

**LEGAL PROBLEMATICS OF RETURNING ASSETS  
(CONFISCATED OBJECTS) THE DEFEND DIED IN A MONEY  
LAUNDERING CRIME CASE**

**( Study of Medan District Court Decision No.  
1252/Pid.Sus/2020/PN Mdn jo. Medan High Court Decision No.  
391/Pid.Sus/2021/PT Mdn jo.**

**Supreme Court Decision No. 3856 K/Pid.Sus/2022)**

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**ABSTRACT**

*The applicable legal instruments in Indonesia have not been able to regulate all activities to return existing criminal assets with asset recovery/return of assets resulting from crime, although in Law Number 7 of 2000, asset return has been ratified in accordance with UNCAC. With Law Number 8 of 2010 concerning TPPO, a person who commits an act to hide or disguise criminal assets is criminalized. The problem is how is the proof of money laundering crimes against the return of assets (confiscated objects) of deceased defendants? How is the analysis of the judge's considerations and decisions regarding the return of assets (confiscated objects) of deceased defendants in the trial process based on the Medan District Court Decision No. 1252/Pid.Sus/2020/PN Mdn jo. Medan High Court Decision No. 391/Pid.Sus/2021/PT Mdn jo. Supreme Court Decision No. 3856 K/Pid.Sus/2022? The research method used in this study is the Normative Research with approach method used in this research is the statutory approach.. From the results of the analysis, it is known that in the event of the death of the defendant, based on the provisions of the Criminal Procedure Code Article 77 Regarding the deceased suspect (suing to his heirs) as regulated in Article 33 of the Corruption Law and the deceased defendant (suing to his heirs) as regulated in Article 34 of the Corruption Law, there are 3 scopes that must be fulfilled without criminalization.*

**Keywords: Problems, Return Of Sssets, Confiscated Objects, TPPU.**

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## INTRODUCTION

The progress of human civilization has an impact on all aspects of life, including the development and increasing diversity of motives and forms of crime. Along with this progress, the business world is also used as a means of committing crimes by criminals, one of which is money laundering which takes advantage of technological advances and system advances in the business world, such as taking advantage of the sophistication and ease of banking transactions and other forms of business activities.<sup>1</sup>

The increasing mode of crime certainly has a negative impact on life in society. Due to advances in technology today, this has resulted in an increasing number of modes of fraud, even leading to the crime of money laundering which is certainly detrimental to the country. The crime of money laundering is "a crime with special characteristics and is also a starting point and method of eradicating economic crimes not only by eradicating the original crime but also hunting down the proceeds of the crime."<sup>2</sup> In general, perpetrators of criminal acts try to hide or disguise the origin of assets resulting from criminal acts in various ways so that the assets resulting from criminal acts are difficult for law enforcement officials to trace so that they can freely use these assets for both legal and illegal activities.<sup>3</sup>

The principle used in law enforcement for the crime of money laundering is reverse evidence. In the crime of money laundering, it is the *lex specialist derogate legi generallie* which is also contained in Law no. 31 of 1999 concerning Eradication of Corruption Crimes.<sup>4</sup> Reverse evidence or also known as reversal of the burden of proof is a means of continuing to ensure the protection and fulfillment of the defendant's basic rights (the right to legal ownership) of assets that have been confiscated before a decision by the Panel of Judges, whether they are appropriate to be confiscated or returned to the defendant. .

Quoting Yunus Husein's views, there are differences in views regarding the handling of law enforcement for money laundering crimes as stated that "The law enforcement paradigm of the anti-money laundering regime uses a follow the money approach (tracing the flow of funds related to crimes or other unlawful acts). "In this paradigm, it is understood that money/assets are the life blood of the crime (the blood that feeds the crime), as well as the weak point in the chain of crime."<sup>5</sup>

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<sup>1</sup> Aal Lukmanul Hakim dan Abraham Yazdi Martin, "Tindak Pidana Pencucian Uang dan Modusnya Dalam Perspektif Hukum Bisnis", *Jurnal De'Rechstaat*, Vol. I, No. 1, Januari 2015, hlm. 1.

<sup>2</sup> Yenti Garnasih, *Penegakan Hukum Anti Pencucian Uang dan Permasalahannya di Indonesia*, (Depok : Rajawali Pers, 2019), hlm.1.

<sup>3</sup> Penjelasan Umum Atas Undang-Undang No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

<sup>4</sup> Prima Idwan Mariza, *Penelusuran Aliran Uang : Konsep Pengembalian Kerugian Keuangan Negara dalam Kasus Korupsi dan Pencucian Uang*, (Malang: Setara Press, 2021), hlm 234.

<sup>5</sup> Direktorat Hukum Pusat Pelaporan dan Analisis Transaksi Keuangan, *Kajian Hukum : Permasalahan Hukum Seputar Perampasan Aset Dalam Undang-Undang Nomor 8 Tahun 2010*

This means that there are differences in the handling of money laundering crimes which are oriented towards asset recovery.

