The comparison of statutes related to asset recovery in these three countries is expected to provide an overview of the weaknesses and strengths of asset recovery in those countries so that the author can recommend an ideal and applicable form of asset recovery in Indonesia.

B. METHODS

An analysis of rules and regulations is used to answer how the mechanism and conditions for regulating the recovery of criminal assets spread in various laws and regulations in Indonesia. The research will examine various rules and laws related to recovering criminal assets in Indonesia. The analysis of laws and rules is used to determine whether there are overlapping regulations and how these regulations synergise in recovering assets.

Comparison analysis is used to answer the following question. Comparative analysis is carried out by classifying the arrangements and mechanisms for asset recovery in several countries, adhering to the common law and civil law systems, to determine the institutions authorised to carry out asset recovery in other countries and how asset recovery in different countries performs their functions. The countries used as the object of comparison are the United States, the United Kingdom, and Italy. By knowing the arrangements of other countries, it is hoped that it can provide an ideal picture for regulating the recovery of criminal assets in Indonesia.

C. RESULTS AND DISCUSSION

1. Arrangements for the Recovery of Assets Resulting from Corruption Crimes in Indonesia

In Indonesia, the terminology of asset recovery was first found in the Attorney General's Regulation on Asset Recovery, which revoked the Attorney General's Decree on the Settlement of Confiscated Goods. (Peraturan Jaksa Agung Nomor: Per-013/A/ JA/06/2014 n.d.) At the legal level, the term asset recovery was first found in Law Number 11 of 2021 concerning the Prosecutor's Office (the new Prosecutor's Law). This Prosecutor's Law expands the duties and authorities of the Prosecutor's Office, namely the authority of the Prosecutor's Office in terms of asset recovery to be limited to tracing, confiscating, and returning assets. Where previously based on the Prosecutor's Regulation on Asset Recovery Guidelines, in terms of asset recovery, the prosecutor's office carried out a series of activities starting from the process of tracing, safeguarding, maintaining, seizing, and returning assets to their owners (state/victims)" The authority to secure and sustain lost assets is not contained in the Prosecutor's Law. The Ministry of Law and Human Rights refuses to give the authority to secure and preserve assets to the Prosecutor's Office because the Ministry of Law and Human Rights already has a Rupbasan that carries out securing and maintaining assets. (Permenkumham Tata Cara Pengelolaan Benda Sitaan Negara Dan Barang Rampasan Negara Pada Rumah Penyimpanan Benda Sitaan Negara, Pasal 15. n.d.)

A series of asset recovery activities are also found in various laws and regulations such as the Law on the Eradication of Corruption, the Law on the Prevention and Eradication of Money Laundering, and Perma Number 1 of 2013 concerning Procedures for Settlement of Applications for the Handling of Assets in Money Laundering or Other Crimes. The problem arising from the

transition of Law No. 3 of 1971 to Law No. 31 of 1999, promulgated on August 16, 1999, is the provision that states that Law No. 3 of 1971 is invalid. There are two opinions regarding this matter. First, Law Number 3 of 1971 is still in effect as long as it is implemented based on the provisions of Article 1 paragraph (2) of the Criminal Code.

Second, Law Number 3 of 1971 can no longer be used for perpetrators of corruption crimes before August 16, 1999, because it has been repealed. There are no transitional provisions in the new law, so the idea arises that there is a legal vacuum to deal with corruption crimes before enacting the latest corruption law. Only in 2001 was Law Number 20 of 2001 promulgated, which determined that corruption cases that occurred before Law Number 31 of 1999 was passed were prosecuted using Law Number 3 of 1971.

Asset recovery in money laundering crimes is regulated in Article 67, Article 77, Article 78, Article 79, paragraphs (4), (5), (6) and Article 81 of the Law on the Prevention and Eradication of Money Laundering. Article 67 of the Law on the Prevention and Eradication of Money Laundering uses an in-brake approach to recover assets resulting from criminal acts because the confiscation of assets through this mechanism is carried out without a criminal trial process. This concept of deprivation focuses on objects and not people.

To implement the provisions of Article 67 of the Law on the Prevention and Eradication of Money Laundering, the Supreme Court issued Perma Number 1 of 2013. The phrase chosen in the Article is "handling of assets" to refine the term Non-Conviction asset forfeiture, or confiscation of assets resulting from crimes without going through criminality. Non-conviction asset forfeiture is used when the perpetrator of the crime dies, escapes, or is not found due to other reasons that obstruct asset recovery efforts.

2. Comparison of Criminal Asset Recovery Arrangements in Indonesia, the United States, the United Kingdom, and Italy

The practice of asset recovery in several countries is generally the same, but the terminology used is different (Brun, Jean-Pierre n.d.). *The term asset recovery in Indonesia was known in 2021 since the passage of the Prosecutor's Law. However, the stages of asset recovery can be found in the Criminal Code, the Criminal Code, the Prosecutor's Regulation, and other special laws. In Indonesia, the asset recovery process is a series of activities that start from asset tracing, asset securing, asset management, asset forfeiture, and asset repatriation)* (Peraturan Kejaksaan Tentang Pedoman Pemulihan Aset, Pasal 1 angka 10. n.d.). Like Indonesia, the

United Kingdom defines asset recovery as a series of investigations to find, trace, and identify financial transactions resulting from crimes that can be carried out in the asset recovery process, such as freezing and confiscation (Office, Home 2019). In contrast, the United States and Italy have used the term asset forfeiture (not asset recovery) to define a series of asset recovery processes.

In principle, there are similarities between the four countries in terms of regulating the recovery and confiscation of assets. The similarity is that the asset forfeiture processes are not codified in one legal rule but spread across various, more specific laws and regulations. For example, in the United States, asset forfeiture of drug crime tools and proceeds is regulated in the Comprehensive Drug Abuse Prevention & Control Act, and the Continuing Criminal Enterprise Statute, and asset forfeiture in extortion and corruption crimes are regulated in the Racketeering Influenced and Corrupt Organizations Act (RICO) (Dery n.d., 2), Criminal forfeiture of assets is regulated in the United Civil Code, and forfeiture of assets without criminalisation is regulated in the Civil Asset Forfeiture Reform Act 2000 (CAFRA) (U.S. Department of Justice 2019).

Similar to three other countries, the provisions for asset recovery in Indonesia are also spread across several laws and regulations, including the Criminal Code, the Criminal Code, the PTPK Law, the Law on the Prevention and Eradication of Money Laundering, the Regulation of the Minister of Law and Human Rights on Procedures for the Management of State Confiscated Goods and State Spoils in Rupbasan, and the Prosecutor's Regulation on Guidelines for Asset Recovery. The author believes that the regulation of asset recovery is spread across various laws and regulations because the legislative process to regulate different types of criminal acts and then codify them in a statute is more complex than controlling them in a more specific law.

