

Juridical Review of The Goods Decision Evidence of Economic Value for Destroyed

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Abstract. A judge's decision regarding evidence in a criminal case does not rule out the possibility of causing problems in the future, including the emergence of material losses, namely the convict's belongings used in the crime and used as evidence that was not returned to the defendant for destruction. This type of research is library research. The data or materials needed to complete the research come from the literature in journals, books, research reports, etc. Data collection is obtained from secondary legal materials, and the approach is normative. A normative juridical approach is taken to seek the truth by looking at the principles in the provisions of the law. The results of this study include, among others, the regulation of positive Indonesian law regarding the seizure of evidence of economic value to be destroyed, which has been regulated in Article 194 paragraph (1) of the Criminal Procedure Code and is one of the additional penalties and is regulated in Article 10 letter b number 2e of the Criminal Code and Considerations The judge in deciding the destruction of evidence in the case of theft by weighting takes action on the fate of the evidence in the form of 1 (one) motorcycle belonging to the defendant under Article 194 paragraph (1) of the Criminal Procedure Code.

Keywords: Castration; Sexual Crimes; Child Protection

1 Introduction

Evidence also receives attention because obtaining evidence must be carried out by coercive measures that can be carried out against someone's property rights to an object and therefore related to human rights. This effort is known as 'Confiscation,' a series of investigative actions to take over and or keep under its control movable or immovable objects, tangible or intangible, for proof in investigation, prosecution, and trial. Investigators only own efforts to force the confiscation of evidence.[1] Confiscation as a form of coercion must require permission from the court for its implementation in a permit from the Head of the District Court. With the investigator's confiscation action, certain goods or objects will be obtained, which can be used as evidence in the examination process before the trial.

The court decision reads that evidence is seized to assist the state or annihilated or harmed so it can't be utilized once more (Article 194 passage (1) of the Criminal Procedure Code).[2] The confiscation of certain goods is one of the additional penalties based on Article 10, letter b no 2e of the Criminal Code. This is described in Article 39 of the Criminal Code. Court decisions that stipulate that evidence is confiscated for the state are usually found in cases of forestry

crimes, smuggling, and others. The seized goods have economic value and can be sold/auctioned. Then the proceeds of the auction become the property of the state.[3] There are also state looted goods that cannot be sold/auctioned, namely goods that are prohibited or prohibited from being circulated, because the public cannot own these objects. Against these objects, according to Article 45 paragraph (4) of the Criminal Procedure Code and its explanations are damaged to be destroyed.

Article 194 paragraph (1) of the Criminal Procedure Code (KUHP) stipulates that in the case of a sentencing decision or acquittal or acquittal from all legal claims, the court stipulates that the confiscated evidence be handed over to the party most entitled to receive it back whose names are listed in the decision unless according to the provisions of the law the evidence must be confiscated in the interest of the state or destroyed or damaged so that it cannot be used anymore. Determination of the execution of evidence is a very complicated matter, so that in the examination carried out by the panel of judges it is necessary to explore the relationship between evidence and actions and the status of rights to the evidence, besides that accuracy and prudence are needed in deciding the status of the evidence.[4]

Article 183 of the Criminal Procedure Code specifies that an appointed authority may not force a sentence on an individual except if with no less than two legitimate bits of proof he gets the conviction that a lawbreaker act has really happened and that the litigant is at fault for perpetrating it. The article has decided two circumstances that should be met to announce an individual liable and force a sentence, to be specific (1) the presence of something like two legitimate bits of proof; (2) there is an adjudicator's conviction acquired in light of the lawful proof.

In addition to the term evidence, the term evidence is also known. From the list of legal evidence presented above, it appears that the evidence is not mentioned as being included as one of the legal evidence [5]. In other words, evidence is not evidence. In connection with this, the KUHP has also determined what things or points must be included in a decision containing the punishment. Evidence such as narcotics/psychotropics used or traded, firearms and sharp weapons used to kill or injure the victim, are important evidence of the defendant's guilt.

Objects or evidence is urgently needed to support the evidence as stated in Article 184 of the Criminal Procedure Code. In a case where there has been a conflict of legal interest and legal obligation, evidence is used as a clue to uncover a criminal case. The position of the case is described briefly. The incident of the death of a grandmother in a fire incident due to the negligence of someone who wanted to provide help caused that person to be accused of being a suspect in the case of the grandmother's death. Basically, this person had good intentions to help the grandmother, but fate actually happened to him and the grandmother died, so that someone had to deal with the police.

The public in general does not understand that court decisions on criminal cases are not only related to the defendant, but court decisions also contain the execution of evidence that existed during the trial process. A judge's decision regarding evidence in a criminal case does not rule out the possibility of causing problems in its implementation in the future.

