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The Role of The Prosecutor as Executor of Court Decisions in Returning Confiscated Objects and State Spoils in Criminal Cases

Comparing Indonesia, Malaysia, Nigeria, and Thailand

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ABSTRACT

The execution of court decisions especially for confiscated objects and state spoils face some challenges in Indonesia. This research aims to find out the the executive of court decisions in the return of evidence, as well as what factors affect the presecutor as the executor of the court's decision. The research questions formulated as *first*, what is the role of the presecutor in carrying out of the execution of the court's verdict on the return of evidence? and *second*, what are the factors that affect the presecutor as the executor of the court's decision in the return of evidence? The research method used in this research is qualitative research method with a type of socio-legal studies. This research found and highlighted that the execution of the court's decision on the status of the evidence carried out by the Prosecutor after

economics and accounting studies in the cross perspective including law and economics.

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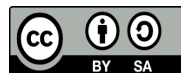
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the adjudicator's decision has been signed. There are four factors that influence the level of effectiveness of the Prosecutor as the executor of court decisions with regard to evidence, including the legal factor itself, the community factor, the law enforcement officer factor, as well as the legal facilities and facilities factor. Various regulations have been drafted, however, none of them have explicitly regulated the threat of sanctions for prosecutors who do not immediately carry out executions, lack of coordination between related parties, and limited legal facilities and facilities are factors that affect the effectiveness of prosecutors in carrying out their duties.

KEYWORDS

Prosecutor; Court Decisions; Evidence; Confiscated Object

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1 INTRODUCTION

The Attorney General's Office of the Republic of Indonesia plays a crucial role in the implementation of law-based democracy in the country. At the conclusion of the prosecution, the Prosecutor's Office is given the ability to carry out court rulings.¹

¹ Heru Suyanto, and Andriyanto Adhi Nugroho. "Realizing Indonesia Prosecutors Commission Professional and Trustworthy." *International Journal of Multicultural and Multireligious Understanding* 7, No. 5 (2020): 52-60. It is also emphasized that in Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Article 2 paragraph (1) it is emphasized that "The Attorney General's Office of the Republic of Indonesia. is a government institution that exercises state power in the field of prosecution and other authorities based on the law. The Prosecutor's Office as the controller of the case process (*Dominus Litis*), has a central position in law enforcement, because only the Prosecutor's Office can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code. Apart from being a person with *Dominus Litis*, the Prosecutor's Office is also the only agency implementing criminal decisions (*executive ambtenaar*). For this reason, the new Prosecutor's Law is seen as stronger in determining the position and role of the Indonesian Prosecutor's Office as a state government agency that exercises state power in the field of prosecution.

Several studies have even confirmed and highlighted that the Attorney General's Office has a very important and strategic role in ensuring justice and legal certainty, including in law enforcement and execution of court decisions in various criminal cases, both in cases of corruption, recovery of assets and state losses, and others.²

Therefore, prosecutors have a crucial role in the criminal justice system. This is not only a domestic issue in Indonesia, but it is also attracting international attention. One of these is mentioned in the Prosecutor's Role of Guidelines prosecutors play a crucial role on the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for the compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and effective protection of citizen againts crime.³

The Prosecutor's role and responsibilities are strategic enough that functional positions require experience in the Prosecutor's Office's organizational framework, therefore a Prosecutor with exceptional ability in carrying out his functions and

² Abvianto Syaifulloh, "Peran Kejaksaan Dalam Pengembalian Kerugian Keuangan Negara Pada Perkara Tindak Pidana Korupsi." *Indonesian Journal of Criminal Law* 1, No. 1 (2019): 47-64; Yasmirah Mandasari Saragih, "Peran Kejaksaan dalam Pemberantasan Tindak Pidana Korupsi di Indonesia Pasca Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi." *Al-Adl: Jurnal Hukum* 9, No. 1 (2017): 49-66; Syifa Vidya Sofwan, and Titin Sulastrri. "Peran Pusat Pemulihan Aset di Kejaksaan Negeri Bandung." *Akurat: Jurnal Ilmiah Akuntansi FE Unibba* 10, No. 3 (2019): 151-165; Roy Nirmawan Hulu, "Peran Kejaksaan dan Kepolisian dalam Kordinasi Melengkapi Berita Acara Pemeriksaan Pada Tahap Pra-Penuntutan." *Jurnal Ilmu Hukum* (2015): 1-18; Fahmi Fahmi, Moch Zaidun, and Bambang Suheryadi. "The Special Power Concept of State Attorney General in Preventing the Governmental Product/Service Procurement-Related Crime in Indonesia." *Yuridika* 36, No. 3 (2021): 605-638; Hibnu Nugroho, "The Prevention Program of Development Corruption by The Attorney General Office of Republic of Indonesia." *International Journal of Global Community* 4, No. 2 July (2021): 87-96.

