

The Protection of Assets of the Heirs Suspected Of Being the Result of a Criminal Act of Corruption

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Abstract: The problem of efforts to eradicate corruption, especially in the effort of the return of state losses by law enforcer that have the potential to cause the loss to other parties in its practice, it can be seen in the Court Decision on Criminal Act of Corruption Number: 57/Pid.Sus-TPK/2015/PN-BNA on behalf of the Convict Elfina S.E. Bint Djakfar, in which in his decision the Panel of Judges granted Public Prosecutor's claim to conduct confiscation towards Mawardy's house as one of the properties to cover the replacement money (compensation). The decision creates a polemic regarding forfeiture of property of Mawardy who has died in the case of payment of replacement money for state losses resulting in losses for other parties namely heirs because there are the differences in law enforcement between regulations and practices (*das sollen das sein*). This research aims to investigate the mechanism of confiscation and deprivation of assets of the heirs suspected of being the result of criminal act of corruption and also to investigate the legal efforts against the heirs' assets which were seized after the court decision on criminal act of corruption number: 57/Pid.Sus-TPK/2015/PN-BNA on behalf of the Convict Elfina S.E. Bint Djakfar. The results of this normative juridical research show that the Court Decision on criminal act of Corruption Number: 57/Pid.Sus-TPK/2015/PN-BNA raises legal uncertainty because the mechanism of confiscation and forfeiture is not in accordance with Article 33, Article 34 j.o Article 19 Paragraph (1) of the Law on Criminal Acts of Corruption. Aspects such as whether the flow of money is used for corruption or is the result of corruption, then whether almarhum mawardy also participates in committing corruption or only as a third party who does not know that the money given to him is the money resulted from the corruption or money used for corruption in legal considerations by judges based on the facts of the trial will determine the legal effort that can be carried out by the heirs as stipulated in Article 19 Paragraph (2) of the Law on Criminal act of Corruption.

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I. INTRODUCTION

Corruption is a serious problem not only for the State of Indonesia but also for other countries in the world. The impact of corruption is very broad, especially from the economic aspect of people's welfare, added with the cost to fight corruption which is very expensive, making asset recovery become a must. The problem of asset recovery must be seen as important as convicting perpetrators with the most severe punishment in efforts to eradicate corruption. Thus, the criminal act of corruption now is not only a national issue but has also become an international issue, that's why this criminal act of corruption is also included in the category of extraordinary crimes.

Henry Campbell Black defines corruption as "*an act done with an intent to give some advantages inconsistent with official duties and the rights of other*" which means that an act committed with the intent to provide an advantage that is not in accordance with official duties and the rights of other party.¹ Corruption comes from the Latin language: *corruption* from the verb "*corrumpere*" which means rotten, damaged, making uncertain, perverting, and bribing. According to Transparency International that is the behavior of public officials, both politicians and public servants, who improperly and illegally enrich themselves or enrich those who is close to them, by abusing the public power entrusted to them.² Corruption is categorized as one of organized crime and is international in character because *modus operandi* of corruption has been integrated with the bureaucracy.

¹ Henry Camble Black, *Black's Law Dictionary*, Sixth Edition, St. Paul Min, West Publishing Co., hlm. 176.

² Muhammad Shoim, *Laporan Penelitian Individual (Pengaruh Pelayanan Publik Terhadap Tingkat Korupsi Pada Lembaga Peradilan di Kota Semarang)*, Pusat Penelitian IAIN Walisongo Semarang, 2009, hlm. 14.

Regarding the issue of returning state losses in term of corruption, as explained in Article 59 paragraph (1) of the Law Number 1 of 2004 concerning State Treasury, it is stated that the settlement of state losses must be carried out immediately to replace state's asset that had been lost or reduced as well as increase discipline and responsibility of civil servants / state officials in general and financial managers in particular. Confiscation and seizure actions carried out by the prosecutors for example as one of the parties authorized to carry out investigations and prosecutions in corruption case simultaneously it also have the potential to cause the loss to other parties, especially in this case the heirs who are suspected of obtaining inheritance from the results of corruption of someone who has died before the existence of court decision that is *incracht* against him. Moreover, the drawback in the mechanism or adjudication process in the regulation of replacement of state assets that have been transferred to other parties in this case the heirs are still unclear.