2 Research Methods

This type of research is library research. Writing research will be research that is completed utilizing writing (library), either as note pads, or reports on research results from past examination.[6] This research is a type of library research, because it uses secondary data in the form of court decisions number 78/Pid.B/2019/PN Tgl.), and other library materials.

library research, because it uses secondary data in the form of court decisions number 78/Pid.B/2019/PN Tgl.), and other library materials. The researcher uses a normative approach because it examines the legal basis for the judge's consideration of evidence that has economic value to be destroyed.

The source of information utilized in this exploration is auxiliary information. Optional information sources will be wellsprings of exploration information got through go-between media or by implication as books, records, existing proof, or documents, both distributed and unpublished overall. This study utilizes auxiliary information on the grounds that the information utilized are as authoritative reports.[7]

The method used in collecting data used in the research is literature. Writing study is a movement to gather data pertinent to the point or issue that is the object of exploration. Researchers collect library data through online searches (internet). Researchers also explore additional information by conducting interviews, through books, papers and research reports.

The data analysis method was carried out qualitatively. Qualitative methods are efforts made by working with information, putting together information, arranging it into a solitary unit that can be made due, incorporating, looking for and tracking down designs, finding what is significant and what is realized and finding what can be told to other people. utilizing subjective information investigation.

3 Results and Discussion

3.1 Arrangements for the confiscation of evidence of economic value are regulated in Indonesian positive law

The procedure for law enforcement officials to carry out their duties in society, whether it is a preventive measure or an eradication/repressive action (repressive), is the Criminal Procedure Code which has the point of finding and bringing the material truth closer, specifically the total reality of a case. criminal regulation by specifying the arrangements of the criminal technique regulation in a legitimate and exact way.[8] The purpose of the procedural law is to find perpetrators who can be charged with violating the law and then order an examination and give a decision by the court to determine whether a criminal act has been committed and someone is charged with a crime. The handling of a criminal case is started by the investigator after receiving a report and/or complaint from the public or knowing the occurrence of a criminal act, then being prosecuted by the public prosecutor by delegating the case to the court. Furthermore, the judge will examine whether the indictment of the public prosecutor directed against the defendant is proven or not.[9]

The most important issue in any criminal process is about proof, because it is from the answer to this question that the accused will be found guilty or acquitted. For the sake of proof, the presence of objects involved in a crime is very necessary. The objects referred to are commonly known as evidence or *corpus delicti*, namely evidence of crime.[10] The evidence has a very important role in the criminal process. According to Andi Hamzah, evidence can be described as follows: "The term evidence in a criminal case is the item on which the offense was committed (the object of the offense) and the item with which the offense is committed, such as a knife used to stab people. Including evidence is the result of the offense. For example, state money is used (corruption) to buy a private house, then the private house is evidence or the proceeds of an offense."

Evidence that is not an object, evidence or the proceeds of an offense but can also be used as evidence as long as the evidence has a direct relationship with the crime, for example, the

money used by the victim when he committed a crime of corruption can be used as evidence. The definition of confiscated objects is closely related to evidence because confiscated objects are evidence of a criminal case confiscated by authorized law enforcement officers for the purpose of evidence in court. The term evidence in Dutch means "bewijsgoed" both in wetboek van strafrecht voor Indonesia, as well as in Het Herziene Inlandsch Reglemen and in other laws and regulations. Evidence in this case are items that are needed as evidence, especially the evidence as stated in the testimony of witnesses or the testimony of the defendant.

In the laws of the Republic of Indonesia Article 42 HIR is translated "courts or officials and special people who are obliged to investigate crimes and further violations must seek and confiscate the goods used." Thus, confiscated objects as additional penalties (Article 10 of the Criminal Code) can result in a transfer of ownership from personal to state. Confiscation of objects is part of an additional crime for perpetrators of criminal acts, including the confiscation of certain goods, this is very clearly regulated in Article 10 of the Criminal Code.

Furthermore, confiscated objects have a very important role in the criminal process, even though all the existing rules do not have a single article that provides a definition or understanding of confiscated objects implicitly (implied) or actually. However, it is necessary to provide limitations that confiscated objects are movable objects or immovable objects, tangible or intangible which are taken over or stored in the control of investigators for the benefit of investigators, prosecution and courts or in other words what is meant by confiscated goods are confiscated goods or objects, proceeds of a confiscation.