³ Komisi Hukum Nasional RI, *Pembaharuan Kejaksaan: Pembentukan Standar Minimum Profesi Jaksa*. (Jakarta: MaPPI FHUI, 2004). In the same context, it is also emphasized that Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Please also see Antoni Bojańczyk, *The Prosecutor in Transnational Perspective*. (Oxford: Oxford University Press, 2012); Rachel E. Barkow, "Organizational Guidelines for the Prosecutor's Office." *Cardozo Law Review* 31, No. 1 (2009): 20-89; Dandurand, Yvon. "The role of prosecutors in promoting and strengthening the rule of law." *Crime, Law and Social Change* 47, No. 4 (2007): 247-259; Oksidelfa Yanto, et al. "The Role of Indictment of Public Prosecutor in Eradication of The Case of Corruption in Indonesian Criminal Justice System." *Rechtidee* 14, No. 2 (2019): 263-287; A. Dyah Ayu Tiara, Hambali Thalib, and Said Sampara. "Role of the Public Prosecutor in Returning Assets Resulting from Money Laundering in Corruption Cases." *Meraja Journal* 3, No. 3 (2020): 1-13.

powers is required.⁴ The Prosecutor's Office, as executive ambtenaar, is empowered to carry out court rulings, including those relating to the status of evidence. The implementation of court decisions is carried out after the court's decision is inkrah. The evidence that has been confiscated must be executed immediately, either to be destroyed, destroyed, or returned to the party that has been mentioned in the excerpt of the court's decision. The execution of the court decision is carried out within 7 (seven) days from the receipt of the order for the execution of the court decision. The prosecutor then immediately made a report on the return of the evidence and took the confiscated goods and the confiscated goods that had been deposited in the state confiscated goods storage house (*Rumah Penyimpanan Benda Sitaan Negara*, hereinafter as RUPBASAN). However, in practice not all of the evidence can be immediately executed by the Prosecutor for various reasons. Rupbasan, on the other hand, as the agency in charge of storing evidence, faced numerous hurdles and challenges both inside and externally in carrying out its tasks and functions. Limited human resources, economic limits, and a lack of infrastructural recommendations are just a few of them. Furthermore, there is no law that specifies a time limit for the safekeeping of confiscated items and goods.⁵

According to information received from the RUPBASAN official website, there is evidence from 19 instances that have not been prosecuted by the Prosecutor as of

⁴ Komisi Hukum Nasional RI, 2004.

⁵ Fransiska Novita Eleanora, "Implementation of State Confiscated Objects Storage Houses (RUPBASAN) by Law Number 8 of 1981 Concerning Law Board Law of Criminal Events (KUHP)." *Tadulako Law Review* 4, No. 1 (2019): 1-14. It is even further emphasized that the problem of the management of looted goods is interesting to study considering that until now the problem of managing looted goods has not provided optimal benefits to the state and there is a tendency for the spoils to be neglected and neglected so that their value is getting lower and lower. In addition, there are problems experienced by the Rupbasan, including the limited number of supporting facilities and the relatively large budget for the maintenance of the spoils. The storage of goods at the Rupbasan is intended to guarantee and protect ownership rights to property belonging to a person (victim) confiscated by investigators to be used as evidence in court until a judge's decision has permanent legal force. *See also* Ahmad Sanusi, "Optimalisasi Tata Kelola Benda Sitaan Negara pada Rumah Penyimpanan Benda Sitaan Negara." *Jurnal Ilmiah Kebijakan Hukum* 12, No. 2 (2018): 199-211; Lollong Manting, and Pantja Bambang Sudarwanto. "Analisis Pengelolaan Benda Sitaan dan Barang Rampasan Negara di dalam Rumah Penyimpanan Benda Sitaan dan Barang Rampasan Negara (RUPBASAN)." *Eduka: Jurnal Pendidikan, Hukum, dan Bisnis* 4, No. 1 (2019): 48-57; Leo Rahmat Karindra, "Proses Pengelolaan Benda Sitaan dan Barang Rampasan Negara." *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 9, No. 2 (2022): 618-624; Rachmatika Lestari, Nila Trisna, and Dara Quthni Effida. "Tanggung Jawab Rumah Penyimpanan Benda Sitaan Negara dalam Pengelolaan Benda Sitaan dan Barang Rampasan Hasil Tindak Pidana." *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 4, No. 2 (2020): 148-162.

