Assets Depreciation as an Economic Challenge Assets Recovery from Corruption

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Abstract

The state goes the extra mile to recover the assets and reduce the financial loss caused by corruption, which is to execute the assets from the perpetrators who use or get by corruption activity, causing state financial loss. This research aims to identify asset depreciation as one of the economic problems of asset recovery, impacting the asset value and cost of asset maintenance. This study methodology used socio-legal research with a financial analysis from a legal perspective. The results show that asset depreciation could affect fixed asset value and asset recovery activity. Economic productive perspective implementation to the assets could benefit state financial income, reduce the cost of the maintenance of the asset, and maximize asset recovery. This research could contribute to and encourage the government to create asset management and regulation with an economic overview.

Keywords: Assets, Depreciation, Economic Challenge, Assets Recovery, Corruption, Criminal Law.

Introduction

Economic wrongdoing committed by privileged parts of high social society or economic elite is known as white-collar crime (Kamaei et al., 2023), such as corruption. Corruption is the abuse of entrusted power for private gain; the definition of corruption is broad and covers various forms of financial crime (Gottschalk, 2021). Corruption in Indonesia is rampant at multiple levels of society, including government and the private sectors, involving state officials and specific individuals who occupy essential positions in private companies (Syahrid et al., 2024). According to the World Bank, corruption is highly harmful to the stability of the economic state of affairs, especially in the private sector. Still, the consequences of corruption in public sector institutions are far more damaging and adversarial for economies than its incidence in the private sector (Shaikh & Khoso, 2019). Opportunities for crime could occur when individuals and groups engage in illegal and unethical behavior and expect, with a certain confidence, that they will avoid detection and punishment (Gottschalk P., 2018). The results of criminal acts are the blood of criminal acts, and money or assets are the blood that

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supports criminal activities (Yunus, 2014). However, the money or the assets come from the results or are sourced from illegal sources, such as criminal acts of corruption, which impact state financial losses (Syakila & Mohammad Saleh, 2024). The results of criminal acts that result in state financial losses must be recovered because they are related to the economy for various needs ranging from infrastructure development and other support in improving the community's welfare. Corruption acts and shadow economy are manifested in different parts of countries, especially during periods of economic crisis and societal transformation (Kipāne et al., 2023). Forfeiture of the proceeds of crime to recover state financial losses stems from the view that crime activity should not get paid or an individual should not benefit from the unlawful activities every human has committed (Hafid, 2021). Several acts of law enforcement actions to secure assets suspected of originating from or proceeding with criminal acts have been carried out, starting from the confiscation of both the means to commit a criminal act (Instrumentum Sceleris), confiscation of the object of criminal acts (Objectum Sceleris), and confiscation of financial benefits obtained from criminal acts (Fructum Sceleris or Productum Sceleris) (Atmasasmita, 2014). Until the execution of the assets, either sold or at auction, the purpose of the proceeds is to be returned to the state treasury.

The confiscated assets of the perpetrator of the crime will get auctioned, and the proceeds from the sale through the auction need to pay the restitution that must be paid as a form of responsibility of the perpetrator. Suppose the auction proceeds are insufficient to pay the restitution based on the judge's decision, which is the obligation of the perpetrator. In that case, it will be calculated how much state loss is the responsibility of the defendant and how long the defendant is likely to be in prison as an effort to replace the restitution responsibility. If the reviewed state losses cannot be made through confiscating the defendant's assets, imprisonment will replace the punishment (Mariana et al., 2022). Asset forfeiture to recover state losses is a solution that can eradicate criminal acts in several cases, such as corruption, in dealing with legal issues conceptually and operationally (Susetyo & Supanto, 2023).

Assets that are seized and then executed, and then the proceeds are returned to the state, are assets that get permanent legal standing. Regulations on the management of confiscated assets, among others, refer to Article 273 paragraph (3) of Law No. 8 of 1981 based on the Criminal Procedure Code. Furthermore, Chapter IX of Government Regulation Number 27 of 1983 concerning implementing the Criminal Procedure Code. In addition, there are also regulations in several ministries/institutions, such as Circular Letter of the Attorney General Number SE-03/B/8.5/8/1988, concerning the Settlement of Confiscated Goods.