The problem of efforts to eradicate the criminal act of corruption, especially in efforts of the return of state losses by law enforcers that have potential to cause the loss to other parties in its practice, it can be seen in the Court Decision on Criminal Act of Corruption Number: 57/Pid.Sus-TPK/2015/PN-BNA on behalf of the Convict Elfina S.E. Bint Djakfar, in which in his decision the Panel of Judges granted Public Prosecutor's claim to conduct confiscation towards Mawardy's house as one of the properties to cover the replacement money. Court Decision of the Criminal Act of Corruption Number: 57/Pid.Sus-TPK/2015/PN-BNA on behalf of the Convict Elfina S.E. bint Djakfar actually raises several legal issues, including confiscation of the property of Mawardy who has died in the case of payment of replacement money (compensation) for state losses resulting in losses for other parties namely heirs because there are the differences in law enforcement between regulations and practices (*das sollen das sein*).

Article 33 of the Law on criminal act of corruption explicitly states that: "*In the event that the suspect dies at the time of the investigation, while there is clearly a state financial loss, the investigator immediately submits the case file of the investigation result to the State Attorney or submitted to the aggrieved agency for a civil lawsuit to be carried out against his heirs*". Furthermore Article 34 of the Law on criminal act of corruption (UU Tipikor) also states that: "*In the event that the defendant dies during an examination in a court of law, whereas there is clearly a state loss, then the public prosecutor shall submit a copy of the minutes of proceedings to the State Attorney or submitted to the aggrieved agency for a civil lawsuit against his heir*".

If referring to the Court Decision on Criminal Act of Corruption Number: 57/Pid.Sus-TPK/2015/PN-BNA on behalf of the convict Elfina S.E. binti Djakfar, confiscation of property of Mawardy who had died before an investigation carried out against him or at least before the existence of *incracht* decision that declared him guilty of committing a criminal act of corruption still continued with the mechanism of special criminal procedure of corruption, another problem is that the punishment of returning state losses on *almarhum* Mawardy was found in the verdict with another convict namely Elfiana S.E. bint Djakfar. In fact, as Article 33 and Article 34 of the Law on criminal act of corruption (UU Tipikor) have governed the mechanism that should be carried out by the Prosecutors that is to act as a state attorney in order to conduct a civil lawsuit against his heirs.

Moreover, regarding the civil lawsuit against the heirs by the prosecutor as State Attorney, actually it is not a new thing to do. On May 11, 2006, the Attorney General's Office issued a Decree on the Termination of Case Prosecution (SP3) on behalf of HM. Soeharto and diverted efforts on returning state assets through the filing of a civil lawsuits. The Attorney General's Office through the Junior Attorney General for Civil and state administrative case (Jamda TUN) ordered the directorates of his ranks to act as State Attorneys until finally on July 8, 2015, the Supreme Court (MA) sentenced Supersemar Foundation (*Yayasan Supersemar*) to return funds of Rp. 4.4 trillion to the country.³

Based on the explanation above, the formulation of the problems in this study explains the following:

1. How is the mechanism of confiscation and deprivation of heir's assets suspected of the result from criminal act of corruption?
2. How is the legal effort against the heir's assets which was seized after the court decision on criminal act of corruption number: 57/Pid.Sus-TPK/2015/PN-BNA on behalf of the convict Elfina S.E. Bint Djakfar?

II. METHODS

The type of legal research that will be carried out in this paper is normative juridical research. Normative juridical research, namely research focused on investigating the application of rules or norms in positive law.⁴ In this case, the statute approach to be taken is the starting point of research analysis that is towards the application of Article 33 and Article 34 of the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as it has been amended by the Law Number 20 2001 concerning amendment to the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption in relation to the Court Decision of Banda Aceh District Court Number: 57/Pid.Sus-TPK/2015/PN-BNA as an *incracht* court decision which

³ Yoshua Ferdinan Napitupulu, *Gugatan Keperdataan oleh Negara Melalui Konsep Non Conviction Based Asset for Feiture dihubungkan Dengan Perlindungan Terhadap Aset Ahli Waris*, Penelitian Skripsi, Universitas Kristen Maranatha, Bandung, hlm. 8.

⁴ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2006, hlm. 295.

gives a decision regarding the confiscation of assets / property of the heirs that are different from the laws and regulations that govern this matters. The conceptual approach is carried out when there are no legal rules governing the problems that were faced. In this research, the conceptual approach is used to understand the concept of confiscation of assets / property of the heirs as an asset recovery from a criminal act of corruption that is related with court decisions that must be obeyed by every element of the state including its citizens. Thus, what is expected is that there is no longer unclear and ambiguous understanding occurs in the stipulation of norm in the future rule of law.