August 2021. From 2005 through 2019, this litigation has been ongoing.⁶ Various variables and impediments, both external and internal, contribute to the execution of evidence or confiscated objects. As a result, there was an accumulation of confiscated goods and state confiscated goods in the RUPBASAN, resulting in a reduction in quality and quantity of confiscated goods and state confiscated goods. Several major issues were discovered as a result of this backdrop, including:

1. What is the role of the Prosecutor in carrying out the execution of court decisions on the return of evidence?
2. What considerations influence the Prosecutor's choice to return evidence as the executor of court decisions?

2 METHOD

This study used mix method between empirical and normative legal study. This study also compares the legal system applied in Indonesia, Malaysia, Nigeria, and Thailand concerning returning confiscated assets and objects in criminal cases. Comparative law used at this study recognized as an academic discipline that involves the study of legal systems, including their constitutive elements and how they differ, and how their elements combine into a system.⁷

Comparative law study is different from general jurisprudence (such as legal theory) and from public and private international law. However, it helps inform all of these areas of normativity. Also, the usefulness of comparative law for sociology of law and law and economics (and vice versa) is very large. The comparative study of the various legal systems may show how different legal regulations for the same problem function in practice. Conversely, sociology of law and law & economics may help comparative law answer questions, such as: How do regulations in different legal systems really function in the respective societies? Are legal rules comparable? And how do the similarities and differences between legal systems get explained?⁸

⁶ Rumah Penyimpanan Benda Sitaan Negara (RUPBASAN) Kelas I Semarang, "Data Kasus Inkrah", retrieved from <<http://rupbasansemarang.com/inkrah/>>

⁷ Mathias Reimann, and Reinhard Zimmermann, eds. *The Oxford Handbook of Comparative Law*. (Oxford: Oxford University Press, 2019); Mousourakis, George. *Comparative Law and Legal Traditions*. (Cham: Springer International Publishing, 2019).

⁸ Peter De Cruz, *Comparative Law in a Changing World*, 3rd edn (1st edn 1995). (London: Routledge-Cavendish, 2007). See also Emmanouil Billis, "On the methodology of comparative criminal law research: Paradigmatic approaches to the research method of functional comparison and the heuristic device of ideal types", *Maastricht Journal of European and Comparative Law* 6 (2017): 864–881.

3 RESULT AND DISCUSSION

A. The Role of the Prosecutor in Carrying Out the Execution of Court Decisions Relating to the Return of Evidence

Prosecutors, in their capacity as executors of court judgments, have the responsibility and authority to carry out the executions of court decisions that have binding legal force or that have been signed, including decisions involving corporal punishment, fines, and the status of evidence. Article 30 paragraph (1) letter b of Law Number 16 of 2004 governing the Prosecutor's Office of the Republic of Indonesia governs the execution of the judge's decision and the execution of court rulings. The Prosecutor must be free of interference from any party when carrying out his or her duties and authorities. Law enforcement officers must be able to work together in order to achieve lawful objectives.

As previously stated, the Prosecutor's Office has full authority to carry out the execution, which is entrusted to the Prosecutor as the executor when the court's verdict is rendered. The Head of the District Attorney's Office appoints the Prosecutor as the executor. The appointed prosecutor will then handle the case, examine the decision that will be implemented, and prepare a warrant for the judge's decision's implementation, as well as a report on the decision and its decision, which is determined in order, and evidence of the judge's decision's implementation, such as those relating to the type of crime, evidence, and costs.⁹

In carrying out his duties and authorities, a prosecutor must adhere to the

⁹ Amrullah Baru Ahnaf, and Dessi Perdani Yuris Puspita Sari. "Eksekusi Barang Sitaan Hasil Tindak Pidana Pencurian Kendaraan Bermotor (Studi di Kejaksaan Negeri Wonosobo)." *Soedirman Law Review* 2, No.2 (2020): 422-434. <http://journal.fh.unsoed.ac.id/index.php/SLR/article/view/57>. Furthermore, it is almos highlighted and emphasized that management of confiscated objects and confiscated goods related to criminal acts is a long-standing problem in law enforcement practice in Indonesia. Developments in practice require practitioners to be more careful in managing confiscated and confiscated items in view of the consequences arising from confiscation and confiscation and its relation to the issue of protecting human rights. *See also* Cucuk Hariyadi, Timbul Mangaratua Simbolon, and Gunarto Gunarto. "Auction of Execution Confiscated and National Confiscated." *Jurnal Akta* 5, No. 3 (2018): 817-822; Trio Sandra Wijaya, "Management of confiscated goods and looted goods of the state at the Class I RUPBASAN Bengkulu." *Indonesian Journal of Police Studies* 5, No. 7 (2021); Mona Lasisca Sugiyanto, Syamsuddin Muchtar, and Nur Azisa. "Execution of Convict Confiscated Equipment Goods of Human Trafficking." *Jurnal Restorative Justice* 6, No. 1 (2022): 1-21; Gholibuddin Zuhairmanto, Retno Saraswati, and Kornelius Benuf. "The Practical Barriers to Auction of Confiscated Objects for Corruption Crime." *Jurnal Daulat Hukum* 5, No.1 (2022): 1-9; Rizki Zakariya, "Follow the Money Approach in The Management of Fishing Criminals by Fisheries PPNS." *Lex Scientia Law Review* 4.1 (2020): 96-111; Sugeng Wahyudi, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia." *JILS (Journal of Indonesian Legal Studies)* 4, No. 1 (2019): 45-72.

