International Journal of Scientific Engineering and Science
Volume 1, Issue 11, pp. 30-35, 2017. ISSN (Online): 2456-7361

Ratio Legis of Asset Seizure of Non-Corruption Result from Corruption Convict in Law Enforcement in Indonesia

Zaenudin[1], Sudarsono[2], A. Rachmad Budiono[3], Bambang Sugiri[4]
[1]Student of Doctoral Program at the Faculty of Law, Brawijaya University, Malang
[2]Professor of Administrative Law at the Faculty of Law, Brawijaya University, Malang
[3]Professor of Labor Law at the Faculty of Law, Brawijaya University, Malang
[4]Lecturer at the Faculty of Law, Brawijaya University, Malang

Abstract— *Republic of Indonesia is a democratic constitutional state based on Pancasila and Constitution of 1945, upholds human rights and guarantees all citizens with their positions in the law and government and it is obliged to uphold that law and government with no exception. The purpose of law is justice, certainty and benefit. Corruption is a criminal act that is already familiar in Indonesia. In corruption crime, the perpetrators of corruption conduct various modes for the transfer of asset from corruption in order not to be undetected by the law enforcement officers. The transfer of assets from crimes conducted by perpetrators in various ways quickly and easily, so that the result of crime disappears from the monitoring of law enforcement officers. The amount of the state's financial losses caused by corruption is not proportionate to the amount of the state's financial refund due to corruption. That refund of state financial loss should be made in any lawful manner in order to be optimally attempted. Seizure of assets that are not accompanied by proof, already break the rules or existing laws or have violated the rights of the convict, in which the assets were legally obtained. The alleged act must be accompanied by strong evidence and if an act is proven as the indictment then the punishment may be imposed by the judge. Furthermore, it is to seize or doing confiscation goods that are alleged as the result of a crime (criminal act of corruption). Assets cannot be seized without regarding to the rights of convict. Seizure of assets of convict of corruption to return the state financial losses that are derived not from the proceeds of crime is very unfair, it violates Articles 17, 18 and 19 of Law No. 39 year 1999 on Human Rights, it violates Article 28D of the Constitution of 1945, it violates Article 10, 39, 40, 41 of the Criminal Code, it violates Articles 38, 46 and 273 Paragraph (3) of the Criminal Procedure Code and violates Article 18 of Law of Corruption Eradication itself.*

Keywords— *Corruption, Law, Convict, Seizure of Asset, Eradication.*

I. INTRODUCTION

The development of world civilization increasingly progresses to the era of modernization. Along with it, forms of crime also always follow the times and transform in the increasingly sophisticated and diverse forms. Crime develops along with the development of human civilization with various motives such as the economic motive. Such as corruption, money laundering, illicit narcotics is a type of crime with economic motive that is in the mode of implementation it is more complex than conventional economic crime. In Indonesia, corruption has become a common thing to do. Even corruption in Indonesia can be said that it has cultured since long ago, both before and after the independence, in the Old Order Era, the New Order, even continuing until the Reform Era even today.

In the crime of corruption, the perpetrators of corruption conduct various modes for the transfer of asset from corruption in order not to be undetected by the law enforcement officers. The transfer of assets resulting from crimes conducted by perpetrators in various ways quickly and easily, so that the result of crime disappears from the monitoring of law enforcement officers. In transferring and covering the assets of the result of crime, the perpetrator generally conducts in the form of a transfer by using a third party as a medium of removing the trace. The mode of transferring assets of corruption by the perpetrators to the third parties, of course, more developed in the ways and techniques in accordance with the facilities and infrastructure that support it.[1]

The eradication of corruption is a mandate of reform and has become the commitment of the Indonesian people as set out in the TAP MPR XI / 1998 on governance which is free of collusion, corruption and nepotism. Discussion on corruption eradication strategy is done in many seminar rooms, booming of anti-corruption, that is precisely.[2] One of the elements of corruption is the existence of the state financial losses. According to the law (Act) no. 1 of 2004 concerning State Treasury, CHAPTER I Article 1 Number 22 states that what is meant by the loss of the state / region is lack of money, securities and goods which are real and with a certain number as a result of act which against the law either intentionally or negligently. State loss is not a loss in the corporate / commercial sense, but a loss that occurs because of an act (an act against the law). State financial loss can occur in 2 (two) stages, which are at the stage of funds will enter the state treasury and at the stage of funds will be out of the state treasury. At the stage of the funds that will enter the state treasury, loss can occur through a tax conspiracy, a conspiracy