Other laws and regulations are Government Regulation Number 27 of 2014 concerning Management of State or Local Property as amended by Government Regulation Number 28 of 2020, Attorney General Regulation Number 7 of 2020 concerning the Second Amendment to Attorney General Regulation Number Per-027/A/JA/10/2014 concerning Guidelines for Asset Recovery, Minister of Finance Regulation Number 145/PMK.06/2021 concerning Management of State Property Derived from State Confiscated Goods and Gratuities. Indonesia has several institutions that manage spoiled assets. The institutions in question are the Directorate General of State Assets (DJKN), there is the Asset Recovery Center (PPA), the Corruption Eradication Commission (KPK), and the State Confiscated Object Storage House (Rupbasan).

State financial losses are shortages of money, securities, and accurate and definite goods due to unlawful acts either intentionally or negligently, as explained in Article 1, paragraph 22 of Law Number 1 Year 2004 concerning state treasury. State financial loss can be defined broadly; although no actual economic loss occurs, there is a potential risk of loss to the state. State financial losses are related to reducing state money or goods and incurring government obligations that should not exist. In practice, state losses often occur because there are several ways or methods of calculating state financial losses (Kurniawan et al., 2022). This is because assets originating or resulting from criminal acts that have been confiscated or executed by law enforcement officials are assets that are for consumptive purposes, such as motorized vehicles such as cars and motorcycles, residences such as houses and apartments to office buildings, hotels, land and other assets both movable and immovable which these assets have a low level of liquidity when compared to cash, gold, shares or bonds and receivables. With a low level of liquidity, these assets will be difficult to sell, and there is a risk of a decline in value (depreciation) if the asset is sold after a while.

Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 Second Amendment to Regulation of the Attorney General Number Per-027/A/JA/10/2014 concerning Guidelines for Asset Recovery explains the role of the Asset Recovery Center, which is a Prosecutor's Work Unit devoted to organizing asset recovery, in Chapter IV concerning Asset Maintenance for goods or assets that require high maintenance costs while their selling value is decreasing over time for the benefit of asset recovery can be sold by auction. Still, it does not necessarily mean that the assets can be sold immediately by auction mechanism or that the proceeds from the sale will cover the costs incurred for care and maintenance and cover state losses arising from criminal acts. Although characterized by weakness or ineffectiveness, anticorruption strategies are governed and advanced through a multilevel approach (Winter & Vozza, 2022).

Based on this description, the depreciation of the value of assets resulting from criminal acts is a real challenge in efforts to recover and return state financial losses that require resolution not only with a legal approach through the formation of laws and regulations but also the need to take an economical approach to assets resulting from criminal acts to streamline the recovery and return of state financial losses.

Research Methods

This research uses socio-legal research from an economic perspective. The characteristics of this research using law and economics are to analyze and approach the issues with a financial perspective, the goals to maximize rational behavior of the market and legal implication side, And assess and evaluate how the law product works in efficiency aspect, beneficial aspect, and nature of ideal law (Irwansyah & Yunus, 2020). Economic analysis of law starts with an economic theory, assumes that the theory's premises are valid, and then uses it to make sense of the legal and institutional framework. Conversely, law and economics emphasize institutional detail that escapes "pure" economic theory, sacrificing technical sophistication for greater realism and policy relevance (Salama, 2022). This research uses descriptive-prescriptive writing to describe and explain phenomena and provide solutions or recommendations (Karianga & Fernando, 2024).

Regulation Assets Recovery Management Due to Corruption

The dynamics speak in recovering the assets derived from criminal acts, one of which is corruption, which is problematic. The effectiveness of countering the illegal withdrawal of capital and ensuring the return of assets is the imperfection of the current legislation, the humanity of criminal legislation, weak explanatory work among the population about schemes and methods of illegal withdrawal of capital, lack of a coherent algorithm of actions of law enforcement officers to work with foreign colleagues on the return of capital and ensuring the return of assets; lack of simultaneous investigation of criminal cases (Mynzhanov et al., 2024). The seizure of the perpetrator's assets from the investigative phase onward (Hendriana et al., 2024). There is now a market for anticorruption enforcement that, though still emerging, is globalizing. Several political, economic, and legal forces have shaped it and will continue to do so (Brewster & Buell, 2017).