Act's provisions. The principal directive that must be carried out in an act of office is the task. The implementation of responsibilities connected to jurisdictional competence is characterized as authority. An agency can function properly if it has certain responsibilities and powers.¹⁰

Prosecutors, in their capacity as executors of court decisions, have the responsibility and authority to carry out the executions of court decisions that have binding legal force or that have been signed, including decisions involving corporal punishment, fines, and the status of evidence. Article 30 paragraph (1) letter b of Law Number 16 of 2004 governing the Prosecutor's Office of the Republic of Indonesia governs the execution of the judge's decision and the execution of court rulings. The Prosecutor must be free of interference from any party when carrying out his or her duties and authorities. Law enforcement officers must be able to work together in order to achieve lawful objectives. The Prosecutor's Office is one of the most powerful in the country.

The Court's decision itself is defined as a Judge's statement containing the imposition of a crime, as well as being free or free from all legal claims submitted in an open court session, described in Article 1 paragraph (11) of Law Number 8 of 1981.

Article 30 paragraph (1) letter b of Law No. 16 of the period regulating the Prosecutor's Office of the Republic of Indonesia regulates the execution of court decisions, including those relating to the status of evidence, by the Prosecutor as the executor. The Prosecutor's Office is the sole institution with the authority to

¹⁰ Marwan Effendy, *Kejaksaan RI, Posisi dan Fungsinya dari Perspektif Hukum*. (Jakarta: Ghalia Indonesia, 2007). The management of confiscated objects is currently carried out based on an approach from the side of law enforcement and management of state property. In terms of law enforcement, the management of confiscated goods is part of the execution of the executive function in the context of carrying out court decisions. This executive authority is functionally attached to the prosecutor as a public prosecutor who is authorized by law to carry out prosecutions and carry out judges' decisions. *See also* Abvianto Syaifulloh, "Peran Kejaksaan Dalam Pengembalian Kerugian Keuangan Negara Pada Perkara Tindak Pidana Korupsi." *Indonesia Journal of Criminal Law* 1, No. 1 (2019): 47-64; Fatin Hamamah, and Heru Hari Bahtiar. "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara dalam Perkara Tindak Pidana Korupsi." *Mahkamah: Jurnal Kajian Hukum Islam* 4, No. 2 (2019): 193-204; Refki Saputra, "Tantangan Penerapan Perampasan Aset Tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia." *Integritas: Jurnal Antikorupsi* 3, No. 1 (2017): 115-130; Syifa Vidya Sofwan, and Titin Sulastri. "Peran Pusat Pemulihan Aset di Kejaksaan Negeri Bandung." *Akurat: Jurnal Ilmiah Akuntansi FE Unibba* 10, No. 3 (2019): 151-165; Ridwan Arifin, Indah Sri Utari, and Herry Subondo. "Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia." *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, No. 1 (2017): 105-137.

carry out court orders (executive ambtenaar). At the very least, there are various conceivable court rulings about the evidence's status, including (1) returning it; (2) seizing it for destruction; (3) confiscating it for the state; and using it in future instances. As has been regulated in Article 194 paragraphs (1), (2), and (3), as well as Article 46 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code.

Except if the evidence must be confiscated for the benefit of the state or destroyed in such a way that it cannot be reused, according to Article 194 paragraph 1 of the Law, evidence that has been confiscated is handed over to the party most entitled to receive it back in accordance with what is stated in the court's decision.¹¹ The decision is executed in its entirety within 7 (seven) days of receiving the execution order, including the status of the evidence. Contacting the parties specified in the court's decision is how eligible evidence is obtained. The entitled party's ability to collect evidence is not restricted to a specific time frame.