Law enforcement against money laundering crimes that are oriented towards follow the money indicates that there is a need for confiscation of assets. Confiscation of assets or asset forfeiture is the forced taking of assets or property that the government believes is closely related to a criminal act. There are three methods of asset forfeiture that have developed in common law countries, especially the United States, namely criminal forfeiture, administrative forfeiture, and civil forfeiture.<sup>6</sup> Criminal forfeiture is confiscation of assets carried out through criminal justice so that confiscation of assets is carried out simultaneously with proof of whether the defendant actually committed a criminal act. Meanwhile, administrative forfeiture is an asset confiscation mechanism that allows the state to confiscate assets without involving judicial institutions. Meanwhile, civil forfeiture is asset confiscation which places a lawsuit against assets rather than against the perpetrator of a criminal act, so that assets can be confiscated even though the criminal justice process against the perpetrator has not been completed. Civil forfeiture, when compared with criminal forfeiture, does not require many conditions and is therefore more attractive to implement and profitable for the state.<sup>7</sup>

According to Fletcher N. Baldwin, Jr., the civil forfeiture model is significant to be implemented in Indonesia, because civil forfeiture uses a reversal of the burden of proof and can confiscate more quickly after it is suspected that an asset is connected to a criminal act. Moreover, in civil forfeiture, the lawsuit is addressed to assets, not to the suspect or defendant, so that state assets can still be taken even if the perpetrator dies or cannot be processed through criminal justice. It seems that this method was then applied and known by another term, namely non-conviction based asset forfeiture (usually abbreviated to NCB asset forfeiture) or in Indonesian "seizure of assets without punishment".<sup>8</sup>

Confiscation of Assets Without Punishment or non-conviction based asset forfeiture (usually abbreviated to NCB asset forfeiture) is a legal mechanism that allows state-owned assets that have been taken by criminals to be confiscated again.<sup>9</sup> Historically, the phenomenon of organized crime has influenced the

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*tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Upaya Pengoptimalisasiannya*, (Jakarta: PPATK, 2021), hlm 1.

<sup>6</sup> Yunus Husein, "Penjelasan Hukum Tentang Perampasan Aset Tanpa Pemidanaan Dalam Perkara Tindak Pidana Korupsi". (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia) hal 16

<sup>7</sup> Ibid

<sup>8</sup> Sudarto, "Mekanisme Perampasan Aset dengan Menggunakan Non-Conviction Based Asset Forfeiture sebagai Upaya Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi", *Jurnal Pasca Sarjana Hukum UNS*, Vol. V, No. 1 (Januari-Juni 2017), hlm. 111.

<sup>9</sup> Hadi Purwadi, "Mekanisme Perampasan Aset Dengan Menggunakan Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi", *Jurnal Pasca Sarjana Hukum UNS* Vol IV No. 2 (Juli-Desember 2016), hlm. 110.

development of thinking about the concept of confiscation in the criminal justice system.<sup>10</sup>

In principle, which applies internationally, there are two types of confiscation, namely confiscation in personam and confiscation in rem.<sup>11</sup> Plunder in person or criminal confiscation is an action directed at someone personally (individually). This action is part of a criminal sanction so it can be carried out based on a criminal court decision. Meanwhile, forfeiture in rem is known by various terms such as civil forfeiture, civil forfeiture, and NCB asset forfeiture.

Regarding confiscation of assets resulting from criminal acts, the lawsuit is filed against the assets, not against the person. The action is separate from the criminal justice process and requires proof that a property has been contaminated by a criminal act. The emergence of the NCB asset forfeiture concept was also motivated by a shift in the law enforcement paradigm from initially being oriented or prioritizing the perpetrator (follow the suspect) to being oriented towards money or losses (follow the money). This is important because criminal acts such as corruption or money laundering cause financial losses to the state and therefore the money from these criminal acts must be immediately returned to the state, and on the other hand, there are often conditions where the perpetrator cannot be prosecuted first. Formerly.<sup>12</sup>

The subject of asset confiscation is the party who controls the assets for which confiscation is requested. The party in control could be the perpetrator, family, heirs, or even third parties such as creditors or other parties who have rights to the assets that are requested to be confiscated. So that when confiscation is to be carried out, there must be a notification to the parties or who is responsible for the property.

The suspect dies (sues against his heirs) as regulated in Article 33 of the Corruption Law and the Defendant dies (sues against his heirs) as regulated in Article 34 of the Corruption Law constitute 3 scopes that must be fulfilled without punishment. As an example, we can find that the suspect, Jeffrey Tongas Lumban Batu, in the case of the recipient of a traveler's check for the election of the Governor of Bank Indonesia, died of a heart attack. With Jeffrey's death, the case he was facing at the Corruption Eradication Commission was null and void. The KPK's reason refers to Article 77 of the Criminal Code, namely that the prosecutor's right to prosecute will cease when the suspect or defendant dies. On that basis, the prosecution of the case was dropped.

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<sup>10</sup> Refki Saputra, Tantangan Penerapan Perampasan Aset tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia, Risetpublik.com, (Sumatera Barat: Fakultas Hukum Universitas Bung Hatta, 2017), hlm122

<sup>11</sup> Barbara Vettori, Tough on Criminal Weakth Exploring the Practice of Proceeds from Crime Confiscation in the EU, (Doordrecht: Springer, 2006), hlm. 8-11

<sup>12</sup> July Wiarti, Non-Conviction Based Asset Forfeiture Sebagai Langkah untuk Mengembalikan Kerugian Negara (Perspektif Analisis Ekonomi terhadap Hukum, UIR Law Review No. 1 (April 2017), hlm. 104

Starting from there, why is the implementation of NCB asset forfeiture necessary, because so far in practice in the field, confiscation in corruption cases is carried out behind closed doors. The practice of NCB asset forfeiture in Indonesia will later result in a determination that can provide stronger legal certainty

Until now, Indonesia does not yet have a regulatory framework that comprehensively regulates asset confiscation schemes without punishment, even in cases of criminal acts of corruption and money laundering, but it is not yet optimal enough in regulating the recovery of state losses through criminal and civil asset confiscation channels.