III. Result

A. Mechanism of Deprivation of Heirs' Asset Suspected of Corruption Results.

Assets Forfeiture in cases of corruption is not only an interest in law enforcement but is also a form of or effort towards the interests of recovering state losses (asset recovery).⁵ In the interests of law enforcement, deprivation in the criminal law system in Indonesia is known as either criminal or additional punishment.⁶ The deprivation can be carried out with the preceding confiscation or without the confiscation. Therefore, confiscation and deprivation in law are two things that have different meanings and mechanisms in law. Confiscation is needed in an effort to prove the existence of a criminal event in a case, the investigator makes efforts to collect goods or objects suspected of being related to a crime through a forced attempt in the form of confiscation so that confiscation in the Indonesian criminal law system is a temporary act of the investigator in placing objects under his authority. In other words, an investigation is needed for the judicial process,⁷ Whereas deprivation in the legal system of criminal acts of corruption is usually based on the existence of a decision from a court that has been *incracht* (permanent legal force), in other words an act of appropriation can only be carried out if there has been a court decision which determines that the goods or objects or assets to be declared seized for the country.⁸

The confiscation and deprivation is very closely related to the enforcement of human rights because the confiscation and seizure is carried out on goods or objects or property belonging to someone who is an important element in his life. Because confiscation and seizure is a forced effort (*dwang middelen*) and is very closely related to the supremacy of human rights (enforcement of human rights), it is fitting that confiscation and seizure must be in accordance with the mechanism stipulated in the legislation. Especially as contained in Article 1 Paragraph (3) of the 1945 Constitution that the state of Indonesia is a state of law.

With regard to the interests of recovering state losses (asset recovery), asset forfeiture is considered to be very important because one of the most important elements in corruption is detrimental to the country's finances, the intention is that the law on corruption eradication is not only to provide criminal sanctions against unlawful act (criminal act of corruption) committed by corruptors but it is also important in the matter of returning state losses. The maximum return of state losses can be said as a form of efforts to eradicate corruption.⁹ This was also done because the act of corruption was seen as a major crime or extra ordinary crime.¹⁰ Emphasis on the rule of law which is an absolute prerequisite for the continuity and success of the implementation of national development in accordance with the ideals of the Pancasila and the 1945 Constitution of Republic of Indonesia (UUD 1945), to realize this it is necessary to increase efforts to maintain order, peace and legal certainty so as to create peace for all the people of Indonesia.¹¹

In the theory of the rule of law, as the legal system adopted by the Indonesian state is the civil law system or the Continental European legal system, the course of a government must be based on laws and regulations.¹² Likewise in law enforcement practices, it must also be in accordance with the mechanism regulated by the law because in relation to the process of appropriation of assets in a criminal act of corruption, in the interests of recovering state losses (asset recovery) it is very likely that the seizure is carried out not only goods or objects that belong to the convicted person, but also belong to other parties or third parties. The other party or third party referred to in this study is the heir of a person suspected of flowing money resulting from a crime of

⁵ Pasal 18 Huruf a Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

⁶ Pasal 10 Kitab Undang-Undang Hukum Pidana (KUHP).

⁷ Pasal 1 angka 16 dan Pasal 38 sampai Pasal 46 Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana

⁸ Pasal 1 angka 4 Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 16 Tahun 2014 tentang Tata Cara Pengelolaan Benda Sitaan Negara dan Barang Rampasan Negara Pada Rumah Penyimpanan Benda Sitaan Negara.

⁹ Krisdianto, *Implikasi Hukum Penyitaan Aset Hasil Tindak Pidana Korupsi Yang Hak Kepemilikannya Telah Dialihkan Pada Pihak Ketiga*, dalam e-Jurnal Karalogis, Volume 3 Nomor 12, Desember 2015, hlm. 191.

¹⁰ Marwan Effendy, *Pemberantasan Korupsi dan Good Governance*, PT. Timpani Publishing, Jakarta, 2010, hlm. 1. Dalam Mustaghfirin, Irwanto Efendi, *Tinjauan Yuridis Terhadap Implementasi Pidana Korupsi Dalam Upaya Mengembalikan Kerugian Keuangan Negara*, Jurnal Pembaharuan Hukum, Volume II Nomor 1, Januari – April 2015, hlm. 12.

¹¹ Romli Atmasasmita, *Sekitar Masalah Korupsi Aspek nasional dan Aspek Internasional*, Mandar Maju, Bandung, 2004, hlm. 54.

¹² Salah satu ciri dari suatu negara sebagai negara hukum menurut Friedric Julius Stahl adalah pemerintahan berdasarkan peraturan perundang-undangan. Lihat Oemar Seno Adji, *Prasarana Negara Dalam Indonesia Negara Hukum*, Simposium UI Jakarta, 1966, hlm. 24.

corruption that has died before being examined against him either at the investigation level or at least before the trial as a defendant.