According to the Indonesian dictionary, confiscated objects are assets or valuables and everything that is tangible or has a body. Seizure means the matter of taking and holding part of the goods which is carried out according to a judge's decision or by the police. The definition of confiscated objects is closely related to evidence because confiscated objects are evidence of a criminal case confiscated by authorized law enforcement officers for the purpose of evidence in court. The term evidence in Dutch means bewijsgoed both in wetboek van strafrecht voor Indonesia, as well as in Het Herziene Inlandsch Reglemen and in other laws and regulations. Evidence in this case are items needed as evidence, especially evidence as stated in the testimony of witnesses or the testimony of the defendant.

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Confiscation in the Criminal Procedure Code (KUHAP) is regulated separately in two places, most of which are regulated in Chapter V, the fourth part of Article 38 to 46 of the Criminal Procedure Code and a small part is regulated in Chapter XIV regarding confiscation as stated in Article 1 point 16 KUHAP, namely a progression of moves by agents to make over as well as hold heavily influenced by mobile items, unmistakable or theoretical for evidence in examination, arraignment and assessment in court.

From the definition above, it very well may be presumed that seizure is remembered for the examination stage since it is supposed to be "a progression of analytical activities for proof in a crook interaction; Confiscation is a confiscation of capacity under the examiner's influence of an article having a place with someone else; The seized objects are mobile and unflinching, unmistakable and elusive; The seizure is for evidentiary purposes. Here there is a genuine downside that seizure ought to be done for evidence, yet additionally for objects that can be confiscated. This is regulated in Article 94 Ned, Sv (Dutch Criminal Procedure Code).

In Article 94 Ned. It is determined that what can be confiscated apart from those which are useful for seeking the truth (evidence) are also objects which can be decided to be confiscated, damaged or destroyed. The limitation on confiscation as mentioned above in Article 1 point 16 of the Criminal Procedure Code is only limited for the purpose of proof in investigations, public prosecutors and courts. The similarity of the two definitions is the return and control of other people's property so that by itself it directly touches and contradicts human rights so that the main issue is seizing control over other people's property.

According to Andi Hamzah, usually objects that can be confiscated are in the form of "used to commit the offense" which is known as the phrase "with which the offense was committed" and "object which is the object of the offense" and is known as the phrase "regarding which offense was committed. In general, objects that can be confiscated are divided into: 1. Objects that are used as a tool to commit a crime (in the Science of Law an act is called "Instrumental Delicti"); 2. Objects obtained or from the proceeds of a criminal act (also called "corpora delicti"); 3. Other objects that are not directly related to the crime, but have strong reasons for evidence; 4. Substitute evidence, for example the stolen object is money, then with that money buy a radio. In this case the radio was confiscated to be used as substitute evidence.

The Decree of the Minister of Justice of the Republic of Indonesia No M.14.PW.07.03 of 1983 concerning Guidelines for the Implementation of the Criminal Procedure Code, point 10 states that the confiscation of objects in the event that the suspect is caught red-handed does not need to obtain permission from the Head of the District Court, but after the confiscation is carried out, it is mandatory to immediately report to the Chairperson. The District Court, in accordance with the provisions of Article 38 Paragraph (2) of the Criminal Procedure Code, for being caught red-handed has the same meaning as a very necessary and urgent situation.

In the examination in court, if the judge is of the opinion that it is necessary to confiscate an item, the judge will make a determination to confiscate. Although according to Article 14 letter (j) of the Criminal Procedure Code, the public prosecutor is authorized to carry out the judge's determination, the public prosecutor only forwards the order to the investigator. It was the investigator who carried out the confiscation.

Foreclosure and confiscation are two different things. The difference is that confiscation is temporary, where someone's property is released from him for the purpose of proof (both evidence at the level of investigation, prosecution and court). If it is proven that the confiscated goods are the result of a criminal act, then the next action against the goods is to be confiscated for the state through a court decision first. If not proven, then the goods are returned to the owner.

3.2 Judge's Consideration in Deciding on the Confiscation of Economic Value Evidence to be Destroyed

In light of the aftereffects of the creator's examination of the proof, the creators contend that against the court's choice Number 78/Pid.B/2019/PN Tgl, in his decision the judge stated that the evidence was that 1 (one) unit of Honda Supra motorcycle Type NF 100 D nopol number: B-3567-T 2003 black color Frame Number MH1KEVA163K295753, along with STNK (Original) and Ignition Key. Seized for destruction according to the author is not appropriate or does not agree because the goods have economic value and can be auctioned or sold so that the auction proceeds can go to the State treasury.