Apart from the lack of a regulatory framework on which to base this mechanism, there is still debate among legal experts regarding the effectiveness of asset confiscation without punishment in cases of criminal acts of corruption. Seeing that the preparation of the Criminal Asset Confiscation Bill is still pending while there is an immediate need to find alternative ways to return assets resulting from criminal acts of corruption, a comprehensive study of the concept of asset confiscation without punishment becomes very relevant

The Bill on Confiscation of Criminal Assets is listed among 189 bill titles in the 2015-2019 National Legislation Program, 3 but the bill does not once appear on the annual priority list. This means that in the five years of the DPR's tenure, this bill has never been a priority for immediate discussion.

## **METHOD**

The research that will be used is normative legal research. The meaning is the activity of identifying legal problems, analyzing legal problems, carrying out legal reasoning, analyzing the problems faced and then providing solutions to these problems, where the problems examined in normative legal research are caused by the existence of problematic norms or rules either because of conflicts in these norms. , there is a vague meaning in the norm, there is a conflict in the norm or there is a legal vacuum.<sup>13</sup>

The approach method used in this research is the statutory approach. This statutory approach is an approach taken by examining all laws and regulations related to the legal issue being handled.<sup>14</sup>

## **DISCUSSION**

### **Legal Basis for Returning Assets (Confiscated Goods) of Deceased Defendants in Money Laundering Cases**

One of the triggers for the birth of the concept of asset seizure without punishment was in 1986, when law enforcement efforts in the United States to combat drug trafficking and abuse by imprisoning those who distributed and used

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<sup>13</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta Timur: Prenadamedia Group, 2019).

<sup>14</sup> *Ibid.*

drugs failed. Law enforcement then sought other methods to pursue criminals, namely by going for the money by cutting directly to the center of the crime (head of the serpent).<sup>15</sup>

Case Examples in Several Countries : Plaintiff-appelllee V. One 1985 Mercedes, Defendant and Kenneth Robert Glenn, Intervenor-Appellant, No. 88-2940, United States on October 25, 1990 in the US District Court for the Northern District of California Glenn and found a small amount of cocaine worth \$ 75.00 in his wallet. Then the FBI agent seized Glenn's Mercedes based on the applicable law, namely 21 USC § 888 (a) (4) and 49 USCApp. § 782. And the Decision of the Supreme Court of the USA with No. 95-345, 95-346, in the Case of US as the applicant vs Usery as the applicant vs USD \$ 405,089.23 The government seized property suspected of being used to manufacture marijuana and subsequently prosecuted the defendant. The defendant was found guilty of manufacturing marijuana in the US District Court for the Eastern District of Michigan. and against this the person concerned filed an appeal, but it was dismissed on the grounds of ne bis in idem. The government began to process separately the property of the defendant who had been charged with conspiracy to commit drug crimes and money laundering. The District Court, A. Wallace Tashima, granted summary judgment for the government. The appeals court dismissed on the finding of ne bis in idem. The Supreme Court Justice, Chief Justice Rehnquist, held that civil in rem forfeiture is not a "punishment" for purposes of the ne bis in idem clause.<sup>16</sup>

Non-punitive asset forfeiture or NCB asset forfeiture is a progressive step that is literally agreed upon in the UNCAC. However, before the UNCAC existed, several international agreements had been born regarding confiscation, asset distribution, legal assistance, and victim compensation.

Some of these agreements are:

1. United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988; Vienna Convention) 24
2. United Nations Convention against Transnational Organized Crime (2000; UNTOC) 25
3. United Nations Convention against Corruption (2004; UNCAC)
4. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)
5. Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990; Strasbourg Convention)
6. Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)

UNCAC does not recognize any differences in legal systems between the States Parties, NCBs Asset forfeiture is considered as a system that can transcend the

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<sup>15</sup> Refki Saputra, *Op.Cit.*, hal. 117

<sup>16</sup> Dr. Muhammad Yusuf, "Merampas Aset Koruptor: Solusi Pemberantasan Korupsi di Indonesia", PT. Kompas Media Nusantara, Jakarta: 2013, hlm 13

differences between the legal systems adopted by the states parties to the UNCAC. UNCAC proposed NCB asset forfeiture as a tool for all jurisdictions in efforts to eradicate criminal acts of corruption.

Must There are regulations on NCB asset forfeiture in clear laws. The legal gap that still exists around the issue of civil asset confiscation must be filled immediately by providing legal regulations in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption on the issue, for example, on the assets of suspects or defendants or convicts who die and no heirs or representatives are found, they are declared as "ownerless assets" for the prosecutor or the injured agency to then apply to the court to be determined as state assets.

Article 1 paragraph (3) of the 1945 Constitution has emphasized that Indonesia is a State of Law. Therefore, all state actions must be based on regulations or positive laws that have been made and are in effect in Indonesia. In the legal system in Indonesia, the regulation on NCB asset forfeiture is indeed not yet adequate so that the implementation of NCB asset forfeiture cannot be optimized significantly by law enforcement officers, especially in corruption cases. However, this does not mean that law enforcement officers cannot apply this mechanism for confiscation of assets without criminalization, because there are also many supporting regulations that can be used as a legal basis in implementing this mechanism.