Article 3 paragraph (1) of the Republic of Indonesia Prosecutor's Office Regulation Number 10 of 2019 concerning Amendments to the Attorney General's Regulation No. PER-002/A/JA/05/2017 states that the return of evidence by the Prosecutor is carried out by sending a summons to the party entitled to confiscated goods or evidence from the District Attorney's office or branch of the District Attorney's Office where the case was handled previously. The summons of the entitled party is carried out by summoning the entitled party 3 (three) times. If no response is received, the products will be delivered to the entitled party's residence or addoffice, if no one is eligible, evidence or confiscated items might be lodged with family or relatives by presenting a family card. If the address or whereabouts cannot be discovered, the prosecutor will declare the confiscated objects or evidence within 30 (thirty) days from the date of sending the summons, which can then be extended for another 30 (thirty) days after the initial announcement. at the village where the last party entitled to dwell, or at the sub-district office, sub-district office, or sub-district office. The Prosecutor will then request an appointment from the Head of the District Attorney's Office after reporting it in writing if the party who is authorized to do so does not appear within the prescribed time limit. This is in accordance with Article 3 paragraphs (2), (3), and (4) of the Indonesian Prosecutor's Office Regulation No. 10 of 2019 on Amendments

¹¹ Ibrahim Nainggolan, "Analisis Yuridis Pengembalian Barang Bukti Dalam Tindak Pidana Perikanan (Juridical Analysis of Returns of Investigation Goods Action of Fisheries Criminal)." *De Lega Lata: Jurnal Ilmu Hukum* 3, No. 1 (2018): 68-80.

to the Attorney General's Regulation No. PER-002/A/JA/05/2017.

However, if the confiscated object is not implemented within 30 (thirty) days following the court's ruling, the Rupbasan, as the agency in charge of custodial possession of the state's confiscated objects, is required to send a notice letter to the relevant agency. If no response is received after 10 (ten) days, the notification letter will be resent, and a second notification will be sent after another 10 (ten) days. According to Article 26 paragraphs (1), (2), and (3) of the Minister of Law and Human Rights' Regulation No. 16 of 2014 about Procedures for Management of State Confiscated Goods and State Confiscated Goods in the State Confiscated Goods Storage House. However, there is still proof that has been committed and should have been executed, but it was not executed promptly at the Class I RUPBASAN Semarang as shown on Table 1 and Table 2.

Table 1 Data for confiscated objects at the Class 1 RUPBASAN Semarang

Year	Confiscated Object Name	Amount	Description
2008	Kayu Jati Bulat	25 batang	Back to Perhutani Mangkang
	Papan Kayu Jati	38 lembar	
	Gergaji Tangan	1 buah	
2009	Sepeda Ontel	1 unit	-
2012	SPM Yamaha Jupiter H2217LW	1 unit	-
2013	SPM Vega H2872JS	1 unit	-
2014	SPM Yamaha Protolan Tanpa Nopol	1 unit	-
	SPM Yamaha Tanpa Nopol	1 unit	-

Source: RUPBASAN Class 1 Semarang, August 2021

Table 2 Data of State Loot in Rupbasan Class 1 Semarang

Year	Loot Name	Amount	Description
2005	Mesin Alkon	1 unit	Deprived of the state cq Pertamina
2006	Minyak Tanah	20 jerigen	
2008	Mesin Alkon	1 unit	
2011	Tabung LPG 12 Kg	8 buah	
2013	Solar 19.619 liter	80 drum	The booty is entitled to return
2014	Mesin	1 unit	
2015	BBM Solar Kotor	31 drum	
2018	KBM Toyota Agya B1575DGA	1 unit	
	SPM Yamaha Vega H2731PY	1 unit	The booty is entitled to return
	SPM Yamaha Vega H2297QD	1 unit	
2019	SPM Yamaha Mio Tanpa Nopol	1 unit	
	SPM Honda Vario DH882ZCQ	1 unit	
	SPM Honda Vario B3402SRQ	1 unit	
	SPM Honda Vario H2759AAW	1 unit	

Source: RUPBASAN Class 1 Semarang, August 2021

In the Rupbasan Class 1 Semarang, the majority of confiscated objects and state confiscations are in the form of motorized vehicles. Routine maintenance is essential since motorized vehicles have a variety of components that are readily damaged. However, based on the year the evidence was submitted, it's likely that the quality has deteriorated, affecting the evidence's economic value. Of course, this will result in losses for the party entitled to seized items and confiscated goods that are found to be entitled to return, as well as for the state if it is chosen to be confiscated as non-tax income for the state.

As previously described, from the data it is known that the number of confiscated objects that were decided to be entitled to the defendant became one of the obstacles for the prosecutor's office. this is because not a few defendants are not willing to contact the family to take the evidence. As a result, the confiscated items were at the General Meeting of Shareholders waiting until the defendant had completed his criminal period.¹²

Prosecutors play an important role in the return of evidence or confiscated objects. Role itself can be defined as a behavior that society expects of an individual according to his status or position. The Prosecutor's Office as executive ambtenaar plays a role in implementing court decisions, including in relation to the status of evidence. In carrying out their duties, the Prosecutor is guided by various provisions that have been previously regulated.