As for the heirs or third parties whose assets were seized by the public prosecutor in corruption cases in practice, it still left a polemic on legal uncertainty and tarnished a sense of justice in the midst of upholding or supremacy in eradicating criminal acts of corruption. The polemic makes law enforcement to eradicate corruption can be likened to repairing or treating one side of the body's organs but giving or giving rise to new diseases that are no less important on the other side of the body. One of the causes of legal uncertainty and a tarnished sense of justice in the midst of upholding the supremacy of the law to eradicate corruption is not fulfilling or not carrying out the legal mechanism as regulated in the statutory regulations by law enforcement officials in the examination at the Court which is expected as an *ultimum remedium* in give a ruling that is fair and in accordance with applicable legal regulations.

One polemic regarding the seizure of the assets of the heirs suspected of being the result of a criminal act of corruption is contained in a court ruling which is also a juridical object in this study, namely the Corruption Court Decision Number: 57/Pid.Sus-TPK/2015/PN-BNA. The verdict is a decision against Convicted Ms. Elfina SE bint Djakfar, but in her decision the Panel of Judges also granted the lawsuits of the Public Prosecutor to confiscate Mawardy's house as one of the assets to cover the replacement money. This was done by the Public Prosecutor because of the allegation of money resulting from criminal acts of corruption committed by Ms. Elfina to *almarhum* Mawardy.

As has been discussed above that the state of Indonesia as a state of law, like the government, law enforcement must also be based on laws and regulations. The appropriation mechanism of the heir assets which allegedly was the result of the criminal act of corruption actually has a clear legal basis in the legislation. Article 33 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crime explicitly states that:

“In the event that the suspect dies at the time of the investigation, while there is clearly a state financial loss, the investigator immediately submits the case file of the investigation result to the State Attorney or submitted to the aggrieved agency for a civil lawsuit to be carried out against his heirs”.

Furthermore Article 34 of Law Number 31 of 1999 concerning Eradication of Corruption Acts as amended by Act Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes also states that:

“In the event that the defendant dies during an examination in a court of law, whereas there is clearly a state loss, then the public prosecutor shall submit a copy of the minutes of proceedings to the State Attorney or submitted to the aggrieved agency to conduct a civil lawsuit against his heir”.

It can be concluded from the rules as mentioned above that for a suspect or defendant who dies, the return of state assets for corrupt acts must be carried out with a civil lawsuit mechanism against his heirs. The civil suit against heirs in the effort to recover state losses from corruption crimes is a concept of the United Nations Convention Against Corruption (UN convention against corruption) in 2003 which has been ratified by the Government of the Republic of Indonesia and set forth in Article 33 and Article 34 of Law Number 31 1999 concerning the Eradication of Criminal Act of Corruption as mentioned above.

According to Fletcher N. Baldwin, Jr., the inverse load method and the seizure is faster after the alleged relationship of assets with criminal acts of corruption in an effort to recover state losses in Indonesia and it is very compatible with the civil forfeiture model. In addition, the lawsuit against assets using the civil forfeiture model basically does not only refer to the criminal act of corruption of the accused or the suspect, but rather to assets that are suspected to result from criminal acts. Thus, state assets can be saved even if the perpetrator has died.¹³

Decision of the Corruption Criminal Court Number: 57/Pid.Sus-TPK/2015/PN-BNA that granted the lawsuits of the Public Prosecutor to seize the house of the deceased Mawardy who died before confiscation at the investigation level or at least ignored the legal facts at the examination at the court related to whether the money is used for corruption or is the result of corruption, then whether the deceased mawardy also participated in committing acts of corruption or only as a third party who does not know that the money given to him is the money resulting from corruption or money that is corrupt used for corruption crimes is an irony that will disrupt the court's decision in the criminal justice system of corruption. Because the consideration of such legal facts will greatly determine the legal mechanism if it is connected with the confiscation and seizure mechanism to recover state losses due to acts of corruption as stipulated in Article 34 of the Law Number 31 of 1999

¹³ Muhammad Yusuf, 2010, hlm. 617.

concerning Eradication of Corruption Crimes as amended by the Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption.

As a state of law and a state that participates in implementing the concept of non-conviction-based (NCB) asset forfeiture in the civil forfeiture system, clearly the Corruption Court Decision Number: 57/Pid.Sus-TPK/2015/PN-BNA will only lead to legal uncertainty and can tarnish a sense of justice for the heirs of *almarhum* Mawardy as another party or third party. If it does not consider legal facts related to whether the money is used for corruption or is the result of corrupt acts, then does *almarhum* Mawardy also participate in committing acts of corruption or only as a third party who does not know that the money given to him is the proceeds of crime corruption or money used for corruption crimes, and linking it with legislation concerning the seizure mechanism as Article 33 and Article 34 of the Anti-Corruption Act *j.o* Article 19 Paragraph (1) and Paragraph (2) of the Corruption Act relating to confiscation and expert legal remedies the heirs of the Mawardy as one form of recognition of human rights before the law.