**Table 1. Supporting Regulations for the Implementation of NCB Asset Forfeiture**

N0	Name of Regulation	Chapter	Article Sound
1	United Nations Convention against Corruption (UNCAC 2003) which has been ratified by Law Number 7 of 2006	Article 51	"The return of assets subject to this chapter is a fundamental principle of this Convention, and States Parties shall afford each other the widest measure of cooperation and assistance in this regard."
		Article 54 number 1 letter c UNCAC	"Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight, or absence or in other appropriate cases"
		Article 20	principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or he cannot reasonably explain in relation to his or her legal income."
	Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes	Article 67 paragraph (2)	"In the event that the alleged perpetrator of the crime is not found within 30 (thirty) days, the investigator can submit an application to the district court to decide that

			the assets are state assets or to be returned to the person entitled to them.
		Article 79 paragraph (4)	In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed the crime of Money Laundering, the judge, based on the demands of the public prosecutor, will decide: confiscation of confiscated assets
	Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001	Article 33	In the event that the suspect dies during the investigation, while it is clear that there has been a state financial loss, the investigator will immediately submit the case files resulting from the investigation to the State Attorney or submit them to the agency that suffered the loss to file a civil lawsuit against the heirs.
		Article 34	In the event that the defendant dies during the examination at the court hearing, while it is clear that there has been a state loss, the public prosecutor will immediately submit a copy of the trial file to the State Attorney or submit it to the agency that suffered the loss to file a civil lawsuit against the heirs.
		Article 38 paragraph (5)	In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed a criminal act of corruption, the judge, at the request of the public prosecutor, will order the confiscation of the goods that have been confiscated.
	Law 30 of 2002 concerning the Corruption Eradication Commission	Article 47 paragraph (1)	Based on strong suspicions that there is sufficient preliminary evidence, investigators can carry out confiscation or seizure without permission from the Head of the District Court in connection with their investigative duties.
	Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling of Assets in Money Laundering Crimes or Other Crimes	article 1	This regulation applies to requests for handling of assets submitted by investigators in cases where the alleged perpetrator of the crime is not found as referred to in Law No. 8 of 2010 concerning Prevention in the Eradication of Money Laundering Crimes.
	Circular of the Supreme Court Number 3 of 2013 concerning Guidelines for Handling Cases: Procedures for Settlement of Applications for Assets in Money Laundering and Other Criminal Offenses	Article 3	The application for handling assets as referred to in Article 2 must be accompanied by: a. Minutes of the temporary suspension of all or part of transactions related to assets known or suspected to be the result of a criminal act at the request of the PPATK; b. Case files resulting from the investigation; and c. Minutes of the search for the suspect



Regulations contained in the table above, there are also several multilateral agreements and UN conventions which aim to collaborate and agree with other countries in terms of forfeiture, asset sharing, legal assistance, and compensation of victims. Apart from these supporting regulations, there are also several regulations that hinder implementation of NCB asset forfeiture in Indonesia in corruption cases

**Table. 2 Regulations Inhibiting the Implementation of NCB Asset Forfeiture**

No	Name of Regulation	Explanation
1	Asset Confiscation Bill t	The regulation on asset forfeiture has not been ratified, so it cannot be used as a basis for implementing NCB asset forfeiture.
2	Criminal Procedure Code (KUHP)	There is no legal regulation of NCB asset forfeiture in the Criminal Procedure Code. - In the laws and regulations in Indonesia there are no provisions that recognize assets or property as subjects of criminal law or as subjects of civil law that can be declared guilty and held criminally or civilly responsible. - The subject in criminal law is a person. Prof. Dr. Wirjono Prodjodikoro, SH in his book Principles of Criminal Law in Indonesia said that in the view of the Criminal Code (KUHP), the subject of a criminal act can be a human being as an individual. This can be seen in the formulations of criminal acts in the Criminal Code which show the power of thought as a requirement for the subject of the criminal act, and can also be seen in the form of punishment or criminal penalties contained in the articles of the Criminal Code, namely imprisonment, detention, and fines. <sup>102</sup> - There are articles that contradict the Concept of NCB asset forfeiture. For example, Article 196 paragraph (1): "The court decides the case with the presence of the defendant unless this law determines otherwise." Based on this article, criminal cases should not be decided in absentia but in absentia is permitted as long as the law stipulates otherwise. In the TPPU Law and the Corruption Law, trials in absentia are permitted as long as the court has attempted to summon the defendant and the defendant is not present with unclear requirements.
	Civil Procedure Code	There is no legal regulation for NCB asset forfeiture in the Criminal Procedure Code. In addition, in the laws and regulations in Indonesia there are no provisions that recognize assets or property as subjects of criminal law or as subjects of civil law that can be declared guilty and held criminally or civilly responsible. - The subject in Civil Law is a person. Subekti in his book entitled Principals of Civil Law says that in law, a person means a bearer of rights or a subject in law. <sup>103</sup> - The subject in Civil Law is a Legal Entity. Subekti says that in addition to people, bodies or associations also have rights and carry out legal acts like a human being. These bodies or associations have their own assets, participate in legal transactions through their administrators, can be sued, and can also sue before a judge
	Law Number 39 of 1999 concerning Human Rights	Article 36 paragraph (2) states, "No one may be deprived of their property arbitrarily and unlawfully." This provision can be an obstacle to the implementation of the NCB asset forfeiture concept if it is not carried out carefully and responsibly.
	Law Number 31 of 1999 concerning Eradication	Article 18 paragraph (1) letter a states, "In addition to additional penalties as referred to in the Criminal Code, additional penalties are: a. confiscation of tangible or intangible movable goods or immovable goods used for or obtained from corruption, including companies owned by the convict where the corruption was committed, as well as goods that replace these goods." The article states that confiscation of goods is an additional punishment. As understood, additional penalties do not stand alone,