Prosecutors play an important role in the return of evidence or confiscated objects. Role itself can be defined as a behavior that society expects of an individual according to his status or position. The Prosecutor's Office as executive ambtenaar plays a role in implementing court decisions, including in relation to the status of evidence. In carrying out their duties, the Prosecutor is guided by various provisions that have been previously regulated. The development and preparation of law is designed professionally and logically, so there is no doubt that legal products can affect people's lives. However, before the legal product was drafted, a need arose in society for such a change. The faster the law responds, the greater the role played by the law for societal change. And vice versa, the slower the law responds, the smaller the role and function and the legal share in

¹² Margerytha Wulandara HB, Erdianto Effendi, and Mexsasai Indra. "Proses Pengembalian Kendaraan Bermotor Yang Dijadikan Barang Bukti dalam Proses Peradilan di Kejaksaan Negeri Kota Pekanbaru", *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 2, No. 2 (2015): 1-13. <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/view/5848>.

changing society.¹³

Execution of evidence status is carried out as efficiently as feasible, leveraging a variety of available resources. Effectiveness can be thought of as a measurement in terms of reaching preset goals or objectives, and if these objectives are met, it is considered to be effective.¹⁴ According to Achmad Ali, the law is efficient if there is a connection between the rule of law and the interests of the target person, the substance of the legal rule is clearly stated so that it is easy to grasp, and the socialization of the legal target is optimized. In addition, to determine the level of legal effectiveness, it is necessary to understand the extent to which the law can be obeyed and followed. Additionally, there are a number of other factors that influence the level of legal effectiveness, including professionalism and the optimization of law enforcement officers' roles, authorities, and functions.¹⁵ Some people view the law as a prohibition; nevertheless, if people have a proper understanding of the law, they will respect it and establish a great and successful legal system.¹⁶ The execution of court decisions on the return of evidence needs to be carried out as much as possible in order to guarantee the rights of the suspect and minimize the losses that will occur. Confiscated objects and state booty that have not been executed are at risk of being damaged.

Damage to confiscated objects and state confiscation poses a legal risk for investigators and the state if by a judge it is decided that the confiscated objects are returned to the owner of the objects before they are confiscated. Losses are also experienced by the state if a court decision with permanent legal force decides that the object is confiscated into state property. The loss in question is the reduced Non-Tax State Revenue (PNBP) resulting from the sale of the auction of state confiscated objects that have not been optimal because the condition of the goods is not maintained, neglected or even damaged so that the economic value of the object is reduced. The confiscated objects seized by the State become part of the

¹³ Munir Fuady, *Sosiologi Hukum Kontemporer: Interaksi Hukum, Kekuasaan dan Masyarakat*. (Jakarta: Kencana, 2011).

¹⁴ Erdianto Effendi, Ayu Yohana Putri, and Ledy Diana. "Efektivitas Sanksi terhadap Pelanggar Marka Jalan Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas dan Angkutan Jalan oleh Kepolisian Resor Kota Pekanbaru." *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau*. 2, No. 2 (2015): 1-15.

¹⁵ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Undang-Undang (Legisprudence) Volume 1 Pemahaman Awal*. (Jakarta: Kencana Prenada Media, 2010).

¹⁶ Widia Edorita, "Menciptakan Sebuah Sistem Hukum yang Efektif: Dimana Harus Dimulai?." *Jurnal Ilmu Hukum* 1, No. 1 (2010). <https://jih.ejournal.unri.ac.id/index.php/JIH/article/view/484>

Non-Tax income based on Government Regulation of the Republic of Indonesia No. 39 of 2016 concerning Types and Tariffs of Non-Tax State Revenues Applicable to the Prosecutor's Office of the Republic of Indonesia.

The storage of confiscated objects at the Rupbasan is carried out with the aim of maintaining the security of the confiscated objects, in order to guarantee the rights of the suspect. However, due to limited facilities and facilities, it is feared that the confiscated objects will be damaged or decrease the quality and quantity of the confiscated objects. The execution of court decisions related to evidence is carried out in accordance with applicable operational standards, however, in practice in the field there are still various problems.

B. Factors Influencing the Prosecutor in Carrying Out the Execution of The Return of Evidence

The application of the law has a significant impact in everyday life. This is due to the fact that the law's intent is determined by how it is implemented. The application of the law is an endeavor to achieve the concept of justice's meaning. The implementation is scheduled to be completed soon, allowing the legal need to be fully met. The implementation of district court decisions is one of them.¹⁷

A court decision is a judge's statement which can contain the imposition of sanctions in the form of punishment and is free or free from all legal claims where the statement is submitted in an open court session. As explained in Article 1 point (11) of Law Number 8 of 1981. A court decision can be completed (executed) if it has permanent legal force or inkrah. In carrying out their duties and authorities, the Prosecutor as the executor of court decisions, including those relating to the status of evidence, is to carry out the execution of court decisions as effectively and efficiently as possible. However, in practice, various reasons were found that hindered the execution of court decisions.