Graphical data from the Indonesia Corruption Watch (ICW) shows the number of cases, suspects, and estimated value of state losses experienced around 2022.

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Figure 1. Graphical data number of cases, suspects by Indonesia Law Enforcers

Next, chart data from several sources related to the number of state losses from corruption compared to the amount of assets recovered from corruption obtained from data of all law enforcers in 2022.

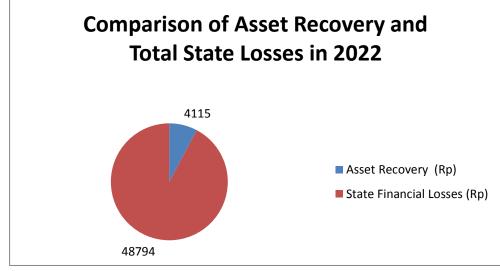


 Figure 2. Data of assets recovery from all law enforcers (Prosecutor, Police,

 KPK) compared with state financial losses

The table data collected from several sources shows that the state's financial losses due to corruption amounted to IDR 48,794 Trillion. In contrast, the assets recovered by all law enforcers, the Prosecutor, the Police, and KPK amounted to IDR 4,115 trillion, or only about 8.43% of the total state losses incurred.

The return of state financial losses from criminal offenses often does not provide appropriate results. There has been a shift in the view of crime prevention, especially related to finance and its derivatives. This impacts the attitude of law enforcement officials and the government because if only referring to the punishment of criminals is not enough, asset recovery through asset recovery mechanisms, be it from confiscation or seizure, must also be implemented (Miladmahesi, 2020). A need for precise mechanisms and policy formulations, especially with criminal law policies related to asset forfeiture, to optimize the return of assets to the state, and the perpetrators of criminal acts will not enjoy the results of these criminal acts (Shibuya et al., 2016).

People who are victims of crime and experience economic losses are not only resolving the case or case to trial through the justice system, but the state also needs to guarantee protection against the incidence of economic losses due to criminal acts (Sulaksono & Novianto, 2019). The return of financial losses state assets that have been taken and the loss of state finances is essential for the management and development of the country, especially developing countries because the return of stolen assets does not merely restore state assets but also aims at law enforcement which shows the rule of law that no one is immune to the law. According to Andi Hamzah, asset confiscation is usually associated with confiscation as an additional punishment carried out not only on the perpetrator's assets but also as a preparation for the further punishment of confiscation and payment of restitution (Karinda et al., 2022). Assets are considered relevant assets if there is a reason that the asset fails and there is a lack of evidence to initiate criminal charges. Then, the civil lawsuit is carried out by the reverse proof mechanism through the government providing evidence explaining that the asset is the result of or related to a criminal offense (Lutfi & Putri, 2020).

Assets are divided into current assets, fixed assets, and non-current assets; current assets are assets that have a high turnover rate and can be used as cash, with a period of one year, as for what is included in the category of current assets, among others, money, gold, bonds, stocks, accounts receivable, and inventory. In contrast, fixed assets are assets that, if you want to be converted into cash, require a longer time or period than current assets, or if you want to cash out, it will be more challenging than current assets (Fahmi, 2015). Fixed assets are then divided into tangible fixed assets, for example, machinery, equipment, vehicles, buildings, and land, and intangible fixed assets, such as software, recipes, formulas, designs,

and trademarks. Fixed assets experience depreciation of value every year, the size of which is determined by several things, including 1. The initial value of the asset plus the cost or cost used during the remaining life of the asset; 2. Residual value or residual value is the estimated value of the realization of the asset plus the end of the service life; 3. Estimated economic life forecasts, how long the asset can be used, and four calculation methods are used (Hartoko, 2017). Asset depreciation is a gradual decrease in the value of an asset over time. The value of an item can vary depending on the type of item and the maintenance performed on the item. Maintenance can slow down the depreciation of goods, and the value of goods still needs to experience a sharp decline (Fahmi, 2015).