Article 34 of Law Number 31 of 1999 concerning Eradication of criminal act of Corruption, as amended by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of criminal act of Corruption, which regulates Defendants who have died in order to recover assets the state for acts of corruption must be carried out with a civil lawsuit mechanism against its heirs not only regulating how the legal mechanism that applies in the interests of state loss (assets recovery) for criminal acts of corruption, but also Article 34 *a quo* becomes the basis or formal legal basis for authority to try a court to decide the assets of a suspect who has died, which is known or reasonably suspected of being the result of a criminal act, being the country's asset or returned to the rightful person.

In addition, the Judge should consider aspects such as whether the money was used for corruption or is the result of corruption, then whether *almarhum* Mawardy also participated in committing acts of corruption or third parties who did not know that the money given to him was the proceeds of money corruption crime or money used for corruption crime. It is important to consider first so that the legal product in the form of a court decision can provide legal certainty and justice. In addition, legal remedies that are the right of the convicted or heirs and third parties can be carried out in accordance with the specific mechanism stipulated in the law against corruption crimes, including special criminal acts. Because without considering the specific aspects as explained above, the Corruption Criminal Court who tried and decided the case Number: 57/Pid.Sus-TPK/2015/PN-BNA which granted the lawsuit (*requisitoir*) of the Public Prosecutor to seize the house belonged to *almarhum* Mawardy on suspicion of the flow of corruption proceeds from convicted Ms. Elfina S.E. bint Djakfar to *almarhum* Mawardy has the potential to cause chaos in legal products or court decisions in the criminal justice system for corruption.

Aspects such as whether the money was used for corruption or is the result of corruption, then whether *almarhum* Mawardy also participated in carrying out corruption or a third party who does not know that the money given to him is the proceeds of corruption or money used for corruption It is also very important in formal and material law enforcement relating to the mechanism of confiscation and seizure of assets allegedly resulting from criminal acts, and consideration of these aspects also greatly determines the legal remedies that can be done by third parties in this case the heirs of the deceased Mawardy as recognized and determined in legislation other than as a form of supremacy in upholding human rights in Indonesia as a state of law.

B. Legal Efforts against Heirs' Assets deprived after Court Decision of Criminal Act.

In the criminal justice system, the defendant and the public prosecutor (JPU) have the right to take legal action if in a criminal court decision there is no sense of justice. Article 1 number 12 of Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP) provides a definition of legal effort in criminal justice as the right of defendant or public prosecutor not to accept court decisions in the form of resistance or appeal or cassation or the right of the convict to file request for Judicial Review (PK) in terms of and according to the method stipulated in the Code of Criminal Procedure (KUHAP). The methods of legal effort regulated in KUHAP are divided into 2 (two) types, namely ordinary legal effort and extraordinary legal effort.¹⁴ Ordinary legal effort consists of legal effort of appeal and cassation, while extraordinary legal effort consists of cassations filed by the Attorney General and judicial review (PK) by the convict or his heirs.

In connection with legal efforts against the Court Decision on criminal act of Corruption Number 57/Pid.Sus-TPK/2015/PN-BNA which imposed an additional sentence in the form of confiscation of Almarhum Mawardy's house because of legal facts at the trial that there was a flow of money resulting from criminal act of corruption by the Convict to Almarhum Mawardy, there are several legal references to conduct legal effort that can specifically be made against *a quo* Decision. Legal uncertainty arising from the court decision on criminal act of the Corruption Court Number 57/Pid.Sus-TPK/2015/PN-BNA due to the granting of lawsuits (*requisitoir*) from the Public Prosecutor without considering the aspects such as whether the flow of money was used for

¹⁴ Lihat BAB XVII dan BABXVIII Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

corruption crimes or is the result from criminal act of corruption, then did almarhum mawardy also participate in committing corruption acts or third parties who did not know that the money given to him was the money from the result of corruption crime or money used for these corruption crimes in addition to causing legal uncertainty towards law enforcement both formal and material, it also can allude to aspects of the enforcement of human rights (HAM) for the interest of the legal effort of heirs as a third party by the enactment of the *a quo* Decision.

In particular, legal effort that can be taken by third parties, in this case the heirs who are harmed because their assets or goods / objects have been seized by the state through the Court Decision on criminal act of Corruption Number 57/Pid.Sus-TPK/2015/PN-BNA, have regulated in the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as amended by the Law Number 20 of 2001 concerning amendments to the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption.

The provisions of Article 19 Paragraph (2) of the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as amended by the Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption state that:

“In term of a court decision as referred to in paragraph (1) also includes goods of a third party who has good faith, the third party may submit an objection letter to the court concerned, no later than 2 (two) months after the court decision is pronounced in an open hearing for public.”