[1]Krisdianto, Implikasi Hukum Penyitaan Aset Hasil Tindak Pidana Korupsi Yang Hak Kepemilikannya Telah Dialihkan Pada Pihak Ketiga, e-Jurnal Katalogis, Volume 3 No. 12, Desember 2015 hlm 188-200.
[2]Lopa Baharudin, *Kejahatan Korupsi dan Penegakan Hukum*. Jakarta: Kompas, hal.105.

of the payment of a fine as a punishment, a conspiracy of additional criminal execution (the return of state losses) and smuggling. While on stage, the fund will come out of the state treasury, loss of one of them caused by corruption, which is a social disease that is difficult to cure.[3] The number of state financial losses caused by corruption is not comparable to the number of the country's financial returns as a result of corruption. The state financial loss should be made in any legal justifiable way in order to be optimally attempted. Principally, the right of the state must be returned to the state for the welfare of the people. The reality in practice, one of them is the number of return of state financial loss in 2011 that is very far from the big losses suffered by the state due to the corruption.

KPK (Corruption Eradication Commission) is an organization established to combat corruption. KPK in handling corruption cases almost all started with operation. The corruption convict must receive a verdict from the judge whether it is a prison term, fines, redress or additional punishment in the form of replacement of money if within one month after the verdict, the convict has not paid any money to replace, then the Judge shall order the Public Prosecutor to seize the asset immediately either from corruption or non-corruption. If the asset of a corruption convict perpetrated by the Public Prosecutor is derived from the proceeds of corruption or at least that has to do with the case of corruption as referred to in Article 18 of Law No. 31 year 1999 Jo. UU No. 20 of 2001 on the Eradication of Corruption (*PTPK*).[4] The primary issue in this research revolves around the issues of asset confiscation of convict to return losses to the state that is not obtained from the corruption. According to Author, such ways cannot be maintained anymore, because it causes new problems as it is listed in the law. However, in fact in any case of corruption, if the convict cannot return the amount of the state financial loss that has been determined within 1 (one) month after the permanent decision, then the Judge order the Public Prosecutor to seize the asset to pay the compensation of state financial loss, if not the judge will give an additional sentence in prison. This is contrary to the rules, with a sense of justice and *conplict of norm* has even happened.

II. Research Method

Research method that is used is normative juridical approach, which is the research that is focused on reviewing the implementation of the rules or norms in positive law and to identify the concepts and principles of law that are used in law enforcement of corruption, particularly state financial loss as one of elements of corruption.[5]

In the specification of the study, the researcher reviews the interpretation of law, legal construction, legal philosophy and comparative of law. Then the specification of the research is analytical descriptive so the approach used is statute-approach, analytical approach and the comparative approach and using the qualitative juridical analysis.

Legal materials that are used in this study consists of primary, secondary and tertiary legal materials. Primary legal material is legal material that consists of rule of law that is organized by the hierarchy, starting from Constitution of 1945, law, government regulations, and other rules under the law, as well as foreign legal materials as comparator of existing legal material. Secondary law materials are legal materials obtained from textbooks, foreign journals, scholars' opinions, legal cases, and symposia by experts related to corruption, while tertiary legal materials such as legal dictionaries, encyclopedias and others, another is the legal materials that provide meaningful guidance or explanation and / or give the sense of a concept whose meaning is not clear, either in the primary legal materials or through secondary law. Secondary data obtained from library of University of Brawijaya, University of Indonesia and University of Sultan Ageng Tirtayasa, while Field Study (Field Research); is needed to support library data, this research is held in the National Police of the Republic of Indonesia, the Attorney General of Republic of Indonesia, the Corruption Eradication Commission and the Supreme Court.