The United States is familiar with pre-seizure planning (pre-seizure planning). Pre-seizure in the United States is conducted to establish the basis for seizure, prevent civil lawsuits from third parties, avoid arbitrary actions by law enforcement (U.S. Department of Justice Criminal Division n.d., 1-13), plan asset management, and identify ways to maintain asset value from falling (U.S. Department of Justice Criminal Division n.d., 1-12). In the Prosecutor's Regulation in Indonesia, the terminology of seizure planning is found. Unfortunately, this provision only applies to the Prosecutor's Office investigators, in this case for special criminal cases, even though the Police investigator who has more confiscated objects than the Prosecutor's Office because they conduct investigations into general crimes does not know the

seizure planning mechanism. As a result, often confiscated objects are then stored and placed at the local police office while waiting for the case file to be complete and ready to be submitted to the Prosecutor's Office.

In addition, although there is already a Prosecutor's Regulation in the Prosecutor's Office that defines confiscation planning, its implementation is still minimal because there are no further regulations regarding how it must be carried out. Special Criminal Investigators often carry unplanned seizures, such as the seizure of 12 (twelve) ships in corruption cases at ASABRI, which eventually stranded without maintenance in Sendawar Regency, East Kalimantan. The United States Attorney General is the highest head of the U.S. Department of Justice.

The Attorney General of the United States holds the command to regulate asset recovery policies because the supporting agencies for asset recovery, such as the United States Attorney's Offices (USAOs), the Executive Office for United States Attorneys (EOUSA), the Money Laundering and Asset Recovery Section (MLARS), the United States Marshals Service (USMS), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the Asset Forfeiture Management Staff (AFMS) under the U.S. Department of Justice (U.S. Department of Justice 2018). Unlike the mechanism in the United States, asset recovery in the United Kingdom is not centralized in one law enforcement agency but is spread across various law enforcement agencies.

The Crown Prosecution Service has a unit that handles explicitly asset recovery, namely the Crown Prosecution Service Proceeds of Crime (CPSPOC) (Crown Presecution Service n.d.). For applications for confiscation of assets based on criminal penalties (confiscation), investigators such as the police, Financial Investigators (FIs), and the Financial Investigation Support System (FISS) which is part of the National Criminal Agency Proceeds of Crime Center to the Crown Prosecution Service Proceeds of Crime (CPSPOC). Then the Crown Prosecution Service Proceeds of Crime (CPSPOC) submitted the confiscation application to the Crown Court for examination. (College of Policing n.d.). As for the expropriation through civil recovery and taxation, the National Crime Agency Proceed of Crime Center submitted to the Crown Court. (National Crime Agency n.d.). However, the cash forfeiture is submitted by the police or customs officers to the Magistrates' Court, which is lower in position than the Crown Court. (College of Policing n.d.). If there is an appeal, the objecting party will submit it to the Crown Court.

Viewed from the perspective of the agency that carries out asset recovery, the concept in the United States, which is under the command of the Attorney General, is different from the concept in the United Kingdom and Indonesia, which is spread to various law enforcement agencies and ministries. Coordinating asset recovery in the United States seems more straightforward than in the United Kingdom and Indonesia because it is in the same organisational structure, namely the U.S. Department of Justice. Asset recovery agencies in Indonesia are fragmented, giving rise to sectoral egos.

An obvious example is corruption cases, where police investigators and prosecutor's investigators search and secure assets. Meanwhile, asset management is carried out by the Rupbasan of the Ministry of Law and Human Rights. Later, the Prosecutor's Office will carry out the return of assets as the executor. The auction sale is carried out by the State Wealth and Auction Service Office (KPKNL) under the supervision of the Ministry of Finance. Four institutions are headed for all asset recovery procedures: the Attorney General, the National Police Chief, the Minister of Law and Human Rights, and the Minister of Finance. The spread of authority makes coordination long and takes a long time. To recover assets, it takes time and effective procedures to avoid having these assets first transferred or even run abroad by criminal offenders, especially corruption perpetrators who have intellectual property and adequate sources of funds.

The author believes Italy has a faster asset recovery mechanism than the United Kingdom and Indonesia. Italy, as a member state of the European Union, is bound by EU Council Decision 2007/845/JHA on coordination between the Asset Recovery Offices (ARO) of each EU member state in terms of tracing and identification of assets that are the proceeds of crime and related to crime. (Wahl n.d.). Italy has an Asset Recovery Office (ARO) called (Servizio per la Cooperazione Internazionale (International Police Cooperation Service) (World Bank n.d.). Thus, the handling of asset recovery in Italy will be faster because countries that are members of the European Union already have an Asset Recovery Office (ARO) connected to a network that makes it easier to coordinate between them. In addition, Italy is also subject to European Union Regulation 2018/1085 on mutual recognition of Confiscation and Forfeiture Orders, making it easier for EU countries to carry out asset forfeiture orders.

Another critical stage in asset recovery is asset management. Assets that have been confiscated must be managed and maintained correctly so that their value does not decline, which can decrease the asset's value when it is sold or the possibility of a third-party lawsuit if the asset is returned to the rightful

party. This is in line with the FATF Recommendation in 2012 for the state to establish an asset management office) (Financial Action Task Force n.d.). An asset management office is needed because law enforcement, such as the police, prosecutors, and judges, may not have the capabilities or resources to manage assets. Therefore, it is necessary to form several asset management institutions (asset management offices) with several optional formations, including (Brun, Jean-Pierre n.d., 163-165):

a. Establish an asset management office separate from law enforcement and explicitly handle asset management. This institution manages confiscated or frozen assets, must have a reliable asset manager, conduct pre-seizure analysis, and coordinate between law enforcement agencies after the seizure.

b. Establish an asset management unit under an existing law enforcement agency.

c. Using a private company that handles asset management.

Each country considers its own considerations when choosing one of the three formation options. The United States has the U.S. Marshals Service (USMS), which is responsible for managing and maintaining seized and frozen assets. (U.S. Department of Justice Criminal Division n.d.). The U.S. Marshals Service (USMS) is under the U.S. Department of Justice (Laniewski, 1012). However, as in the first form, it has become a separate asset management institution (Asset Management Office). Just like in the United States, Italy also has its own separate asset management agency called the Italian National Agency for Seized and Confiscated Assets (Agenzia Nazionale per l'Amministrazione e la Destinazione del Beni Sequestrati e Confiscati alla Criminalità Organizzata, ANSBC) (Brun, Jean-Pierre n.d., 163) In the UK, asset management is handled by the government after obtaining permission from the Crown Court. The government then hands it over to a third party outside the government, the so-called Management Receiver. (Crown Presecution Service n.d.). The Management Receiver will manage the assets and prevent the value of the assets from falling whose management budget will be charged when the managed assets are successfully sold. The asset management office in the UK adopts the third form.