As Article 19 Paragraph (2) states, the legal effort that can be taken by the heirs who are aggrieved by the existence of Court Decision on Corruption Number 57/Pid.Sus-TPK/2015/PN-BNA that granted the confiscation of the property suspected of the result of criminal act of corruption against *almarhum* Mawardy is that by filing an objection letter to the court 2 (two) months after the *a quo* court decision. The meaning of court in that article according to the author is that it still the corruption court that issues the court decision, in this case the Court of Criminal Act of Corruption at Banda Aceh District Court. Furthermore, Article 19 Paragraph (4) and Paragraph (5) of the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as amended by Law Number 20 of 2001 concerning amendments on Law Number 31 of 1999 concerning Eradication of Corruption Crimes mention that:

“(4) In the circumstances referred to in paragraph (2), the judge asks the testimony the public prosecutor and interested parties.”

“(5) The decree of judge on the objection letter as referred to in paragraph (2) can be requested to cassation to the Supreme Court by the applicant or the public prosecutor.”

From what have stated in Article 19 Paragraph (4) and Paragraph (5) above, legal effort by the heirs of *Almarhum* Mawardy by filing an objection at the Court of Criminal Act of Corruption of Banda Aceh which issued a decision Number 57/Pid.Sus-TPK/2015/PN-BNA, by the judge will be asked for information from the public prosecutor and other interested parties. This means that an inspection of whether the confiscation is legal or not will be held again after the previous court decision. Furthermore, the legal product resulting from the objection is in the form of a judge's decree.

The issue is whether the decree of the judge is stated into a court decision which is *comdenatoir* in character or only in the form of a court decree which is usually *voluntair* in character, because these problems will have an impact on the executorial power of a court product. According to the author, in this case, the objection letter should have produced a court product in the form of a decision, even though it contained a judge's decree as referred to in Article 19 Paragraph (5) above. The reason is because the judge's decision will become a legal product of the court after the existence of court decision stating the confiscation of third party assets, in this case the previous heirs. It will be very chaotic in the criminal justice system of corruption if the judge's decree is included in the form of a court decree after the court decision. Moreover, the matter that is examined or the material in it is one of the principal matters relating to additional punishment or additional criminal law material from a court decision before the existence of the decree of the case by holding back the material or principal case related to the confiscation of the heir's assets by requesting information from the Public Prosecutor and interested parties as stipulated in Article 19 Paragraph (4) above.

In practice, the issue of legal effort of objection is in accordance with the provisions of Article 19 of the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Criminal act of Corruption (UU Tipikor) is still difficult for interested parties to do considering that until now there is still a legal vacuum regarding technical procedural law against requests for legal effort of objections as referred to in Article 19 of the Law on Criminal Act of Corruption. Even though the Supreme Court has issued Supreme Court Regulation (PERMA) Number 1 of 2013 concerning Procedures on Settling the Requests for Handling Assets in criminal act of Money Laundering or Other Crimes (PERMA No.1 of 2013), it still has not provided a solution and legal certainty for technical mechanisms for legal efforts of objections as referred to in Article 19 of the Law on Criminal Act of Corruption.

At least according to the author, the reason of PERMA No.1 of 2013 has not provided a solution and legal certainty towards the technical mechanism of proceedings for legal efforts of objection as referred to in Article 19 of the Law on Criminal Act of Corruption (UU Tipikor), those are: 1) the mentioned PERMA was issued expressly in its preamble with or in consideration of the absence of procedural law for the implementation of Article 67 of the Law Number 8 of 2010 concerning the Prevention and Eradication of the Criminal act of Money Laundering (UU TPPU), although in the title of the PERMA it also contains the words “or other criminal act”, but other criminal acts that is mentioned must also be mentioned what kind of criminal acts or at least it is mentioned the legal basis of other criminal act that is referred to in preamble of PERMA explicitly so that it give legal certainty to what criminal act other than the criminal act of money laundering that PERMA can be enforced by law enforcement officers and justice seekers; 2) within the scope of application of PERMA, CHAPTER I Article 1 PERMA Number 1 of 2013 also strictly limits that regulation of PERMA applies to the Request for the handling assets submitted by investigators in term of suspected as perpetrator of a criminal act, it is not found as referred to in UU TPPU.

Decision Number 57/Pid.Sus-TPK/2015/PN-BNA which created legal uncertainty because it did not clearly consider aspects such as whether the money was used for corruption crimes or was the result of corruption, then whether *Almarhum* Mawardy also participated in committing corruption or only as a third party who does not know that the money given to him is the result of corruption or the money used for corruption crime has an impact on the legal uncertainty towards the legal effort that will be carried out by his heirs in the facts of the trial.