In accordance with the provisions contained in Article 194 paragraph (1) of the Criminal Procedure Code, it is stated that "in the case of sentencing, or being free or free from all legal claims, the court determines that the confiscated evidence is handed over to the party most entitled to receive it. return whose names are listed in the decision unless according to the

provisions of the law the evidence must be confiscated for the benefit of the state or destroyed or damaged so that it cannot be used again". Provisions for the seizure of evidence for the state as well as provisions for the confiscation, destruction or destruction of evidence are also stated in Article 45 paragraph (4) of the Criminal Procedure Code. Article 194 paragraph (1) is the basis for the judge to decide regarding the destruction of evidence that 1 (one) unit of Honda Supra Type NF 100 D motorcycle number : B-3567-T 2003 black color Frame Number : MH1KEVA163K295753, along with STNK (Original) and the ignition key because the judge believed that the evidence was a tool used to commit a crime, so the evidence should have been destroyed so that it could no longer be used. According to the explanation of Article 45 paragraph (4) of the Criminal Procedure Code, what is meant by confiscated objects for the benefit of the state are objects that must be handed over to the relevant department in accordance with the applicable laws and regulations.

Court decisions which read that evidence is confiscated for the benefit of the state are usually found in cases of economic crimes, smuggling, firearms and explosives, and narcotics. The evidence that is confiscated for destruction is usually a tool used to commit a crime as well as items that are prohibited (Ratna Nurul Afiah, 1988: 205-206). Based on Article 197 paragraph (1) letter (d) of the Criminal Procedure Code, it is stated that the considerations compiled briefly regarding the facts and circumstances along with the evidence obtained from the examination at the trial are the basis for determining the guilt of the defendant.

The judge's consideration in a decision is said to be something that can show the honor of the judge concerned. The consideration section is very important because it shows what the judge considers in deciding the case so that the decision can fulfill legal certainty, benefit and justice. The judge's considerations in imposing a criminal sentence on the defendant must relate the criminal threat to the severity of the defendant's guilt, the background of his actions, aggravating and mitigating circumstances (Gatot Supramono, 2009: 128). Based on the explanation as stated above, in the decision of the Tegal District Court Number: 78/Pid.B/20159 PN Tgl, it is considered that the judge's actions were inappropriate in giving considerations and making decisions related to the evidence submitted to the trial. Against the defendant regarding the judge's consideration of deciding the evidence in the form of 1 (one) unit of Honda Supra motorcycle Type NF 100 D number: B-3567-T 2003 black color Number: MH1KEVA163K295753, along with STNK (Original) and key contacts to be confiscated and destroyed even though the evidence has economic value because the evidence can be sold/auctioned for the state.

In this case it shows that who is the real perpetrator of the criminal act or at least who the person must be the defendant in this case and the person who is brought before the trial is the true person who was accused by the Public Prosecutor of having committed a criminal act (strafbaar feit), and the person is physically and spiritually capable of being responsible, thus this element requires that there be no Error In Persona or wrongly confronting the defendant before the trial.

Criminal liability is a mechanism to determine whether a defendant or suspect is accountable or a criminal act has occurred or not. In this obscenity case, it has fulfilled three elements of the responsibility of the perpetrator of the crime of obscenity, namely in terms of the ability of the Defendants to be held accountable. Based on the actions of the defendant in this case, the defendant is said to be healthy or it can be said that a person who is normal in spirit and capable of being responsible because he is able to judge with his thoughts and feelings that his actions are prohibited, meaning that they are not required by law, and he should act as thoughts and feelings the.

Deliberate is an act that is desired and known. This means that someone who acts intentionally must be desired and known. This means that someone who does it intentionally must want what he did and must also know what he did. Deliberately referred to is if the maker wants the consequences of his actions. The defendant's intention was to know the possibility of the existence or consequences of a situation which constituted an offense, as evidenced by the intelligence of his mind which could be concluded, among others, assuming that the victim was only a child. The attitude towards the possibility if it arises, can be agreed or dared to take the risk, can be proven from the defendant's words around the act and does not make any effort to prevent unwanted consequences.

Every court decision, whether sentencing or acquitting or releasing from all lawsuits, must confirm the status of the evidence, unless there is no evidence in the case concerned. Court decision which reads that evidence is seized to support the state or annihilated or harmed with the goal that it can't be utilized once more (Article 194 section (1) of the Criminal Procedure Code). The seizure of specific merchandise is one of the extra punishments in light of the arrangements of Article 10 letter b number 2e of the Criminal Code. This is depicted in Article 39 of the Criminal Code. Court decisions that stipulate that evidence is confiscated for the state are usually found in cases of forestry crimes, smuggling and others. The seized goods have economic value and can be sold/auctioned then the proceeds of the auction become the property of the state.