III. Results and Discussion

According to Bahasa, corruption means rottenness, ugliness, cruelty, dishonesty, bribe, immorality, deviation of holiness, words or sayings that insult or slander as can be read in The Lexicon Webster Dictionary:

> *"Corruption (1. oorruptio (n-), the act of corrupting, or the state of being corrupt; putrefactive decomposition, putrid matter; moral perversion; depravity, perversion from a state of purity; debasement, as of a language; a debaised form of a word".* [6]

If a criminal act of corruption is conducted by or on behalf of a corporation then criminal prosecution and verdict can be made to the corporation and/ or its management.[7] Before discussing deeper on Ratio Legis of seizure of asset that is not obtained from the proceeds of corruption as referred in Article 18 paragraph (2) letter b of law of eradication of corruption, author firstly will discuss about the ratio legis. Ratio Legis is the intent and purpose of the enactment of a law and regulation that carries within it the principle of legality. The principle of legality is an important element of a rule of law, even it can be said as the heart of the rule of law. The principle of legality is said to be the heart of the rule of law, it is because, (1) the principle of legality is the basis of the rule of law, meaning that the rule of law can ultimately be referred to the principle of law; (2) the legal principle is the reason / general purpose (ratio legis) of the birth of the rule of law,

[3] Romli Atmasasmita, 2002, *Korupsi, Good Governance dan Komisi Anti Korupsi Indonesia*, Badan Pembinaan Hukum Nasional Departemen Kehakiman Dan Hak Asasi Manusia Republik Indonesia, Jakarta, hal.48 (Selanjutnya disebut Romli Atmasasmita II).

[4] Chaerudin, Syaiful Ahmad Dinar, Syarif Fadillah, Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi, PT. Refika Aditama, Bandung, 2009.

[5] Robert E.Rodes, Jr., & Howard Pospesel, *Premises and Conclusion, Symbolic logic for Legal Analysis*, Prentice Hall, Upper Saddle River, New Yersey, 1997, hlm. 7.

[6] Andi Hamzah, *Korupsi di Indonesia*, PT Gramedia Jakarta, 1984, Hal 9.

[7] Indriyanto Seno Adji, Korupsi Dan Pembalikan Beban Pembuktian, Kantor Pengacara dan Konsultan Hukum "Prof Oemar Seno Adji, SH & Rekan, Jakarta, 2006.

meaning that the principle of legality will not exhaust its power to provide new regulations. The principle of legality will remain and will create further regulations.

Ratio Legis of Implementation of Article 18 of Law No. 31 of 1999 Jo Law No. 20 of 2001 on the Eradication of Corruption is the intent and purpose of the stipulation of a law and regulation to seize the asset of corruption convict which is obtained from corruption. Article 18 actually has regulated properly the assets that may be taken by the state which is asset from the results of corruption. In fact, every indictment against the perpetrators of corruption in Corruption Court, Implementation of Article 18 of Law No. 31 of 1999 Jo Law No. 20 of 2001 on the Eradication of Corruption is always used because it is believed by the Public Prosecutor as an effort to return the state financial loss, to cause a deterrent effect and is expected to minimize the occurrence of corruption. The Public Prosecutor strives to return the money allegedly from corruption. This is a step to make the perpetrators or potential perpetrators of criminal acts of corruption become deterrent. Article 18 is commonly used against the perpetrators of corruption crimes charged with Article 2 or Article 3 of the law of corruption eradication. On the other hand, for other articles, especially for bribery cases in the opinion of the writer that the charge against corruption case in the case of bribery cannot be linked to Article 18. Moreover, if the reason is only to cause a deterrent effect. Reason of deterrent effect should be reasonable, it is because in the case of bribery the burden is on those who bribe. Except, the consequences of bribery lead to state losses. For example, because of the bribe the value of the building that became the project in that case is reduced. However, proof for this case is not as easy as turning your palms. It is because the calculation of the value of buildings that become the state losses will be difficult. To calculate in the value of the building there are state losses that can use construction experts, and experts from BPKP or BPK of Indonesia. In the case of bribery, the defendant allegedly violates Articles 2 and 3 of Law of Corruption only, if it is related to Article 18 of Law 31 of 1999, to seize the asset of the defendant to return the state losses, Investigators, Prosecutors and Judges must know first in detail/ clearly that the asset that will be seized is really derived from the results of corruption. Do not make a want to be popular or because it has a mindset that corruption must always be impoverished so that all his asset is seized for the state. Such mindsets violate existing legal norms. This is in line with what is written in the sound of Article 18 of the Corruption Law that the seized asset for the return of the state losses is derived from the corruption which means the condition has been clear. However, the fact is not so, Investigators, Public Prosecutors and Judges in order to return the financial losses of the state, many parties who do seizure of asset that is not obtained from corruption. This is untrue, unfair and violates human rights. In Law Enforcement Theory by Lawrence M. Friedman explained that law enforcement must meet three conditions that are 1) Structure> Law enforcement institution should be promoter; 2) Substance> Norms / rules / regulations per Law established must include living law; 3) Legal culture> The culture of the people must obey the law so that anyone who is guilty must be punished indiscriminately. In Article 1 Paragraph 3 of the amended Constitution of 1945, it is stated that Indonesia is a state of law.