The formation of asset management institutions (asset management offices) in Indonesia combines the first and second forms. The first form is found in the Asset Recovery Center and Rupbasan of the Ministry of Law and Human Rights, where the two institutions are separate institutions that have the authority to

manage assets. When comparing the Asset Recovery Center and the Rupbasan of the Ministry of Law and Human Rights, the one who has more specific authority to carry out asset management is the Rupbasan of the Ministry of Law and Human Rights because the Asset Recovery Center not only carries out asset management but also other stages of asset recovery such as asset tracing, asset security, and asset recovery to victims and the state through auctions.

Meanwhile, the third formation, a unit of law enforcement agencies, can be found in the Management Section of Confiscated Objects, Evidence, and Confiscated Goods in each District Attorney's Office. The Management of Confiscated Objects, Evidence, and Confiscated Goods Section conducts asset management by storing and managing assets in the Evidence Building. Likewise, the KPK has a KPK Rupbasan to carry out asset management. The KPK Rupbasan is a smaller unit of the KPK Directorate of Corruption.

From the description above, it is clear that asset management in Indonesia has not been implemented in an integrated manner and has different standards depending on the internal regulations of each agency. For example, the Prosecutor's Office carries out asset management based on the Guidelines on the Governance of Confiscated Objects, Evidence, and State Spoils within the Prosecutor's Office of the Republic of Indonesia. In contrast, the Rupbasan of the Ministry of Law and Human Rights carries out asset management based on the Minister of Law and Human Rights Regulation concerning Procedures for the Management of State Confiscated Goods and State Spoils in Rupbasan.

As a result, assets of the same type but different management institutions will be compared to other institutions if other institutions are more competent in carrying out asset management. For example, asset management in the form of luxury cars in the KPK Rupbasan, which already has high standards with special facilities for storing luxury cars, will not be the same if asset management is carried out in the Rupbasan of the Ministry of Law and Human Rights which does not have a special storage place for luxury cars. Regarding the Criminal Procedure Code, the institution authorised to store and maintain assets is the Rupbasan of the Ministry of Law and Human Rights. However, in its implementation, the Ministry of Law and Human Rights Rupbasan does not exist in every city/district, while law enforcement, such as the Police and Prosecutor's Office, is in every city/district. This results in law enforcement, such as the police and prosecutors, preferring to store assets in their own offices by considering the high transportation costs from the police station or the Prosecutor's Office to the Ministry of Law and Human Rights' Rupbasan as well as the effectiveness and efficiency factors.

To establish an asset management office, regulations are needed that are the basis for asset management and maintenance with consideration of efficient, transparent, and flexible economic value (Brun, Jean-Pierre n.d., 161). The asset management office must be centralized to manage and control assets and appoint an asset manager who has the capability to carry out asset management because existing law enforcers such as the police and prosecutors may not have the capabilities and skills to carry out asset management. The Ministry of Law and Human Rights is not a law enforcement agency, so its authority is administrative and ineffective and efficient to carry out asset management. The author recommends that the asset management office should be implemented under the Attorney General of the Republic of Indonesia by upgrading the organizational structure of the Asset Recovery Center to an Asset Recovery Agency like the system in the United States which is implemented under the U.S. Department of Justice headed by an Attorney General.

The Prosecutor's Office, led by an Attorney General, is the only law enforcer who has the authority to determine whether or not a case can proceed to trial (dominus litis) and the executive authority to implement court decisions that have permanent legal force (in kracht). The Prosecutor's Office can be said to have handled cases from upstream to downstream in handling cases. The Prosecutor's Office currently also has human resources specifically to manage assets (asset managers) called Evidence and Confiscated Goods Management Officers.

Thus, the Prosecutor's Office is expected to be the coordinator of the recovery of criminal assets in Indonesia through the establishment of the Prosecutor's Office Asset Recovery Agency, which will synergise and collaborate with ministries/institutions related to asset recovery, such as the Police, Supreme Court, PPATK, Ministry of Finance, and the Ministry of Law and Human Rights. However, asset management standards should no longer use internal regulations of ministries/institutions but are shaded in the form of laws and regulations that are recognized by all ministries/institutions, such as laws through amendments to the Criminal Code.

Regarding asset forfeiture, the four countries that are the object of comparison have their weaknesses and advantages that are unique characteristics of asset forfeiture in each country. Criminal forfeiture in the United States is part of a criminal conviction (Cassella 2004, 355). This concept is the same as in Indonesia, where criminal asset forfeiture is part of an additional crime that adds to the principal penalty, so the confiscation of assets cannot stand alone. Meanwhile, in the UK, confiscation is based on a criminal verdict

so that a criminal verdict must exist first before an application for confiscation (post-trial assessment) is carried out (Candler 1997, 5). In the United Kingdom, a confiscation order is a process in which the court takes into account the profits of the crime that has been committed and then returns the profits to the state (College of Policing n.d.).

Civil forfeiture in the United States is different from the concept of civil recovery in the United Kingdom. Civil forfeiture in the United States is carried out when law enforcement confiscates a person's assets suspected of being involved in a crime without the need for a criminal conviction or criminal conviction. (Gius 2008, 2). This is because civil forfeiture is an action against assets, not against people (in rem). In the United States, if criminal forfeiture has been successful, civil forfeiture will not be carried out because civil forfeiture is carried out only if criminal forfeiture is not successful. Contrary to the concept in the United States, civil recovery in the United Kingdom is carried out only if criminal confiscation cannot be carried out. (Gius 2008). Unlike the United States and Britain, Italy chooses not to recognise civil expropriation in the rem because Italian law still identifies assets based on their relationship with the defendant or members of the mafia and does not links them to criminal acts. (Sieber 2015, 146)

Indonesia is unfamiliar with civil forfeiture or non-conviction-based asset forfeiture, as is the case in the United States and the United Kingdom. This is because the law in Indonesia still focuses on people who commit crimes who must be convicted and have their assets confiscated based on criminal verdicts. Although in Indonesia, there is a provision that looks like a Non-Conviction asset forfeiture, its implementation can be said to be a "partial" Non-Conviction asset forfeiture because it is only limited to the condition that the defendant dies, escapes, is not proven, or is not found. Indonesia does not yet have provisions that oppose assets (in rem) without the need to prove someone guilty. The concept of Non-Conviction asset forfeiture "partially" can be found in Article 67 of the Law on the Prevention and Eradication of Money Laundering Crimes and Articles 32, Article 33, and Article 34 of the Law on the Eradication of Corruption. Non-conviction-based asset forfeiture "partially" in Indonesia is limited to corruption and money laundering crimes. Until now, the concept of Non-Conviction asset forfeiture, such as in the United States and the United Kingdom, is still wishful thinking that has not been realised in the Bill on the Forfeiture of Assets Proceeds of Criminal Acts.