Mukti Arto defines a decision as a written declaration made by a judge during a public trial.¹⁸ According to Soerjono Soekanto's book, there are several aspects that influence the law's effectiveness, including:

¹⁷ Heri Anjar Setio, "Pelaksanaan Putusan Hakim yang Telah Berkekuatan Hukum Tetap Atas Pengembalian Barang Bukti di Kejaksaan Negeri Indragiri Hulu". *Jurnal Online Mahasiswa Fakultas Hukum Universitas Riau* 1, No. 1 (2018). See also I. Kadek Warga Pernada, I. Made Sepud, and Diah Gayatri Sudibya. "Pelaksanaan Putusan Hakim Yang Telah Berkekuatan Hukum Tetap Terhadap Uang Pengganti Dalam Tindak Pidana Korupsi Putusan Nomor 02/Pid. Sus-TPK/2017/PN DPS." *Jurnal Analogi Hukum* 1, No. 3 (2019): 347-353.

¹⁸ M. Natsir Asnawi, *Hermeneutika Putusan Pengadilan*. (Yogyakarta: UII Press, 2014).

- 1) The legal component is one that has to do with the law itself. The existing regulations are quite systematic with certain fields, there is no conflict between the existing regulations, and they are quite synchronous, the regulations are sufficient both qualitatively and quantitatively, and the regulations are issued in accordance with the existing legal requirements.
- 2) The Law Enforcement Factor is concerned with the parties who write and enforce the law. Measures of legal effectiveness related to law enforcement officers include the attachment of law enforcement officers to existing rules, limits for law enforcement officers who are allowed to provide policy, and synchronization between the duties and authorities of law enforcement officers.
- 3) The Legal Facilities and Facilities Factor refers to current facilities and facilities that assist law enforcement officials in carrying out their responsibilities. In this case, it can be said to be effective if the legal facilities and facilities have met the degree of effectiveness that includes the availability of legal facilities and facilities, whether or not the available facilities and facilities are adequate, as well as the condition of the existing legal facilities and facilities.
- 4) Community Factors, or the environment in which the law applies or is applied, are important considerations. The degree of measuring effectiveness in this factor is in the form of public understanding of existing regulations, because people do not understand the applicable rules, and because people understand the applicable rules.
- 5) Cultural variables are linked to work, creativity, and taste in everyday interactions and are dependent on human initiative.

According to Artho Mudzhar, if a regulation is merely a recommendation or an appeal, it will be ineffective. According to Atho Mudzhar, the following elements determine the law's effectiveness

- 1) Attribute of Authority, in order to run effectively, the law must be issued by an authorized agency or party in the community.
- 2) Attribute of Universal Application, the rule of law must have breadth and have a period of time into the future. So that in its preparation it must pay attention to philosophical, juridical, or sociological factors. Thus, the rule of law does not only apply to one party, but applies to all parties regardless of their status.
- 3) Attribute of Obligation, it must be apparent if a rule is a command or a restriction in each one. So that there is no ambiguity or misinterpretation in its implementation.

- 4) Attribute of Sanction, in a rule, the existence of sanctions is no less important. Sanctions are held to regulate public order so that it is maintained.

Law can be said to be effective if it has met the degree of effectiveness measurement, as described by Soerjono Soekanto and Atho Mudzhar. It can be concluded that the factors that affect the effectiveness of the law include the law itself, including the legal substance and sanctions to be imposed, the availability of legal facilities and facilities, as well as relating to law enforcement officers. The prosecutor as the executor of court decisions in carrying out his duties and authorities is influenced by several factors. From the previous expert opinion, it can be concluded that there are 4 (four) factors that influence the execution of court decisions, including:

- 1) Legal Factor

Legal factors are related to the implementation of the law itself. Substantially the execution of court decisions has been regulated in various existing regulations. This includes the time period for the execution of court decisions by the Prosecutor. On the other hand, at Rupbasan Class 1 Semarang, the storage term for signed evidence is not tightly restricted. Furthermore, there is no express regulation regulating the application of punishment on the prosecutor as executor who fails to perform his duties promptly. This has an influence on the Prosecutor's ability to carry out court orders. When the evidence could not be performed for different reasons, the prosecutor did not take prompt action. The Head of the District Attorney's Office sets the policy on the status of evidence, but if the application letter for the status of the evidence takes too long to prepare, the evidence will naturally continue to pile up at the Rupbasan. As a result, if court decisions are not strictly enforced, the prosecutor's role in returning evidence will be rendered ineffectual.