		they depend on or are related to the main crime. The main penalties based on Article 10 of the Criminal Code consist of the death penalty, imprisonment, detention, and fines. Meanwhile, the application of NCB asset forfeiture focuses on the confiscation of assets without criminal punishment, which means that in its application it ignores the main penalty so that it is contrary to the provisions of this article.
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The asset confiscation mechanism is based on Article 18 letter (a) of the Corruption Eradication Law which states:

“Confiscation of tangible or intangible movable goods or immovable goods used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as the price of goods replacing such goods.”

Law Number 8 of 2010 concerning Money Laundering has so far been negligent towards behavior that hides or disguises criminal assets. The object of this law is movable and immovable assets. Where the context of the Money Laundering Law is money from criminal acts, assets obtained from corruption, bribery, narcotics, psychotropics, smuggling, theft, prostitution, gambling, and other crimes that are threatened with imprisonment of 4 years or more.

The Corruption Eradication Law also regulates the confiscation of assets if the suspect or defendant dies, namely:

1. If the suspect dies during the investigation, while there is a state financial loss, the investigator will submit the file to the Public Prosecutor who will file a civil lawsuit against his heirs.
2. If the defendant dies during the defendant's examination, while there is a clear state financial loss, the public prosecutor must immediately submit a copy of the trial minutes to the State Attorney or submit it to the injured agency to file a civil lawsuit against the heirs.

The act of confiscation of assets has been regulated and used as a sanction against perpetrators of corruption as an effort to return the proceeds of the crime. Furthermore, the Corruption Law also places the act of confiscation of assets not only as a criminal sanction against the perpetrator, but also for goods that have been confiscated in the event that the defendant dies before a verdict is issued against him with sufficient evidence that the person concerned has committed a crime of corruption, then according to the Corruption Law, the judge at the request of the public prosecutor determines the act of confiscation of goods that have been previously confiscated .

Basically, the criminal law policy is applied to formulative policies, where the confiscation of assets of perpetrators of corruption crimes can be carried out through 2 (two) channels, namely criminally through a court decision and through civil law, namely through a civil lawsuit (civil procedure).

Article 79 paragraph (4) of the TPPU Law states that "in the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed the crime of money laundering, the judge, upon the demands of the public prosecutor, shall decide to confiscate the assets that

have been confiscated." Furthermore, Article 79 paragraph (5) of the TPPU Law states that "a decision on confiscation cannot be appealed for legal action." In relation to the protection of third parties who act in good faith, Article 79 paragraph (6) of the TPPU Law stipulates that "any interested person may file an objection to the court that has issued the decision as referred to in paragraph (5) within 30 (thirty) days from the date of the announcement as referred to in paragraph (3)

The return of confiscated objects (assets) or evidence is regulated in Article 46 of the Criminal Procedure Code. Based on the provisions of Article 46 of the Criminal Procedure Code, it can be seen that the return of confiscated goods can be carried out in 2 (two) conditions, namely:

1) Before the case is decided or at the same time as the court process. Article 46 Paragraph (1) explains that:

"Objects subject to confiscation are returned to the person or persons from whom they were confiscated, or to the person or persons most entitled if:

- a. the interests of investigation and prosecution no longer require it;
- b. the case was not prosecuted because there was insufficient evidence or it turned out not to be a criminal act;
- c. The case is set aside for the public interest or the case is closed by law, except if the object was obtained from a criminal act or used to commit a criminal act."

During the law enforcement process for a crime is still ongoing, the only other action that can be taken is confiscation. Further provisions regarding confiscation are contained in Article 39 of the Criminal Procedure Code (KUHAP), which regulates the provisions regarding goods that can be confiscated .

The legal provisions for examining applications for the confiscation of non-criminal assets in court are as follows:

1. Investigations, pre-prosecution, examinations in court and the implementation of decisions regarding asset confiscation are carried out in accordance with the provisions of laws and regulations.
2. If the district court accepts an application for asset confiscation and is of the opinion that the case falls within its jurisdiction, the head of the district court will appoint a panel of judges or a single judge who will hear the case.
3. The appointed judge orders the clerk to announce the application for asset seizure. Within 30 (thirty) working days from the announcement of the application for asset seizure, the judge will set a trial date and order the clerk of the district court to summon the public prosecutor/state attorney and/or the party filing the objection to attend the court hearing.
4. The public prosecutor submits a request for asset confiscation along with arguments about the reasons why the assets should be confiscated and submits evidence about the origin and whereabouts of the assets that support the reasons for asset confiscation. If necessary, the public prosecutor can present the assets to be confiscated or based on the judge's order, an examination of the criminal assets at the location where the assets are located.
5. In the event of objections from a third party, the judge will give the third party the opportunity to submit evidence regarding their objection.

6. The judge considers all the arguments submitted by the public prosecutor and/or third parties before deciding whether to accept or reject the application for Asset Confiscation.