Determination of the execution of evidence is a very complicated matter, so that in the examination carried out by the panel of judges it is necessary to explore the relationship between evidence and the actions and status of rights to the evidence.

4 Conclusion

Indonesia's positive legal regulation regarding the seizure of evidence of economic value to be destroyed is already regulated in Article 194 paragraph (1) of the Criminal Procedure Code which explains that in the case of a sentence of imprisonment or freedom from all legal claims, the court stipulates that the confiscated evidence is handed over to the party most has the right to receive back whose name is stated in the decision unless according to the arrangements of the law the proof should be seized to support the state or annihilated or harmed so it can't be utilized once more. This is one of the extra punishments and is managed in Article 10 letter b number 2e of the Criminal Code.

The judge's consideration in deciding that evidence of economic value to be destroyed belonging to the defendant related to the crime must be confiscated for destruction and if it is returned to the defendant, it will be feared that the defendant will misuse the evidence. The judge's authority is based on his belief in making decisions and is supported by the facts in the trial that the judge has inherent authority with him regarding his decision. Judges can take a stand on evidence, especially in relation to the confiscation and destruction of goods that are considered dangerous. Consideration of the Judge in Deciding the Destruction of Evidence in the case of theft with Weights taking action on the fate of the evidence in the form of 1 (one) motorcycle belonging to the defendant is in accordance with Article 194 paragraph (1) of the Criminal Procedure Code.

Determination of the execution of evidence is a very complicated matter, so that in the examination carried out by the panel of judges it is necessary to explore the relationship between evidence and the actions and status of rights to the evidence, in addition, accuracy and prudence are required in deciding the status of the evidence.

It is necessary to emphasize again the explanation of Article 194 paragraph (1) in the application of criminal law to the confiscation of evidence that has economic value confiscated for destruction must remain effectively with supervision from all law enforcement officials accompanied by members of the community with various kinds of business and take responsibility.

It is hoped that the public will understand that court decisions in criminal cases are not only related to the defendant, but also include the execution of evidence that existed during the trial process. A judge's decision regarding evidence in a criminal case does not rule out the possibility of causing problems in its implementation in the future.

References

- [1] R. Erbaş, "Effective criminal investigations for women victims of domestic violence: The approach of the ECtHR," *Womens. Stud. Int. Forum*, vol. 86, no. January, 2021, doi: 10.1016/j.wsif.2021.102468.
- [2] A. R. Assegaf, "Policy Analysis and Educational Strategy For Anti Corruption in Indonesia and Singapore," *Int. J. Asian Soc. Sci.*, vol. 5, no. 11, pp. 611–625, 2015, doi: 10.18488/journal.1/2015.5.11/1.11.611.625.
- [3] H. Khairi, "The Role of NGOs as Civil Society Control in Corruption Eradication in North Bengkulu Regency," *J. Bina Praja*, vol. 10, no. 2, pp. 159–168, 2018, doi: 10.21787/jbp.10.2018.159-168.
- [4] D. David and A. Budianto, "Legal Policy in the Sky of Higher Education as A Strategy for Empowering Indonesia Society," 2021, doi: 10.4108/eai.6-3-2021.2306408.
- [5] E. E. Supriyanto, M. Rachmawati, and F. J. Nugroho, "Transformative Policies and Infrastructure Strengthening Towards the Police Era 4.0," *J. Bina Praja*, vol. 13, pp. 231–243, 2021.
- [6] C. Maguire, "Library research: Luxury or necessity?," *Aust. Libr. J.*, vol. 60, no. 4, pp. 298–303, 2011, doi: 10.1080/00049670.2011.10722646.
- [7] S. Houghton-Jan, A. Etches-Johnson, and A. Schmidt, "The read/write web and the future of library research," *J. Libr. Adm.*, vol. 49, no. 4, pp. 365–382, 2009, doi: 10.1080/01930820902832496.
- [8] E. E. Supriyanto, H. Warsono, and H. Purnaweni, "Collaborative Governance in Investment Policy in the Special Economic Zone of Kendal Indonesia," *Budapest Int. Res. Critics Inst. Humanit. Soc. Sci.*, vol. 4, no. 4, pp. 13697–13710, 2021, doi: <https://doi.org/10.33258/birci.v4i4.3454> 13697.
- [9] F. Dalimartha and F. Santiago, "Banking Legislation Renewal as a Preventive Effort of Banking Corruption Crime," in *ICLSSEE 2021*, 2021, no. 1, doi: 10.4108/eai.6-3-2021.2306201.
- [10] D. Duriyanto, S. Riyadi, and F. Santiago, "Price Balance for the Good of Consumers and Business Actors," 2021, doi: 10.4108/eai.6-3-2021.2305979.