If the money that flows to *almarhum* Mawardy is money used for corruption crimes or is the result from corruption or *almarhum* Mawardy participated in committing the corruption crime, then the act of deprivation as an effort to recover state losses must be carried out by the public prosecutor. However, the Public Prosecutor must precede it by confiscation. In a case such as Decision Number 57/Pid.Sus-TPK/2015/PN-BNA, it is very important to prove that there was a flow of corruption money that flowed to *almarhum* Mawardy or *almarhum* Mawardy was a person who participated in committing the criminal act of corruption and a confiscation mechanism was carried out in advance.

Regarding the confiscation, because *almarhum* Mawardy passed away before the inspection was carried out or at least before being inspected in front of the court, then the concept of non conviction based (NCB) asset forfeiture in the civil forfeiture system that has been ratified under the provisions as referred to in Article 33 of Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as amended by the Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal act of Corruption explicitly states that:

“In the event that the suspect dies at the time of the investigation, while there is clearly a state financial loss, the investigator immediately submits the case file of the investigation result to the State Attorney or submitted to the aggrieved agency for a civil lawsuit to be carried out against his heirs”.

and Article 34 of Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption, as amended by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption, also states that:

“In the event that the defendant dies during an examination in a court of law, whereas there is clearly a state loss, then the public prosecutor shall submit a copy of the minutes of proceedings to the State Attorney or submitted to the aggrieved agency for a civil lawsuit against his heir”.

If *almarhum* Mawardy was only a third party who did not know that the money given to him was the result of corruption crimes or money used for corruption crimes, then the legal mechanism that can be pursued in accordance with laws and regulations in this case is the provision of Article 19 Paragraph (2) of the Law Number 31 of 1999 concerning Eradication of Criminal Act of Corruption as amended by the Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Criminal act of Corruption (UU Tipikor) is by submitting an objection letter to the related court but this provision in formal has limit or deadline that has been determined which is 2 (two) months after the verdict is pronounced.

IV. CONCLUSION

Confiscation and deprivation by the state is closely related to the enforcement of human rights, because the confiscation and seizure is carried out on goods or objects or property belonging to someone that is an important element in his life. Because confiscation and seizure is a forced effort (*dwang middelen*) and is very closely related to the supremacy of Human Rights (enforcement of human rights), confiscation and seizure should be appropriate in accordance with the mechanism stipulated in the legislation. Especially as contained in Article 1 Paragraph (3) of the 1945 Constitution that the state of Indonesia is a state of law. As a state of law and a country that has participated in implementing the concept of non-conviction-based (NCB) asset forfeiture in

the civil forfeiture system, explained the Decision of the Corruption Court Number: 57/Pid.Sus-TPK/2015/PN-BNA will only cause legal uncertainty and can tarnish a sense of justice for the heirs of the late Mawardy as another party or third party. If it does not consider legal facts related to whether the money is used for corruption or is the result of criminal act of corruption, then does almarhum Mawardy also participate in committing criminal acts of corruption or only as a third party who does not know that the money given to him is the results of criminal act of corruption or money used for corruption crimes, and linking it to the laws and regulations regarding the mechanisms for confiscation and deprivation as referred to Article 33 and Article 34 UU Tipikor (the Law on Eradication of Criminal act of Corruption) relating to confiscation and deprivation mechanisms in criminal acts of corruption and Article 19 Paragraph (1) as well as Paragraph (2) UU Tipikor, legal efforts of the heirs of almarhum Mawardy as one of the forms of human rights recognition before the law.

Aspects such as whether the money is used for corruption or is the result of corrupt acts, then whether the deceased mawardy also participates in committing acts of corruption or only as a third party who does not know that the money flowing to him is the proceeds of corruption or money used for crimes of corruption in legal considerations by judges based on the facts of the trial, will determine the legal remedies that can be carried out by the heirs of the deceased Mawardy against the confiscation of the property of the deceased Mawardy because of the alleged flow of money from the convicted Ms. Elfina S.E. binti Djakfar as stated in the Corruption Court Decision Number: 57/Pid.Sus-TPK/2015/PN-BNA against Convicted Ms. Elfina S.E. Bint Djakfar. If the late Mawardy is only a third party who does not know that the money flowing to him is the proceeds of corruption or money used for corruption, then the legal mechanism that can be adopted in accordance with statutory regulations in this case is the provision of Article 19 Paragraph (2) Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption (Corruption Law) is by submitting an objection letter to the court concerned, but this provision formally has a predetermined limit or time limit that is 2 (two) months after the verdict is announced.