Return on assets can be grouped in the form of:

1. Return of assets to the state, consisting of:
  - a. Disposal of confiscated state assets ( *disposal* ) through direct sale, auction sale, grant, exchange or inclusion as government capital; and
  - b. Use of assets for state interests.
2. Return of assets to victims/those entitled:
  - a. Return of assets to victims of crime.
  - b. Return of assets to ministries/institutions/BUMN.

### **Proof of Money Laundering Crime Against the Return of Assets (Confiscated Goods) of Deceased Defendant**

In the event that the accused dies, the legal consequence is that the criminal charges against the person concerned are dropped . This has been stated in Article 77 of the Criminal Code ("KUHP"), this article contains a principle that the prosecution of the punishment must be directed at the person personally. If the person accused of committing the criminal event dies, then the prosecution for the event is simply finished, meaning that the prosecution cannot be directed to his heirs.

So, the death of the defendant does not mean that the district court's decision becomes a final and binding court decision. However, the criminal charges that reached the cassation level are dropped. The formulation of the chamber regarding the sound of the verdict for a defendant who dies before the cassation is decided GENERAL CRIMINAL/A.4/SEMA 7 2012 In the case where a defendant who has filed a cassation dies before his cassation request is decided by the Supreme Court, referring to Article 77 of the Criminal Code: The prosecution from the Public Prosecutor is declared to have lapsed.

There are several District Court decisions stating that the defendant died, namely:

- a. Decision of PRABUMULIH District Court Number 83/Pid.B/2024/PN Pbm SET:
  1. Declaring that the Public Prosecutor's authority to prosecute Defendant Meggi Saputra Bin Heri Yanto has been revoked because the Defendant has died;
  2. Declaring that the examination of criminal case Number 83/Pid.B/2024/PN Pbm in the name of Defendant Meggi Saputra Bin Heri Yanto has been dropped because the Defendant died;
  3. Charge court costs to the State in the amount of Nil;
- b. Decision of BULUKUMBA District Court Number 12/Pid.B/2014/PN.BLK Determined: Defendant: HERMAN BIN MUNSIR Died , Public Prosecutor: A.RENY RUMMANNA,SH

- c. Decision of the Central Jakarta District Court Number 1413/Pid.Sus/2018/PN Jkt.Pst

Decided : the case was declared dropped because the defendant died.

The return of assets/evidence to the entitled party, who is considered the entitled party, to whom the evidence is returned is submitted to the relevant judge after hearing the testimony of witnesses and the defendant, both regarding the case and regarding evidence in the trial examination in court.<sup>17</sup> People who are entitled to receive evidence, including:

- a. The person or persons from whom the goods are confiscated, namely the person or persons who hold or control the goods at the time the investigator carries out the confiscation and when the goods are being examined in court, they are the ones who have the right to the goods.
- b. The actual owner, when the object used as evidence was confiscated was not in the person's control. However, during the examination it turned out that the object belonged to him who in the case acted as a victim witness. This often occurs in cases of crimes against property.
- c. Heirs, in the event that the person entitled to the evidence has died before the decision is made, then with regard to the evidence, the judge's decision stipulates that the evidence be returned to the heirs or their families.

The last rights holder, evidence can also be returned to the last rights holder for the object provided it can be proven that he legally has the right to the object.

**Analysis of Judge's Considerations and Decisions Regarding the Return of Assets (Confiscated Objects) of the Defendant Who Died During the Trial Process Based on the Decision of the Medan District Court No. 1252/Pid.Sus/2020/Pn Mdn Jo. Decision of the Medan High Court No. 391/Pid.Sus/2021/Pt Mdn Jo. Decision of the Supreme Court No. 3856 K/Pid.Sus/2022**

After the trial process in court, reading of the indictment, objection notes (exceptions), responses to objection notes, interim decisions, examination of witnesses, demands ( *requisitoir* ), defense notes (pledoi), replies, and duplicates, the Panel of Judges at the Medan District Court who examined and tried the case provided the following legal considerations:

- a. In connection with the Defendant Zakir Usin alias Jakir Usin who died on September 26, 2020 at the Bandung General Hospital in Medan due to illness as stated in the Bandung Hospital Death Certificate No. 13/RSB/SKM/IX/2020 dated September 26, 2020, the case examination cannot be continued and has not been completed;
- b. Based on the provisions of Article 77 of the Criminal Code, if the accused dies, the criminal charges against the person concerned are dropped;
- c. Furthermore, the Panel of Judges in its considerations stated that in the case of Money Laundering Crimes (TPPU), based on the provisions of Article

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<sup>17</sup> Ratna Nurul Afiah, Evidence in Criminal Proceedings , (Jakarta: Sinar Grafika. Jakarta, 1988), p. 199.

79 paragraph (4) of Law No. 8 of 2010 concerning the Prevention and Eradication of TPPU, it is stated that "In the event that the Defendant dies before the verdict is read and there is sufficient evidence that the person concerned has committed TPPU, the Judge, based on the demands of the public prosecutor, decides to confiscate the assets that have been confiscated". However, because the examination of the a quo case has not been completed and the number of witnesses examined is 1 (one) person, namely the witness who arrested the defendant in the non-narcotics crime case which is the original crime, there is no sufficient evidence to state that the evidence confiscated in the a quo case is the defendant's assets obtained from Money Laundering Crimes, so that the evidence in the a quo case cannot be confiscated for the state but must be returned to the defendant through his heirs.