Another unique model of asset forfeiture in the UK is cash forfeiture and taxation. These concepts are not found in the United States, Italy, and Indonesia.

The basic principle of cash forfeiture is that the police or customs officers can seize and hold money or other banking instruments found with a value of more than £1,000. Furthermore, the money that has been confiscated will be processed civilly and does not require the person who owns the money to be criminally punished. However, it is possible that it can be carried out in parallel between the cash forfeiture and the criminal investigation (College of Policing n.d.).

Indonesia also recognizes restrictions on carrying cash and/or other payment instruments into or outside the Indonesian customs area (Cross Border Cash Carrying). Based on Article 34 paragraph (1) of the Law on the Prevention and Eradication of Money Laundering Crimes, the minimum threshold for carrying cash in rupiah or foreign currencies and/or other payment instruments is Rp 100,000,000 (one hundred million rupiah). People who carry money over the threshold must notify the Directorate General of Customs and Excise. However, the provisions in Indonesia do not provide for the seizure of the money brought. Provisions in Indonesia only provide administrative sanctions to people who do not notify when carrying cash more than Rp 100,000,000 (one hundred million rupiahs) or people who report carrying cash, but the money brought is more extraordinary than reported.

In addition to cash seizure, the UK is also familiar with taxation. Where the UK collects taxes on every income and profit allegedly derived from the proceeds of crime. Taxpayers are then charged to prove that their revenue and profits come from legitimate income. If the taxpayer cannot prove this, then the revenue and profits owned will be taxed (National Audit Office 2007). The taxation mechanism is unknown in Indonesian law because Indonesia will only tax reported income, whether obtained legally or illegally, without any desire to seize it through tax payments.

Italy, which is famous for its mafia gangs, applies the concept of extended confiscation, which means confiscation based on criminal convictions plus an examination of the imbalance between wealth and income (Putaturo 2013, 30). A defendant performs a criminal examination while his assets are also examined. If there is an imbalance between his wealth and income, his property will be confiscated. This concept prevents mafia families from enjoying the proceeds of their crimes. Extended confiscation is not known in the United States, the United Kingdom, or Indonesia. However, the law in the United States and the United Kingdom will confiscate all assets that are the product of crime, assets used to facilitate crime, and assets resulting from crime.

In addition to cash seizure, the UK is also familiar with taxation, which imposes taxes on every income and profit allegedly obtained from the proceeds of crime. Taxpayers are charged to prove that the income and gains earned come from legitimate income. If the taxpayer cannot prove that his income and profits are based on legitimate income, then the income and profits will be taxed (National Audit Office 2007, 8). The taxation mechanism is unknown in Indonesian law because Indonesia will only tax reported income, whether obtained legally or illegally, without any desire to seize it through tax payments.

Italy, famous for its mafia gangs, applies the concept of extended confiscation, which means confiscation based on criminal convictions plus examining the imbalance between wealth and income. (Putaturo 2013, 30). A defendant performs a criminal examination while his assets are also examined. If there is an imbalance between his wealth and income, his property will be confiscated. This concept prevents mafia families from enjoying the proceeds of their crimes. Extended confiscation is unknown in the United States, the United Kingdom, or Indonesia. However, the law in the United States and the United Kingdom will confiscate all assets that are the product of crime, assets used to facilitate crime, and assets resulting from crime. The regime in Italy also recognises preventive measures similar to Non-conviction-based asset forfeiture, which is applied in other countries. However, there is a difference where preventive confiscation is not carried out through a civil trial but through a criminal trial.

The unique thing about preventive confiscation is that it requires an assessment that the person is dangerous (social dangerousness) because he may commit other crimes and the assets are not under his or her legitimate income (Brun, Jean-Pierre n.d., 207). Indonesia cannot seize a person's assets based on the suspicion that the person is dangerous. This concept is different because Indonesia is not known as a mafia-hotbed country like the culture in Italy, where families and relatives are involved in a solid mafia organisation.

The concept of transnational asset recovery in the United States, the United Kingdom, Italy, and Indonesia is generally the same because the four countries have ratified UNTOC and UNCAC, which are enthusiastic about assisting other nations in asset recovery. The four countries open space to recover assets by tracing, confiscating, confiscating, and returning assets to other countries formally and informally.

The four countries already have a legal basis for implementing mutual legal assistance (MLA) and open opportunities to assist informally through CARIN, ARIN-AP, Egmont Group, Interpol, Eurojust, SEAjust, and other

informal networks. In addition, the four countries recognise cooperation through the principle of reciprocity if the countries that will cooperate do not have bilateral agreements or multilateral agreements. On the other hand, the practice of recovering transnational assets in Indonesia does not have provisions for asset sharing or attorney's fees, so the confiscation of assets of different countries in Indonesia is still charged to the Indonesian budget.

The country requesting assistance can freely obtain aid to Indonesia without any reciprocity given to Indonesia. Britain's exit from the European Union has its asset recovery consequences for Britain. The United Kingdom legally exited the European Union on January 31, 2020 (Wallenfeldt 2023). As such, the UK is no longer subject to and is not bound by EU regulations, including the European Union Regulation 2018/1085 on mutual recognition of Confiscation and Confiscation Orders. As a result, the UK will take longer to conduct investigations related to asset recovery because it is not a member of the 27 (twenty-seven) Asset Recovery Office (ARO) of the European Union. If the UK is going to order the seizure or confiscation of assets, it must first have a bilateral agreement with an EU country. (Alexander 2019, 399)

According to the author, asset confiscation in Indonesia has not been able to protect innocent or good-faith third parties. When compared to the concept of third-party protection in good faith, such as in the United States through "ancillary proceeding" (a process in which a court determines assets that can be seized because they are related to the defendant and assets that cannot be seized because there is a third party's interest in it) and "uniform innocent owner defence" (protection of the interests of a third party who does not know that the asset is being used for a crime), Therefore, the law in Indonesia has not protected a person in good faith by showing evidence that he is not involved and does not know about the crime related to his assets.

Indonesia does have provisions in Article 19, paragraph (2) of the PTPK Law, which stipulate that a third party can file an objection no later than two months after the court decision is read out in an open session with the public. Then as procedural law, it has been regulated in Perma Number 2 of 2022 concerning Procedures for Resolving Third-Party Objections in Good Faith Against the Decision of Confiscation of Goods Not Owned by the Defendant in Corruption Cases. However, the objections and procedural law are only limited to corruption crimes. Likewise, Article 67, paragraph (1) of the Law on the Prevention and Eradication of Money Laundering Crimes, regulates the objections of third parties if PPATK temporarily suspends transactions.