Thus, the state must be able to give legal sovereignty or supremacy of law to their people, the state should protect their people from the arbitrary actions of the government and give the people to enjoy their civil and political rights as human beings. This is because Indonesia has declared a legal state not a power state. Besides, in law enforcement it is known principle of presumption of innocence. Please note that the verdict of thought-based corruption cases to focus on community justice should not be stuck in the desire to seek popularity, by always insisting on imposing criminal prosecution in every corruption case, regardless of the facts and circumstances it is very dangerous because it will end and fall on misuse/ arrogance of power. On the contrary, if in the verdict of corruption cases the Judge has also considered carefully between the justice of the accused and the justice of the community and still concludes that the defendant must be acquitted, or criminalized for so long, as long as the judgment is fair, of course it is not regarded as a failure of the Judge in the eradication of corruption. Thus, the success indicator of the role of Judge in eradicating corruption is not from the number of defendants convicted, but rather because of fair decisions after considering the above matters. This is deemed necessary because of the efforts to eradicate corruption so far, the condition of the legal balance is in the "failure of law enforcer" or otherwise is "the success of the perpetrators of corruption", therefore it is necessary to make a correction. The court should side with the interests of the country/ folk by planning an innovation that Indonesian court is conscience of the court and the conscience is corruption. A judge who takes full determination to fight corruption by looking closely at the facts at the trial is different than the judge who has the attitude of maintaining the status quo. It can happen if in the beginning, Judges are progressive and have a psychological predisposition in the form of commitment, determination, and courage to fight corruption that has harmed state finance so it can provide the essentials justice to the community (delivery of justice). Therefore, the psychological predisposition of the judge can determine the quality of the verdict. A fair verdict can only be achieved especially if the Judge constantly sharpens his or her conscience and strongly believed in his teaching of religion and beliefs, all of which must be done in order to uphold law and justice.

In the case of corruption, related to criminal of compensation payment is a consequence of the result of corruption which could harm the state finance and economy as referred in Article 2 and Article 3 of the Law on Corruption Eradication, so to return the loss it needs medium of juridical which is in the form of payment of compensation as intended in article 18 of Law on Corruption Eradication.[8] Compensation is a form of extra punishment (criminal) in a corruption case. Essentially, both legally and doctrinally,

[8]Penjelasan Umum UU No. 31 Tahun 1999

Volume 1, Issue 11, pp. 30-35, 2017. ISSN (Online): 2456-7361

judges are not required to always impose additional criminal charges. However, specifically for corruption cases it is necessary to be noticed. This is because corruption is an act that is against the law that harms or can harm the state finances. In this case the loss of the country must be returned. One way that can be used to return the state's losses is to require defendant who is proven and convinced to do corruption to return to the country in the form of replacement money. Thus, although the replacement money is only an additional penalty, it is not wise to allow the defendant to pay no substitute money as a way to recover the state's losses. The defendant of corruption case that has been proven and convinced to corruption is exempt from the obligation to pay substitute money if the surcharges can be compensated with the defendant's wealth claimed for the state or the defendant does not enjoy the money, or there have been other defendants convicted pay replacement money, or the state losses can still be collected from other parties. The amount of replacement money is a state loss that is actually enjoyed or enriched by the defendant or due to a certain causality, so that the defendant is responsible for all state losses. The law provides special emphasis on the amount of replacement money that is equal to the amount of asset obtained from corruption. Juridically, this should mean that the losses which can be charged to the convict is the loss of the State whose amount is real and certain in number as a result of the unlawful act which is intentionally or negligently conducted by the convict. Therefore, that the asset obtained by convicts from corruption should be immediately taken for the state.[9]