REFERENCES

Books:

- [1] Asshiddiqie Jimly, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Bhuana Ilmu Populer (BIP) Kelompok Gramedia, Jakarta, 2007.
- [2] _____, *Komentar atas Undang-Undang Dasar Negara Republik Indonesia tahun 1945*, Sinar Grafika, Jakarta, 2009.
- [3] Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana Prenada Media, Jakarta, 2006.
- [4] Diana Halim Koentjoro, *Hukum Administrasi Negara*, Ghalia Indonesia, Bogor, 2004
- [5] Dyah Ochtorina dan A'an Efendi, *Penelitian Hukum (Legal Research)*, Sinar Grafika, Jakarta, 2014.
- [6] Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2006.
- [7] M.A. Loth, *Bahasa dan Hukum: Sebuah Metodologi Kecil*, Penerjemah: Linus Doludjawa, Direktorat Jenderal Departemen Hukum dan Hak Asasi Manusia, Jakarta, 2007.
- [8] Majda El. Muhtaj, *Hak Asasi Manusia dalam Konstitusi Indonesia*, Kencana, Jakarta, 2005.
- [9] Moelyatno, *Hukum Acara Pidana*, Bagian Pertama, Seksi Kepidanaan, Fakultas Hukum UGM, Yogyakarta.
- [10] Ni'matul Huda, *Negara Hukum, Demokrasi dan Judicial Review*, UII Press, Yogyakarta, 2005.
- [11] Ni'matul Huda, *Hukum Tata Negara Indonesia*, PT. Raja Grafindo Persada, Edisi Revisi Cet.8, Jakarta, 2013.
- [12] Oemar Seno Adji, *Prasarana Dalam Indonesia Negara Hukum*, Simposium UI, Jakarta, 1966.
- [13] Oemar Seno Adji, *Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter*, Erlangga, Jakarta, 1991.
- [14] Padmo Wahjono, *Ilmu Negara Suatu Sistematis dan Penjelasan 14 Teori Ilmu Negara dari Jellinek*, Melati Study Group, Jakarta, 1977.
- [15] Ateng Syafrudin, *Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab*, Bandung, 2000.
- [16] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Bina Ilmu, Surabaya, 1987.
- [17] Soesilo.R., *Kitab Undang Undang Hukum Acara Pidana serta Komentar Komentarnya Lengkap Pasal Demi Pasal*, Politea, Bogor. 2005.
- [18] Ridwan HR, *Hukum Administrasi Negara*, PT. Raja Grafindo Persada, Jakarta, 2006.
- [19] Harahap, Yahya, M, *Pembahasan Permasalahan dan Penerapan KUHAP*, Sinar Grafika, Edisi Kedua, Jakarta, 2005.

Journal Articles:

- [1] Damanhuri Fattah, *Teori Keadilan Menurut John Rawls*, Jurnal TAPIs, Vol. 9 No.2, Juli-Desember 2013.
- [2] Teguh Prasetyo, *Rule Of Law Dalam Dimensi Negara Hukum Indonesia*, Jurnal Ilmu Hukum Refleksi Hukum Edisi Oktober 2010.
- [3] Muhammad Nur Ibrahim, *Perlindungan Hukum Pihak Ketiga Terhadap Keberatan Atas Putusan Pengadilan Dalam Perkara Korupsi*, e-Jurnal Katalogis, Volume 4 Nomor 5, Mei 2016.
- [4] Sigit Martono, *Perlindungan Hukum Bagi Pihak Ketiga Yang Beriktikad Baik Sehubungan Dengan Penyitaan dan Perampasan Aset Dalam Perkara Tindak Pidana Korupsi dan Pencucian Uang (Studi Kasus: Putusan Pengadilan Tindak Pidana Korupsi No. 39/PID.SUS TPK 2013/PN/JKT.PST)*,
- [5] Mustaghfirin, Irwanto Efendi, *Tinjauan Yuridis Terhadap Implementasi Pidana Korupsi Dalam Upaya Mengembalikan Kerugian Keuangan Negara*, Jurnal Pembaharuan Hukum, Volume II No, 1, Januari-April 2015.

Legislation:

- [1] Undang-Undang Dasar 1945.
- [2] Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.
- [3] Undang-Undang Nomor 20 Tahun 2001 tentang perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.
- [4] Undang-Undang Nomor 15 Tahun 2002 tentang Tindak Pidana Pencucian Uang.
- [5] Peraturan Mahkamah Agung Nomor 1 Tahun 2013 tentang Tata Cara Penyelesaian Permohonan Penanganan Harta Kekayaan dalam Tindak Pidana Pencucian Uang atau Tindak Pidana Lain.
- [6] Putusan Pengadilan Negeri Banda Aceh Nomor : 57/Pid.Sus-TPK/2015/PN-BNA.

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