The provisions of this article are only limited to temporarily stopping transactions carried out by PPATK in the realm of money laundering crimes. Asset protection for third parties in good faith in narcotics crimes is carried out in two ways. For example, in the first case, public transportation companies in Aceh do not know at all if their vehicles are used to carry narcotics because the person who commits the narcotics crime is a driver who works in his company. (Nursiti 2019, 419).

Consequently, the Panel of Judges decided that the state confiscated the company's vehicles. In practice, assets belonging to a third party in good faith may be returned to him when presented to the court. Unfortunately, the presence of a third party in good faith in criminal trials has not been regulated in the Criminal Procedure Code, unlike the practice in the United States, which has been regulated in law. Because this practice is not regulated in the Criminal Code, it is the authority of the Judge and the Public Prosecutor to determine who will be presented in the trial.

For example, in the second case, a third party in good faith in a narcotics case submits a resistance to the court after a criminal verdict is issued within 14 (fourteen) days. The opponent, namely Hasan, who is always the owner of the Avanza car rental, filed a protest against the Defendant, namely the Kepanjen District Prosecutor's Office, because one unit of Avanza car belonging to Pelawan that was rented by the defendant in the narcotics case was decided to be confiscated for the state. Based on the evidence of ownership submitted to the trial, the Panel of Judges of the Kepanjen District Court postulated that the Defendant did not know and did not have permission to use the car as a means to commit narcotics crimes. In the Decision of the Kepanjen District Court Number 46/Pdt.Plw/2018/PN.Kpn dated July 5, 2018, the Panel of Judges decided that one unit of Avanza's car was returned to the Opponent, and the Defendant must return the car to the Opponent.

The law in Indonesia is still limited to providing third-party protection only for corruption crimes, money laundering crimes in the event of temporary suspension of transactions, and narcotics crimes. Meanwhile, the procedural law protecting third-party assets only exists in corruption crimes. In contrast to the laws in the United States and Italy, which have accommodated the protection of a third party in good faith where the assets cannot be confiscated if the assets are owned by a third party who does not know that the assets are used for crimes or the proceeds of crime. Indonesia does not yet have legal and procedural provisions that protect third parties in good faith for crimes in the economic sector. However, do not let this reason for a third party in good faith

be misused by criminals to deceive the proceeds of their crimes. Therefore, law enforcement must be observant to determine that the asset is unused.

In this case, not all differences found in the United States, the United Kingdom, and Italy can be adopted in Indonesian law. After comparing the asset recovery mechanism in Indonesia with the three countries, several provisions can be adopted by Indonesia, namely:

a. Passing the Bill on the Forfeiture of Assets Proceeds of Criminal Acts as a perfect implementation of the Non-Conviction Based Asset Forfeiture from the implementation of UNCAC. In the Bill on Confiscation of Assets Proceeds of Criminal Acts, it is necessary to include provisions on cash seizure for assets suspected of being related to the proceeds of crime as a concept in the UK;

b. Improve the organisational structure of the Asset Recovery Center to become an Asset Recovery Agency as a leader or coordinator institution in asset recovery that is authorised to carry out synergy, communication, and coordination related to asset recovery with law enforcement and related ministries/institutions. This is strengthened by the position of the Prosecutor's Office, which handles cases from the investigation stage to execution and already has an Evidence Building and Evidence Officer (asset manager).

c.For effectiveness and efficiency, the asset management function in the Rupbasan of the Ministry of Law and Human Rights was merged into the Prosecutor's Office Asset Recovery Agency through amendments to the Criminal Code because the Prosecutor's Office is a law enforcer who directly handles criminal acts and each city/district also has its own Evidence Building.

d. Amending the Criminal Procedure Code, which contains a chapter on Asset Recovery so that the concept of asset recovery can be accepted by supporting institutions such as PPATK, OJK, Ministry of Finance, Ministry of Law and Human Rights, BPN, and other ministries/institutions so that it is not limited to the internal regulations of an agency. The amendment to the Criminal Code also regulates the recovery of transnational assets, especially asset sharing and attorney's fees, so that the cost of asset management and asset confiscation of other countries in Indonesia is not charged to the Indonesian budget so that there is mutually beneficial reciprocity between the country requesting assistance and the country receiving aid.

e. Legal protection of third-party assets in good faith should be regulated not only for narcotics, corruption, and money laundering crimes but also for all criminal acts in the economic sector that can be applied through the Criminal Procedure Code Bill. For criminal asset confiscation, legal protection against a third party in good faith should be carried out in a series that is inseparable from the criminal trial. This is because the practice of third-party protection through (civil) resistance takes longer and costs more expensive, making it inefficient in its implementation.

2. Strategy for Regulating the Recovery of Criminal Assets in Indonesia as Optimizing the Recovery of State Losses

a. Inclusion of Asset Definition and Asset Recovery in the Criminal Procedure Code Bill

The word asset is not found in the 2012 Criminal Procedure Bill, which uses nouns and evidence like the current Criminal Procedure Code. Objects and assets have different meanings. Objects are everything that can be owned. (KUHPerdata, Pasal 49 n.d.). While "assets are all movable or immovable objects, both tangible and intangible and have economic value." From the two understandings above, an experience is obtained that assets are objects, and the difference from ordinary objects is that assets must have economic value. The definition of asset recovery needs to be included in the Criminal Procedure Bill because the series of asset recovery processes is part of the criminal procedure law. The definition of asset recovery that will be included in the General Provisions chapter can be derived from the Prosecutor's Regulation Number 7 of 2020 concerning Asset Recovery Guidelines, which defines "asset recovery as a series of activities that include the process of tracing, safeguarding, maintaining, seizing, and returning assets related to criminal acts (crimes/violations) and/or other assets to the state or those who have the right." However, according to the author, the word "maintenance" which comes from the word "management" is more accurately translated as "management". Therefore, the definition of asset recovery is "a series of activities that include the process of tracing, safeguarding, managing, seizing, and returning assets related to criminal acts (crimes/violations) and/or other assets to the state or those who have the right to."

b. The purpose of the investigation in the Criminal Procedure Code Bill is still the same as the Criminal Procedure Code, which is still focused on pursuing the defendant (in personam)