To reduce the impact of asset value depreciation, the state needs to spend the cost of care and maintenance on these assets so that the value of these assets does not experience a significant decline. When referring to the Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 Second Amendment to the Regulation of the Attorney General Number Per-027/A/JA/10/2014 concerning Guidelines for Asset Recovery, it is not explicitly and comprehensively related to efforts to reduce the impact of asset depreciation. Still, if you refer to this regulation, there are principles in implementing asset recovery, including: 1. Effective, its implementation must be appropriately on target and as needed; 2. Efficient asset recovery activities must be carried out quickly and with the minimum possible cost and maximum results; 3. Transparent, namely, the spoiled assets must be monitored by related parties and the community as needed; 4. Accountable, accountable according to regulations, 5. Integrated through one system and an integrated unit.

When referring to the principle, there are discrepancies, especially in the application of the principle of efficiency, where, in reality, the executed assets have not obtained maximum results because the maintenance of high assets does not cover the maintenance costs or state financial losses incurred, preservation of assets and preservation of assets seized by requiring specificity makes the state bear the cost or maintenance costs as long as the asset has not been sold. The mechanism of sale through auction is also considered ineffective in preventing depreciation and high maintenance of assets because there are factors that affect purchasing power, including (a) income, (b) price, (c) product quality, (d) location, (Herlina et al., 2022); and (e) demand or needs. Related to the management and purpose of recovering state financial losses, fixed assets that are then seized by the state and need to be executed immediately need to be considered regarding the determination of the target market by considering factors that affect purchasing power as a form of implementation of the principle of efficiency.

According to Richard Allan Posner, the law can reduce or even eliminate costs. The cost here is in the sense that it needs to be understood not only as a cost but also as a burden that must be borne or borne by someone or by a party (Irwansyah, 2020). From this, it can be concluded that broadly speaking, the party in this sense is the state needs to issue legal products that can reduce or even eliminate costs when it comes to asset recovery for state financial losses and maximize asset management following the application of efficient principles as a form of implementation in the recovery and return of state financial losses.

In several cases of criminal acts that result in state losses, such as corruption, the majority of assets confiscated and then seized by the state are fixed assets (non-current assets or fixed assets), for example, houses, land, vehicles, machinery, and other goods that are for consumptive purposes as an example of the assets of PT Duta Graha Indah (PT DGI) which were executed which also involved Nazaruddin Zulkarnain including corporate assets that were involved in corruption cases. With a total of Rp. 85.490 billion, and based on the Corruption Eradicate Commission (KPK) website and the Attorney General's Asset Recovery Center (PPA) website related to auction announcements and confiscated goods sold, the majority are fixed assets such as vacant land, houses, apartments, buildings, vehicles, offices, cellphones, machines, bags and so on. There is a possible legal gap where there is a difference in the return of state financial losses, as well as the inability to pay restitution by the perpetrator, and there is also a weakness if the wealth or assets of the perpetrator cannot be found, either hidden or insufficient, it can be replaced with confinement. This is a big gap and weakness in the recovery and return of state finances where there should be a distinction between corporal punishment and financial punishment, insufficient restitution charged by the perpetrator of the crime should be considered as a debt that must be paid in the future if the wealth is inadequate when the execution is carried out and can be billed to the heirs (Ubaidila et al., 2024). This will also provide a deterrent effect to those who will try to commit crimes that have an impact on state financial losses, and also to avoid if the perpetrator dies, the obligations related to economic crimes will still run and will be the responsibility of the perpetrator's heirs.

Asset Management Become Productive Asset Concept Model in Asset Recovery

The growth of attraction has not been consistent in the international overview, and despite the label of global economic crisis, not all nations have been to the same degree (Khan & Mahmood, 2017). In addition to law enforcement and increased public trust with various actions to restore illegally obtained wealth, the

perpetrators will face financial impacts and also provide a deterrent effect because there is no profit obtained from the results of criminal acts that have been committed because various asset confiscation actions against the perpetrators harm them economically. Increased sources of state financial income are also economic points from the recovery of illegally obtained criminal assets, which have an impact on contributing to the development and welfare of the community, reducing the country's dependence on debt (Azrica et al., 2023) and increasing investor confidence to invest in the country.