In the legal system in Indonesia, asset seizure is part of additional criminal action in the form of confiscation of certain goods resulting from a crime. This is applied generally to any criminal acts occurred in the realm of criminal law in Indonesia with the purpose of harming the convict which is proven through a binding court decision who have committed a crime so that it cannot enjoy the proceeds of a crime. The consequence of additional criminal is that the additional criminal cannot stand alone and always follow basic case, meaning that additional criminal can only be convicted along with principal punishment. The seizure of asset resulted from criminal can only be done if the principal case is examined and the defendant is proven guilty, the goods obtained from the crime, by the court may be determined to be seized by the State to be destroyed by doing another act in order to make the goods or assets available for the benefit of the state by granting them or conducting an auction on the assets of a criminal act. In the provisions contained in the criminal law in Indonesia, the deprivation of certain goods can only be made by a court decision which has binding legal force. Thus, during the process of law enforcement of a crime, another action can be done that is foreclosure. Foreclosures are forced attempts by investigators to take over and store objects (assets) for the sake of verification in law enforcement processes at both the investigation, prosecution and trial stages. It is temporary that can only be done with the permission of the chairman of local district court, but in urgent circumstances it can be seized first and then that seizure is reported to the chairman of local district court for getting approval.

Further provisions on foreclosures are contained in Article 39 of the Criminal Procedure Code. The Article provides for the provision of goods that are for foreclosure. The goods are objects or bills of a suspect or defendant that are wholly or allegedly obtained from a crime or part of a criminal act; objects that have been used directly to commit a crime or to prepare it; objects which are used for obstruct the investigation of a crime; objects that are specially made or intended to commit a crime; other objects that have a direct relationship to the crime committed. The Criminal Procedure Code also restricts confiscated items, i.e. only on objects directly related to criminal offenses, objects which are not directly related to the occurrence of a criminal event cannot be seized by the investigator. In the event of being caught red-handed, the investigator may confiscate objects and equipment that are reasonably suspected to have been used to commit a crime as evidence. Confiscated items may be returned to the most eligible persons when the investigation and prosecution do not require the seizure. In addition, confiscated goods can also be returned when the incident is not prosecuted because it is stated that it has not enough evidence and is declared as not a crime. Other conditions in which confiscated goods may be returned are when there is a waiver of the case for the sake of the public or the case is closed by law, except where it is obtained from a criminal act or used to commit a crime.

By using this mechanism, the seizure of the assets of the proceeds of crime is not maximal because the objects that can be confiscated and seized are the only objects that have direct relevance to a crime. This becomes an obstacle for law enforcement officers who make confiscation or seizure because sorting out any items that are directly related or which goods are not directly linked to a criminal offense takes time while the nature of confiscation and seizure requires the speed so that the existing assets move to other hands. By using the existing mechanisms of the Criminal Procedure Code, the practice of the asset seizure of the criminal proceeds take a very long time, because the time taken for a case to obtain a binding ruling may cost months or even months. The length of time required, allowing the defendant to hide the assets acquired and used in a crime so that the original purpose of asset seizure, which is to seize the proceeds of crime so that the perpetrator cannot enjoy the wealth that is not his rights because the perpetrator has made an attempt to flee the asset.

The asset seizure mechanism as written in the Criminal Procedure Code as mentioned above focuses on the disclosure of a criminal offense, in which there is an element of finding the perpetrator and placing the perpetrator in jail and simply placing the asset seizure as an additional penalty is not yet effective enough to suppress the crime rate. By not making asset seizure as the focus of law enforcement of criminal acts that have economic elements, there is a neglect of the perpetrators of criminal acts to control and enjoy the proceeds of crime and even repeat the criminal acts that he once committed even with a more sophisticated modus operandi.

[9]Guse Prayudi, Pidana Pembayaran Uang Pengganti (suatu tinjauan terhadap ketentuan pasal 18 angka 1 huruf b Undang-Undang Nomor 31 Tahun 1999).