Based on the Criminal Code Bill, "an investigation is a series of actions by investigators to find and collect evidence with which evidence sheds light on the criminal acts that occurred and determine the suspects." The purpose of the investigation in the Criminal Procedure Code Bill and the Criminal Procedure Code is still the same, namely to prove the existence of a criminal act committed by a particular legal subject and not for the sake of asset recovery. This provision shows the stagnation of the investigative paradigm that does not accommodate the development of technological, economic, social, and cultural aspects. According to the author, the purpose of the investigation must be increased, namely to restore the condition of the victims, both state and individual. The restoration of this condition is in the form of confiscation of assets against criminals so that the losses experienced by victims can be recovered.

c. Inclusion of Asset Tracing in the Criminal Procedure Bill

The investigation technique in the investigation method is regulated in Article 7 paragraph (1) of the Criminal Code, one of which is confiscation. Still, it has not been found that an asset tracing process is needed before the confiscation process to determine what assets can be confiscated. When referring to the Criminal Procedure Procedure Statute, the investigation technique in the Criminal Procedure Procedure is the same as the Criminal Procedure Procedure Procedure, which does not recognise asset tracing. Investigation techniques can be found in the Regulation of the National Police Chief Number 6 of 2019 concerning Criminal Investigation. However, in the Regulation of the National Police Chief, there is also no asset tracing action even though often in the media we hear that the police search for the suspect's assets, as in the case of the convicted Indra Kenz (Farisa 2022). The author is of the view that asset tracing must be included in one of the duties and authorities of investigators regulated in the Criminal Procedure Bill because asset tracing is one of the investigative techniques.

In addition to asset tracing carried out by investigators at the investigation stage, the Criminal Procedure Bill must also regulate asset tracing carried out by the Public Prosecutor at the prosecution stage and the Prosecutor at the execution stage of court decisions with permanent legal force. Asset tracing in the prosecution stage is a mandate of Article 81 of the Law on the

Prevention and Eradication of Money Laundering which determines that "if there are still assets that have not been confiscated, then the judge orders the public prosecutor to confiscate the assets." Wealth in this law can be equated with the meaning of assets where the object has economic value.

Asset tracing in the execution stage of a court decision that has still been in force is needed to carry out the mandate of Article 30C letters d and g of the Prosecutor's Law, which states that the duties and authority of the Prosecutor's Office to confiscate the execution of criminal payments of fines, substitute money, and restitution. To fulfil the three principal and additional crimes, the prosecutor must look for the convict's assets that can be confiscated and sold to meet the penalty of fines, substitute money, and restitution imposed on the convict. The New Criminal Code has explicitly regulated fines, and if the convict does not pay the fine, the convict's wealth or income can be confiscated for further action by the prosecutor to pay the fine. This is so that losses due to criminal acts can be recovered. Asset tracing requires information or captions first. This information is not the testimony of witnesses who are evidence in the trial but in the form of information to make it easier to find the assets of suspects and convicts in the context of asset tracing. For example, information is obtained from neighbours, land offices, civil registry offices, and other institutions.

One of the critical asset tracing techniques to uncover asset traces is financial intelligence analysis because it is used to trace financial transactions. Financial intelligence analysis is the process of analysing every financial intelligence data information that is expected to help in knowing how good or bad financial intelligence information or data is, learning something unknown before, providing what we need to understand a situation, and communicating what we know to others so that we can collect financial intelligence information. (Cakraputra 2023, 56-57). Asset information can be obtained from other law enforcement or government agency databases. (Brun, Jean-Pierre n.d., 7)

After the court decision obtains permanent legal force, the confiscation of previously confiscated goods can be carried out. When associated with Lawrence Friedman's theory of the legal system, it shows part of the workings of the legal structure. (Herimulyanto 2019, 9). Ministries/institutions such as the Prosecutor's Office, the Police, the Ministry of Foreign Affairs, PPATK, the Directorate General of State Assets, the Directorate of Taxation, the Directorate of Customs, the Ministry of Law and Human Rights, and the Ministry of ATR/BPN can cooperate in asset tracing to realise success in asset recovery.

d. Regulating the Mechanism for Blocking and Freezing Assets in the Criminal Procedure Code Bill

Blocking and freezing of assets is part of asset securing (Herimulyanto 2019, 96-98). The Reciprocal Assistance in Criminal Matters Act stipulates that "a blockade is the temporary freezing of property for investigation, prosecution, or examination at a court hearing to prevent property derived from criminal acts from being transferred or transferred." Based on the definition of blocking, the author believes that the law in Indonesia equates blocking with freezing. This term similarity is also found in the Law on the Prevention and Eradication of Forest Destruction which stipulates that efforts to recover losses from the crime of forest destruction are carried out by blocking or temporarily freezing assets to prevent assets from being transferred. The word "or" means a choice between several things in common.

Currently, blocking provisions can be found in the law, including:

a) Article 71 paragraph (1) of the Law on the Prevention and Eradication of Money Laundering stipulates that "investigators, public prosecutors, or judges are authorised to block assets that are known or reasonably suspected to be the result of criminal acts of suspects, defendants, or any person whom PPATK has reported to investigators." Based on this article, the authority to block is under the stages of handling the case.

b) Article 29, paragraph (4) of the PTPK Law stipulates that "investigators, public prosecutors, or judges may request banks to block deposit accounts belonging to suspects or defendants suspected of corruption."

c) Article 17, paragraph (1) of the Law on Tax Collection by Compulsory Letter stipulates that "the confiscation of savings, bank statements, current accounts, time deposits, or other forms shall be carried out by prior blocking."

Investigators often block bank accounts and assets in the form of land and/or buildings. The blocking of the account is preceded by seeking information about the account obtained from PPATK. Meanwhile, investigators can block land and/or buildings to investigate and prosecute criminal cases. However, the author criticises the provisions of the article because it only records the block at the investigation and prosecution stage, even though the Prosecutor's Office has the authority to execute the payment of compensation and fines so that the blocking record should also be carried out at the execution stage of the court decision that has permanent legal force.

According to the author, blocking is a stage carried out before confiscation. Blocking does not apply to all types of assets but is limited to assets that have proof of ownership and are recorded in an institution such as blocking bank accounts and blocking land. The Criminal Procedure Code does not regulate, even though blocking is an essential stage of asset security before confiscation. Asset blocking aims to secure assets so that later assets can be handed over to the right. (Herimulyanto 2019, 98)

e. Confiscation is not only intended for proof but also for securing assets

Confiscation is part of the asset securing (Brun, Jean-Pierre n.d., 8). Article 1 number 16 of the Criminal Procedure Code stipulates that "confiscation is the act of the investigator taking over and keeping movable or immovable objects, tangible or intangible objects for evidentiary in investigation, prosecution, and justice under his control." The meaning of this confiscation has not changed in the Criminal Procedure Bill. The reading of this article does not stipulate that the confiscation is intended for the recovery of assets but for proof. Confiscation based on the Criminal Procedure Code is more aimed at uncovering a criminal act. At the same time, legal developments require confiscation to reveal a criminal act and for asset recovery. Confiscation as an instrument to prevent assets from being lost, moved, or damaged (Brun, Jean-Pierre n.d.).