Asset management, which makes fixed assets productive, is also one way to reduce the impact of depreciation. Apart from being productive and being able to finance its maintenance costs, the asset also avoids premature damage due to not being operated or used. This was conveyed by the Head of the Attorney General's Office of the Republic of Indonesia Asset Management Agency, Amir Yanto, at the Public Lecture at the Hasanuddin University Faculty of Law on Friday, June 14, 2024, with the theme Asset Recovery Strategy in Efforts to Prevent and Counter Corruption. Amir Yanto said that some assets have been seized but are constrained to be sold because they have been marketed for sale and passed the auction stage. Still, the demand and market are limited, for example, the smelter machine where the maintenance of the machine is not cheap, and if it is not operated, there is a risk of damage. Therefore, the machine continues to operate and is managed by the state, where the production goes to the state treasury. This can also be applied to several other fixed assets that are difficult to sell and require high maintenance costs, such as hotels, aircraft, ships, and other vehicles. Cooperation is also needed by all government agencies in managing assets that require high maintenance costs and are difficult to sell, such as hotel assets that are currently confiscated can be managed into multipurpose buildings or used by government agencies or managed by BUMN to remain productive so that maintenance costs suppress depreciation and can even increase state income. Other fixed assets, such as vehicles, can also be managed into productive assets, such as aircraft and ships, whose management can be handed over to companies under the auspices of BUMN to be leased or even purchased so that these assets become a source of state financial income because they are managed into productive assets. The asset management that has been discussed can be done if the asset cannot be sold even through an auction mechanism. The sales or marketing mechanism within government agencies can also be considered. The need for regulations that favor asset recovery is related to the procurement of goods in internal government agencies, both regional and central or other government agencies, by prioritizing the procurement of asset purchases originating from assets seized by the state to impact saving state spending.

Conclusion

Asset value depreciation is a real challenge when recovering assets from corruption-related criminal acts. Assets with a low level of liquidity need to be maintained so that the depreciation of their value does not experience a significant decrease from the original purchase price. The dilemmatic problem faced is that, on the one hand, the assets resulting from the crime need to be immediately executed and sold either directly or through an auction mechanism so that state losses are immediately covered. On the other hand, the state bears the cost of maintaining assets with low liquidity or not being sold. This maintenance cost is mandatory so that the asset does not decrease in value, and the resale value can cover the state's financial losses while covering the costs incurred for maintenance and maintenance. The formulation of laws and regulations related to governance and comprehensive implementing rules are needed for the maintenance and management of assets so that with these regulations, the risk of depreciation of assets can be appropriately suppressed management and maintenance, which will have an impact on maximizing the recovery of state financial losses and reducing costs incurred by the state related to maintenance. In the future, law enforcement policies and regulations must also consider the benefits and losses that arise and not only focus on punishing the perpetrators of criminal acts. Taking an economic approach so that assets become productive and managing assets with a high level of maintenance costs with low liquidity so that they can be managed and produced so that the cost of maintaining these assets does not need to be a burden on the state, but the results of production or profit from production will finance its maintenance costs to have an impact on increasing state income and effectively recovering state losses. Still, the implementation and management need to involve all parties so that they are not misused and become a new forum for criminal acts of corruption. An asset forfeiture law is also crucial in supporting the duties of law enforcers in confiscating and seizing assets of corruption crimes for asset recovery.

About what has been stated, there are recommendations related to the topics previously discussed.

- The need for the establishment and implementation of an asset forfeiture law that thoroughly regulates not only the mechanism of asset seizure and confiscation but also asset management
- There is a need for synergy between law enforcement and government business entities, especially in the management of seized fixed assets with high management and maintenance costs. These assets need to be managed and can provide economic effects so that the cost burden related to maintenance does not become a burden for the state.

Carrying out proper management and management of asset recovery will reduce the impact of asset depreciation and maximize the return of state losses, not burden the state related to asset maintenance and maintenance.

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