The existence of a subsidiary mechanism (reimbursement) for the payment of assets resulting from criminal acts also led to the effort to seize the assets of the proceeds of crime becomes less effective. For most of the convicts would prefer to declare their inability to return the assets resulting from the crime they committed, so that their incapacity would be rewarded with a confinement in lieu. The existence of a subsidiary mechanism whose duration does not exceed the threat of main criminal punishment as indemnity for the number of assets that must be paid to the state would be a very promising alternative for the convicts, rather than having to return the assets of the crime they committed.

In addition to the arrangements contained in the Criminal Code and Criminal Procedure Code, in the current legal system in Indonesia there have been provisions regarding the seizure of assets in the Corruption Act. In general, the Corruption Act uses 2 (two) mechanisms for asset seizure, which are criminal mechanism and civil mechanism. The criminal mechanism is regulated in Article 18 Paragraph (1) letter (a), in that provision the asset seizure in a corruption case shall be regulated in the provision of asset seizure that commonly applied which is similar to the provision existed in the Criminal Procedure Code. In addition to criminal mechanism, the Corruption Act also provides for the mechanism of seizure of assets in a civil case in Article 32 Paragraph (1). In such provisions when the Investigator finds and believes that a criminal act of corruption does not contain sufficient evidence, but there is a real loss of state, the investigator may submit the case file of that investigation result to the Attorney General or the aggrieved institution to file a civil suit. In addition, the acquittal verdict in the criminal act of corruption also does not abolish the state's right to file claims for losses of the state's finances. Beside the above circumstances, there are several circumstances that is possibly done in doing seizure of assets of corruption. The situation that is meant is when the defendant dies during investigation.[10] Then when the defendant dies at the time of the hearing in the court.[11] When the court decision on the case that is meant already have permanent legal force and it is known that there are still treasures of the convict that is suspected or reasonably suspected from corruption and have not seized by the state because the convict cannot prove that the asset is not derived from corruption.[12] It is also when the defendant dies before the court decision is imposed.[13] The seizure of assets through a civil suit with the circumstances as mentioned above, can only be done when the state financial losses have been really existed. This lawsuit is filed by the Attorney General or aggrieved institution by a convict or an heir.

In the case of seizure of confiscated assets against the defendant who dies cannot be applied for an appeal. The civil mechanisms in seizure is made in the context of the return of assets used in conducting corruption and/ or result of the corruption. The effort to recover the corrupted state's losses through asset seizure in civil mechanism is directed at two sources, which are the result of corruption that has become part of the defendant's wealth or the convict, and the compensation of the convict's wealth, the defendant, the suspect even if the result of corruption is not owned. The circumstances in which the criminal cannot be used again because there is no enough evidence to be found; death of suspect, defendant, convict; the defendant is decided to be free; the existence of the notion that there is a result of corruption that has not been seizure for the state even though the court's decision has a permanent legal force. With the arrangement of civil lawsuit for asset seizure in the Corruption Act in Articles 32, 33, 34 and 38C.

From Law of Corruption it can be concluded that without the existence of that regulation so the asset seizure from the corruption criminal act by using civil mechanism cannot be done. Asset seizure by using civil mechanism in Law of corruption criminal act and Criminal Code and Criminal Procedure Code principally do not have basic difference, because they equally wait binding court decision, need long time and is not maximal in attempt of the state's finance recovery that is corrupted. The availability of civil mechanism in asset seizure of result of corruption criminal act can cover the weakness of civil mechanism that is keeping to be able to bring a suit even suspect, defendant or convict die then it can increase the attempt of state's finance recovery that is corrupted. On the other hand, the availability of civil mechanism in the attempt of asset seizure of result of corruption criminal act as regulated in Law of corruption criminal act has also not been maximal because process of civil follow formal verification system which practically can be more difficult than material verification.

Thus, the implementation of asset seizure based on Law number 31 year 1999 on corruption eradication as amended with Law number 20 year 2001 has not been maximal to state's finance recovery so it needs an alternative of legal policy in attempt of state's finance recovery, which are adoption of provision of asset seizure without criminal indictment in line with Convention of UN of anti-corruption year 2003 by doing some adjustment with the existing condition in legal system in Indonesia. However, the existing provision of law is felt as not sufficient for the attempt of asset seizure of result of criminal act that is controlled by the perpetrator of criminal act. Because it is not effective enough to do asset seizure of result of criminal act, so the asset of result of criminal act that have been seized is not maximal.