The development of criminal acts in various sectors is faster than existing legal rules. Criminal acts in capital markets, banking, insurance, and cryptocurrency are not followed by adequate legal rules for investigators to process criminal acts that occur. This development requires law enforcement to classify objects related to criminal acts based on their nature, purpose of use, legal arrangements, ownership, and control. (Institute for Criminal Justice Reform 2022, 224). FATF Recommendation 15 on New Technologies recommends that countries classify virtual assets as property, yields, funds, or other assets that correspond to different values (Financial Action Task Force 2023, 76). Virtual assets do not require identity, so they have the potential to be used for crimes. (Brun, Jean-Pierre n.d., 11). Therefore, confiscating virtual assets is a new challenge for law enforcement, who must use existing resources and legal instruments without thinking that the assets must be physically controlled. (Tom Keatinge 2018, 57). Indonesia itself does not have regulations to confiscate virtual assets such as cryptocurrencies.

The author recommends that regulations be established to confiscate virtual currencies. For example, to seize cryptocurrencies, law enforcement must have a cryptocurrency wallet that is used to transact virtual assets (Tom Keatinge 2018, 60). Law enforcement must also make clear legal rules if the virtual asset experiences a decrease in value. When cryptocurrency transactions occur outside the jurisdiction of a country, the country will have difficulty blocking the cryptocurrency transaction, so cooperation between law enforcement is required to block the virtual transaction. Therefore, international cooperative relations are needed to deal with crimes that use cryptocurrencies, including coordination, to make laws and regulations. (S. Elsayed 2023, 2).

Learning from the practice of confiscating cryptocurrencies in the United States, cryptocurrencies are stored in accounts called wallets or wallets. Any law enforcement that will confiscate cryptocurrencies must have more than one wallet depending on the type of cryptocurrency and must have a special division to control cryptocurrency transactions. After confiscating the cryptocurrency, the cryptocurrency is transferred to the U.S. Marshals Service (USMS). After that, the seized cryptocurrency is then managed by the Asset Forfeiture Department and given an identification number. Then, law enforcement officials who carried out the seizure transferred the cryptocurrency to a temporary depository. There are many types of cryptocurrencies, and law enforcement must be able to determine whether or not they can be stored and cashed out. If a cryptocurrency cannot be stored and disbursed, it cannot be processed (U.S. Department of Justice Criminal Division n.d., 2-10).

f. Management of Confiscated Goods and State Confiscated Goods Carried Out by the Prosecutor's Office Through the Asset Recovery Agency

Pohan, as quoted by Agustinus Herimulyanto, said that "*asset management is a series of activities carried out by an institution to manage assets related to crime during the legal process against assets before they have permanent legal force.* (A. Pohan 2008, 15)." The author believes that this definition is too narrow because asset management also needs to be carried out for state loot that has been decided based on a decision that has permanent legal force but does not sell at auction. Therefore, asset management must continue to be carried out until the asset is returned to the right person or auctioneer. Asset management also includes the maintenance of assets so that they are not damaged and experience a decrease in value (Herimulyanto 2019, 122).

Article 44 of the Criminal Procedure Code stipulates that confiscated objects are stored in Rupbasan. Confiscated objects and state loot are prohibited from being used by anyone. However, the Criminal Procedure Code does not further regulate the management of seized goods starting from the receipt of the confiscated object until the confiscated object is returned or handed over to the rightful person. Confiscated objects are different from state loot. According to Article 39 of the Criminal Code, "confiscated objects are objects confiscated by investigators, public prosecutors, or officials who, due to their positions, have the authority to confiscate goods for proof in the judicial process." (KUHAP, Pasal 39 n.d.). Meanwhile, "state loot is confiscated goods that based on court decisions that have legal force are declared confiscated for the state" (KUHAP, Pasal 46 ayat (2) n.d.). Confiscated goods and state loot can be stored outside the Rupbasan if there is no Rupbasan in its territory.

The Police, the Prosecutor's Office, the KPK, BNN, and the Directorate General of Customs have their own storage places for confiscated objects and not in the Rupbasan of the Ministry of Law and Human Rights. The agency prefers to store confiscated objects in its own office because it is considered more efficient when presenting them in front of the Public Prosecutor during the second stage. The Ministry of Law and Human Rights Rupbasan does not exist in every city/district. In addition, confiscated objects that are evidence are attached to the case file so that the agenda for examining the evidence of the seized objects needs to be brought and presented to the trial. The Public Prosecutor believes it is easier and more efficient if the seized objects are stored in his office, which already has an Evidence Building. This results in the regulation to store confiscated objects at the Ministry of Law and Human Rights' Rupbasan, which is often violated because it is considered inefficient. (Institute for Criminal Justice Reform 2022, 229)

Problems related to the management of confiscated objects and state loot include:

a) Inconsistency in asset management arrangements from the investigation stage to execution. The police, the Prosecutor's Office, the KPK, and other institutions with investigative authority have unharmonious rules.

b) The Ministry of Law and Human Rights was appointed to manage and store confiscated objects and state loot but did not have qualified facilities and infrastructure. The number of Rupbasan of the Ministry of Law and Human Rights until 2023 is only 63 (sixty-three) Rupbasan, and it is not spread evenly, so it is not proportional to the assets and the number of investigators who confiscate.

c) The Head of the Rupbasan of the Ministry of Law and Human Rights, who regulates confiscated objects and state loot, is an echelon IV official who is not comparable to the Chief of the Resort Police and the Head of the District Attorney's Office, who are echelon III. The Head of the Rupbasan of the Ministry of Law and Human Rights is only echelon IV, resulting in a limited budget.

d) There are no rules related to the party responsible for managing confiscated objects or state loot stored outside the Rupbasan or the Police and Prosecutor's Office. For example, confiscated objects in the form of ships are not adequately managed and are left on the edge of the harbour even until they sink.

e) Provisions for evidence management are still limited to movable and tangible objects, so they have not reached immovable and intangible objects.

Substantively, nothing has changed in the content material of the storage of confiscated objects and state loot in the Criminal Procedure Code Bill with the Criminal Procedure Code. The Criminal Procedure Bill regulates that officials who commit confiscation must submit or hand over confiscated objects to Rupbasan. If there is no Rupbasan in the area, the seized objects are stored at the office of the official who carried out the confiscation. The problems of management, storage, and control of confiscated objects that have been spreading, both in investigators, public prosecutors, and in Rupbasan have not been accommodated in the Criminal Procedure Bill prepared by the government.