Based on the legal considerations above and taking into account Article 77 of the Criminal Code and Article 79 paragraph (4) of Law No. 8 of 2010 concerning the Prevention and Eradication of TPPU, the Panel of Judges tried the a quo case with the following verdict:

1. Declaring the Criminal Charges against the Defendant ZAKIR HUSIN alias JAKIR USIN to be dropped because the Defendant has died;
2. Release the Defendant ZAKIR HUSIN alias JAKIR USIN from all legal charges;
3. Stating evidence in the form of:
  - a. One land and building located at Jalan Starban No. 2C Link. VIII Kel. Polonia Kec. Medan Polonia in the name of ZAKIR HUSIN alias JAKIR USIN with a land size of  $\pm 80.00$  m<sup>2</sup> with Land Certificate No: 594/041/SKT/POL VIII/2017 dated August 30, 2017;
  - b. One land and building located at Jalan Starban Gang Bilal No. 384/45 Medan Lingk. X, Kel. Polonia, Kec.. Medan Polonia in the name of ZAKIR HUSIN alias JAKIR USIN with a land area of  $\pm 224$  m<sup>2</sup> with Land Certificate Number 594/58/SKT/Pol/VII/2011, dated July 21, 2011;
  - c. A plot of land and building located at Jalan Setia Budi Baru No. 6 Arcadis Regency Complex, Helvetia Timur Subdistrict, Medan Helvetia District, Medan City, in the name of ZAKIR HUSIN alias JAKIR USIN with a building area of 98 m<sup>2</sup> with Certificate Number 02.01.05.04.1.028882, dated March 17, 2010, Ownership Rights Number 2882;
  - d. A plot of land and building located at Jalan Setia Budi Pondok Surya Rt 000/Rw 0900, Block A-12 Atria Residence Complex, Medan City, an. ZAKIR HUSIN alias JAKIR USIN, with a land and building area of 126 m<sup>2</sup> with Certificate Number or Ownership Rights 3685;
  - e. One unit of land and building located on Jalan Plamboyan ½, Tanjung Selamat Subdistrict, Medan Tuntungan District in the name of Muhammad Sabrang, occupied by ZAKIR HUSIN alias JAKIR USIN with Certificate Number 439;

- f. 1 (one) vacant land located on Jalan Balai Desa, Polonia Village, Medan Polonia District, Medan City;
  - g. 1 (one) unit Agya BK 1619 OB car with engine number IKRA 097046 and frame MHKA4DB3JEJO20085;
  - h. 1 (one) CRV BK 1831 QH car with the Pemuda Pancasila logo with engine number K24AI1230352 and frame MHRRD68 405JOO036;  
**Returned to the Defendant ZAKIR HUSIN alias JAKIR USIN through his Heirs;**
  - i. 1 (one) Bank Mandiri savings book, Account No. 106-00-0799771 in the name of JAKIR USIN;
  - j. 1 (one) Bank Mandiri savings book, account number 105-00-1121027 9, in the name of Muhammad Irda Yandi Sabrang;
  - k. 1 (one) BCA Bank savings book with account number 0222220781 in the name of MELVA SARI;
  - l. 1 (one) BCA Bank savings book, Account No. 8375027026 in the name of MELVA SARI;
  - m. 1 (one) BRI Bank Savings book, Account No. 2083-01-012292-50-0 in the name of MELVA SARI;
  - n. 1 (one) BRI ATM with Account No. 2083-01-000166-30-7 in the name of MELVA SARI;
  - o. 1 (one) BNI ATM, Account No. 619924920 in the name of MELVA SARI;  
**Returned to its rightful Owner;**
4. Charge court costs to the State.

Dissatisfied with the Medan District Court's decision, the public prosecutor made an appeal to the Medan High Court, which in essence submitted an appeal against the evidence in the form of the defendant's assets, both immovable assets, namely land, and movable assets in the form of cars, so that they would be confiscated for the state because they were suspected of being obtained from narcotics crimes based on Article 79 paragraph (4) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

The Panel of Appeal Judges of the Medan High Court stated in its legal considerations after carefully considering the appeal memorandum of the Public Prosecutor that it was clear that the Public Prosecutor in his appeal memorandum was only based on allegations obtained from narcotics crimes and not because there was sufficient evidence for it in accordance with the provisions of Article 79 paragraph (4) of Law No. 8 of 2010. Therefore, the Public Prosecutor's demands should be rejected. Furthermore, regarding other matters in the appeal memorandum, there are no new matters that need to be considered, all of which have been carefully considered by the First Level Judge in his decision and the considerations of the First Level Judge were taken over and used as considerations by the Panel of Judges of the High Court itself in deciding the a quo case at the appeal level.

Termination of prosecution due to the death of the accused is a natural thing because for there to be a prosecution there must be a person who can be held

accountable for the act. Criminal responsibility is attached to the perpetrator (the person who committed the crime), if the person who must be held accountable for his actions is not there because he died, of course the prosecution must be stopped by law.<sup>18</sup> Because of the death of the perpetrator, the state loses the right to prosecute the perpetrator of the crime.<sup>19</sup>

If the court has learned that the defendant has died, the public prosecutor's demands will definitely be rejected or if the defendant dies after the case has been transferred and an examination has been carried out, the court will issue a decision regarding the demand for a dropped sentence or the public prosecutor's demands cannot be accepted.<sup>20</sup>

The right to demand a death sentence because the accused died was once decided by the Supreme Court as in Supreme Court Decision No. 29/K/Kr/1974 dated November 19, 1974, deciding the right to demand a death sentence because the accused died. Therefore, the prosecutor's cassation request was declared unacceptable. In its considerations, the Supreme Court stated among other things:

- a. Considering, that based on the statement of the Head of Lampuk Village, Mukim Tungkop, Darussalam District dated December 21, 1973, it turns out that he died on December 4, 1973.
- b. Considering, that according to Article 77 of the Criminal Code the right to demand a sentence is terminated because the accused has died.<sup>21</sup>

Furthermore, the same consideration is also contained in the Supreme Court Decision No. 186 K/Kr/1979 dated September 5, 1979, which decided that in the event that the defendant has died (at the appeal examination stage), the High Court is sufficient to issue a decision stating that the sentence demand is dropped or the prosecutor's demand cannot be accepted because the defendant has died.<sup>22</sup>

Based on the description, Article 77 of the Criminal Code, the prosecution of the sentence is removed (dismissed) if the defendant dies. Therefore, in relation to the case against the Defendant Zakir Usin alias Jakir Usin, the Panel of Judges at the first level, appeal, and cassation have correctly applied Article 77 of the Criminal Code in their sentencing considerations and in line with the demands ( *requisitoir* ) of the public prosecutor stating that the criminal charges against the Defendant Zakir Usin alias Jakir Usin cannot be accepted and stopped the examination of the case because the defendant had died.

However, the legal demands for the assets or wealth of the defendant that have been confiscated between the public prosecutor and the Panel of Judges have different views, which legally in cases of Money Laundering Crimes have their own regulations which are regulated in Article 79 paragraph (4) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

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<sup>18</sup>Alfitra, op. cit. , p. 118.

<sup>19</sup>Harly Said Moha, The Elimination of the Right to Execute the Sentence Due to the Defendant's Death According to Article 83 of the Criminal Code, *Lex Privatum Journal* , Vol. VI, No. 4, June 2018, p. 7.

<sup>20</sup>Alfitra, op. cit. , p. 118.

<sup>21</sup>Alfitra, loc. cit .

<sup>22</sup>Alfitra, loc. cit .



There is not yet sufficient evidence to state that the confiscated evidence, both immovable and movable, in the *a quo case* constitutes the defendant's assets obtained from the crime of money laundering.

Based on the legal considerations, it is known that there is no strong enough evidence to state that the assets or wealth belonging to the Defendant Zakir Usin alias Jakir Usin that have been confiscated are the result of a crime. As in the case examination process at the Medan District Court, the defendant died after the examination agenda of 1 (one) witness, namely the police personnel who arrested the defendant in the narcotics crime (predicate crime).

When linked to Article 79 paragraph (4) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which states "In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed the crime of Money Laundering, the judge, based on the demands of the public prosecutor, will decide to confiscate the assets that have been confiscated."

Furthermore, Article 183 of the Criminal Procedure Code states that "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he is convinced that a crime has actually occurred and that the defendant is guilty of committing it."

Based on the above descriptions, the judge's decision stating that the Criminal Charges against the Defendant Zakir Usin alias Jakir Usin were dropped due to his death, releasing him from all legal charges and returning the assets or property confiscated by investigators, both immovable and movable goods, to the defendant through his heirs/legal owners, is considered appropriate.

Although the Panel of Judges in considering its decision was deemed not to accommodate or include other articles in Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering which are also related to the *a quo case* which can be used as a basis for trial, namely Article 77 and 78 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

## **CONCLUSION**

The return of assets or property (confiscated objects) of a deceased defendant in a money laundering case is based on Article 46 paragraph (1) of the Criminal Procedure Code, namely to the most entitled person, namely the defendant's heirs as long as the defendant dies before the verdict is rendered and there is not sufficient strong evidence of at least 2 (two) valid pieces of evidence and the judge's belief that the defendant did not commit the crime of money laundering. The return of these assets is also implicitly contained in Article 79 paragraph (4) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which implies that the confiscation of the assets of a deceased defendant can only be carried out before the verdict is rendered and there is sufficient strong evidence that the defendant has committed the crime of money

laundering, so that if these elements are not met, the confiscated assets or property must be returned to the defendant through his heirs.

The reverse burden of proof system in money laundering crimes is an application of the principle of *lex specialist derogat legi generallie* which emphasizes the obligation on the defendant to prove that his assets or wealth are not the result of a crime as regulated in Article 77 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. This obligation is strengthened by Article 78 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which requires (imperative) the judge to order the defendant to prove that the assets related to the case do not originate from or are related to a crime. If in a court hearing the judge does not order the defendant to prove this, then the judge examining and trying the case has made a mistake in trying the money laundering crime case so that it can be a reason to file an appeal as per Article 253 paragraph (1) letter b of the Criminal Procedure Code.

The judge's consideration and decision regarding the return of assets (confiscated objects) of the defendant who died during the trial process based on the Medan District Court Decision No. 1252/Pid.Sus/2020/PN Mdn *jo*. Medan High Court Decision No. 391/Pid.Sus/2021/Pt Mdn *jo*. Supreme Court Decision No. 3856 K/Pid.Sus/2022 has been considered based on the legal basis, is considered appropriate, and provides legal certainty regarding the defendant's confiscated assets because there has been a decision stating that the confiscated assets or evidence will be returned to the defendant through his heirs. Although the Panel of Judges did not comprehensively include the legal basis contained in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering in trying the case, the judge's decision has fulfilled fair legal certainty.

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