Beside criminal mechanism, civil mechanism is also available in Law of Corruption Criminal Act, unfortunately because there is Law of Corruption Criminal Act, the object of arrangement in asset seizure uses civil mechanism that is only limited to corruption criminal act only. On another criminal

[10] Pasal 33 Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

[11] Pasal 34 Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

[12] Pasal 38C Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

[13] Pasal 38 (5) Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

act that there is an economic element in it, asset seizure has not been able to be conducted by using civil mechanism because there has been not been written rule that regulate it, except going through the civil track itself after criminal case *Inkracht*. According to writer, it shows that it needs change of legal policy of asset seizure in Indonesia, so that things mentioned above are not obstacle in the attempt of asset seizure in Indonesia. In Law of corruption criminal act, it places an act of asset seizure not only as criminal sanction, in an act of asset seizure it can be done when the defendant dies before the verdict is decided by obtaining the quite strong evidence which that involving person has done corruption criminal act, so the judge with the indictment of public prosecutor decides an act of seizure to the goods seized before as meant in Article 38 Number (5) of Law of Corruption Criminal Act.

IV. CONCLUSION

The conclusion of this research is that seizure of asset of corruption convict to recover the loss of finance of state that is got not from crime is very unfair, it violates Articles 17, 18, and 19 of Law No. 39 year 1999 on Human Rights, Article 28D of Constitution of Law 45, Articles 10, 39, 40, 41 of Criminal Code, Articles 38, 46 and 273 paragraph (3) of Criminal Code and it also violates Article 18 of Law of corruption eradication itself. Then before the judge give the decision of law to the convict, it should dig as objective as he could on how many convicts make a loss of finance of state and how many convicts use money of state so that the decision that is given could be objective and if that convict does not use money of state it should give the decision as fair as possible (the asset is not forced to be seized for state).

REFERENCE

Books

[1] Atmasasmita, Romli, "Korupsi, Good Governance dan Komisi Anti Korupsi Indonesia", Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman Dan Hak Asasi Manusia Republik Indonesia, 2002.
[2] Chaerudin, Syaiful Ahmad Dinar, Syarif Fadillah, "Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi", Bandung: PT. Refika Aditama, 2009.
[3] Hamzah, Andi, "Korupsi di Indonesia", Jakarta: PT. Gramedia, 1984.
[4] Indriyanto Seno Adji, "Korupsi Dan Pembalikan Beban Pembuktian, Kantor Pengacara dan Konsultan Hukum", Jakarta: Prof Oemar Seno Adji, SH & Rekan, 2006.
[5] Krisdianto, "Implikasi Hukum Penyitaan Aset Hasil Tindak Pidana Korupsi Yang Hak Kepemilikannya Telah Dialihkan Pada Pihak Ketiga", (e-Jurnal Katalogis, vol. 3, no. 12, hlm 188-200, 2015).
[6] Lopa, Baharudin, "Kejahatan Korupsi dan Penegakan Hukum", Jakarta: Kompas Media Nusantara, 2001.
[7] Prayudi, Guse, "Pidana Pembayaran Uang Pengganti (suatu tinjauan terhadap ketentuan pasal 18 angka 1 huruf b Undang-Undang Nomor 31 Tahun 1999).
[8] Robert E.Rodes, Jr., & Howard Pospesel, "Premises and Conclusion, Symbolic logic for Legal Analysis", New Yersey: Prentice Hall, Upper Saddle River, 1997.

Law and Regulation

[1] General Explanation of Law no. 31 Year 1999
[2] Article 33 of Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning the Eradication of Corruption
[3] Article 34 of Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning the Eradication of Corruption
[4] Article 38C of Law Number 20 Year 2001 concerning Amendment to Law Number 31 Year 1999 concerning the Eradication of Corruption
[5] Article 38 (5) of Law Number 20 Year 2001 regarding Amendment to Law Number 31 of 1999 concerning the Eradication of Corruption