Based on the above conditions, the author recommends that the Rupbasan of the Ministry of Law and Human Rights be abolished for the following reasons:

a) The Rupbasan of the Ministry of Law and Human Rights is not included in the four sub-systems of the criminal justice system because the Rupbasan of the Ministry of Law and Human Rights is only a custody place so that it cannot carry out the function of asset recovery.

b) Viewed from the perspective of economic analysis of law (EAL), the management of confiscated objects and state loot should be carried out by each party who confiscates them, and then when the case file is handed over to the Prosecutor's Office to be stored in the Prosecutor's Evidence Building. Considering that the Prosecutor's Office carries out the trial examination process which must present evidence to the trial and the

Prosecutor's Office has the authority to carry out the execution of the verdict so that it is more efficient if the Prosecutor's Office keeps its confiscated objects by itself. However, with the note that asset management must be regulated in the Criminal Procedure Bill so that it is accepted by all law enforcers. This is to overcome strong sectoral egos in the formation of laws and regulations because sectoral egos are often the cause of weak coordination between ministries/institutions in various regulations and policies (Pusat Analisa Kebijakan Hukum dan Ekonomi 2020, 9).

c) Raising the organizational structure of the Asset Recovery Center which was previously under echelon II to the Asset Recovery Agency under echelon I to improve communication and coordination between ministries/institutions that have a role in asset recovery. Then, the Asset Recovery Agency was included in the Criminal Procedure Bill to replace Rupbasan's duties and authority.

g. Regulating the Protection of Third-Party Assets in Good Faith in the Criminal Procedure Code Bill

Investigators investigating third-party assets do not need proof that is the basis for the confiscation. As a result, often, the rights of a third party in good faith to assets are not protected. The law in Indonesia is still limited to providing third-party protection only for corruption crimes, money laundering crimes in the event of temporary suspension of transactions, and narcotics crimes. Perma Number 2 of 2022 concerning Procedures for Resolving Objections of Third Parties in Good Faith Against the Decision of Confiscation of Goods Not Owned by the Defendant in Corruption Cases is a procedural law to implement the provisions of Article 19 paragraph (2) of the PTPK Law which is limited to corruption crimes. On the other hand, the Criminal Procedure Code has not regulated the return of assets to third parties in good faith for all criminal acts in the economic sector. In practice, if the Judge and the Public Prosecutor agree, a third party in good faith can be presented to the evidentiary hearing to testify and show evidence that the ownership of the assets is unrelated to the criminal act. The author believes that the Criminal Procedure Code Bill should regulate the proof of third-party assets in good faith so that the rights of third parties unrelated to criminal acts can be protected. However, do not let the provisions of this well-intentioned third party be abused by criminals to deceive the proceeds of their crimes. Thus, law enforcement must ensure that the confiscated assets are not used or not related to the criminal act.

h. Regulating Complex Asset Return Mechanisms in the Criminal Procedure Code Bill

Asset recovery can occur during the investigation, prosecution, and implementation of court decisions with permanent legal force. Confiscated objects not relevant to the case must be returned to the person confiscating the seized objects. Article 46 paragraph (1) of the Criminal Procedure Code has regulated the reasons for the return of seized objects to their owners in a limited manner, including: "It is no longer necessary in the investigation and prosecution; the case is stopped because there is not enough evidence or it does not constitute a criminal offence, and the case is set aside for the public interest, or the case is closed for the sake of the law."

For cases that have been decided, the objects subject to confiscation are returned to the person mentioned in the decision. (KUHAP, Pasal 46 ayat (2) n.d.). This provision includes returning assets belonging to victims of criminal acts. In addition, assets can also be decided to be confiscated by the state. The return on assets confiscated for the state is a return in the form of money from the auction proceeds of state loot.

Asset recovery is the final stage of asset recovery. The prosecutor carries out the return of assets as the executor of the court decision with the force of law stipulated in Article 270 of the Criminal Code. There are no regulations related to the return of assets that are so different between the Criminal Procedure Code and the Criminal Procedure Bill. The Criminal Procedure Reform Bill has not yet accommodated the problem of returning assets in the Criminal Procedure Code. For example, in the verdict of the Cipaganti case, it was stated that 15 (fifteen) assets in the form of luxury cars and excavators were confiscated for auction, and the results were handed over to the victim (Mahkamah Agung, 2016, 227-228). The auction conducted by the Prosecutor's Office is currently still limited to carrying out the execution of assets that are decided to be confiscated for the state. In fact, some assets were also confiscated and the results were returned or handed over to the victims. However, the auction mechanism to return to the victim has not been regulated in the Criminal Code, the Criminal Procedure Bill, or other internal law enforcement regulations.

D. CONCLUSION

Based on everything that has been explained previously in this study, the author concludes three things as follows:

Arrangements for the recovery of criminal assets in Indonesia must be regulated by law that binds all law enforcement agencies and ministries/institutions. If law enforcement agencies and ministries/agencies want to make internal regulations, there must be technical instructions that apply internally. These internal regulations must not conflict with higher laws and regulations and must be in harmony with the technical regulations of law enforcement agencies and other ministries/institutions. Therefore, law enforcement agencies and ministries/institutions that will regulate technical instructions from the asset recovery process and related to other agencies must first coordinate and communicate to implement these regulations optimally.

Indonesia can apply the concept of asset recovery from other countries, which is considered able to solve legal problems related to the recovery of criminal assets in Indonesia. First, the recovery of criminal assets in Indonesia is coordinated by the Prosecutor's Office led by the Attorney General, such as the practice of asset recovery in the United States to achieve the effectiveness of asset recovery faster and right before the perpetrators of the crime. The practice of recovering criminal assets in Indonesia is not coordinated, giving rise to sectoral egos. Second, the asset management office in Indonesia is implemented under the Attorney General of the Republic of Indonesia through the Asset Recovery Agency as in the United States system implemented by the U.S. Marshals Service (USMS). Third, ratifying the Bill on the Confiscation of Assets Proceeds of Criminal Acts as a form of implementing a perfect Non-Conviction Based Asset Forfeiture from the implementation of UNCAC. Fourth, the protection of third-party assets in good faith for all criminal acts in the economic sector should be regulated through the Criminal Procedure Bill. Proving the assets of a third party in good faith should be carried out in a series of criminal trials to be time and cost-efficient.

Strategies for recovering criminal assets in Indonesia can be carried out through the Criminal Procedure Bill. To support the optimisation of the recovery of criminal assets as a return of criminal losses, the Prosecutor's Office is designated as the coordinator of the recovery of criminal assets in Indonesia because the Prosecutor's Office handles cases from the investigation stage to execution and has been given authority through the Prosecutor's Law to carry out asset recovery.

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