- 2) Factors of Law Enforcement Apparatus

Law enforcement factors, it is known that law enforcement officers as part of law enforcement are required to be able to provide justice, certainty, and legal benefits in a balanced way. In a narrow sense, law enforcement officers can be interpreted as the police, prosecutors, judiciary, etc. Each agency has different main tasks, functions, and authorities.

This factor relates to the attachment of law enforcement officers to existing regulations, as well as the duties and authorities of these law enforcement officers. Coordination between the Prosecutor's Office and the Rupbasan is based on their respective duties and authorities relating to the management of

evidence. Regarding confiscated goods or state confiscations that are being deposited, the Prosecutor will coordinate with the Rupbasan, including when the evidence will be executed after the court's decision is declared inkrah. In order to maximize the task of the Rupbasan as an agency for storing evidence, an MoU was drawn up with the aim that the relevant agencies are willing to entrust evidence or confiscated items to the Rupbasan Class 1 Semarang.

In 2014-2015, the Office of the Ministry of Law and Human Rights in Central Java and other agencies drafted a Memorandum of Understanding (MoU) that essentially discussed the Rupbasan. The Rupbasan agency then conducted a separate working meeting, inviting officers from the Semarang District Prosecutor's Office, the Semarang District Attorney's Branch, the Court, Polres, and Polsek from all around the city of Semarang. In terms of administrative and physical accountability for confiscated items, the Head of the Rupbasan is in charge, while the District Attorney is in charge legally. In compliance with the provisions of Government Regulation No. 27 of 1983, Article 32 paragraph. If the Prosecutor's Office and Rupbasan face challenges in carrying out their duties and authorities, As a result, the head of the agency, in this case the District Attorney's Office and the Rupbasan, has the authority to set their own policies. Furthermore, if evidence has not been executed at the Internal Prosecutor's Office, it is because the party entitled to take it, as well as the party right to refuse it, was not found or not found. The evidence status might be transferred by the District Attorney's Chief. The Head of Rupbasan, on the other hand, has the authority as a policymaker to return confiscated materials or evidence to the District Attorney's Office if they are not executed immediately. However, the Head of Rupbasan did not return the evidence right away, and cooperation was underway.

3) Factors of Legal Facilities

Facilities and infrastructure are often the obstacles experienced by most of the Rupbasan. In terms of the readiness of human resources, both in quantity and quality, it is not sufficient. In addition, the limited facilities and infrastructure related to storage warehouses and equipment for the treatment of confiscated and confiscated objects are not sufficient.¹⁹

Even though it is known that the legal facilities and facilities support law

¹⁹ Totok Sugiarto, "Tinjauan Tentang Pelaksanaan Pengelolaan Benda Sitaan Negara Dan Barang Rampasan Negara di Rumah Penyimpanan Benda Sitaan Negara (RUPBASAN) Probolinggo." *IUS: Jurnal Ilmiah Fakultas Hukum* 7, No. 1 (2019): 1-15.

enforcement officers in carrying out their duties and authorities. However, if it is not fulfilled it will hinder the implementation of duties and authorities. The storage of confiscated objects was not fully entrusted to the Rupbasan Class I Semarang, this was due to the limited legal facilities and facilities. Such as limited space, lack of experts, and some confiscated objects that cannot be stored in the Rupbasan, such as drugs, firearms, money and demand deposits.

The confiscated objects in Rupbasan have basically been classified and placed according to their respective categories. However, due to limited facilities and facilities at the Rupbasan, the placement of confiscated objects does not necessarily comply with the existing technical instructions. If the confiscated things are returned to the owner of the evidence before it was confiscated, investigators and the state face a legal danger. If a court decision with permanent legal power rules that the object is confiscated and turned over to the state, the state will suffer losses as well. The loss in question is the reduced Non-Tax State Revenue (PNBP) resulting from the sale of the auction of state confiscated objects that have not been optimal because the condition of the goods is not maintained, neglected or even damaged so that the economic value of the object is reduced. The confiscated objects seized by the State become part of the Non-Tax income based on Government Regulation of the Republic of Indonesia No. 39 of 2016 concerning Types and Tariffs of Non-Tax State Revenues Applicable to the Prosecutor's Office of the Republic of Indonesia. The storage of confiscated objects at the Rupbasan is carried out with the aim of maintaining the security of the confiscated objects, in order to guarantee the rights of the suspect. However, due to limited facilities and facilities, it is feared that the confiscated objects will be damaged or decrease the quality and quantity of the confiscated objects.

4) Community Factor

The law is interpreted differently by each individual. Most people, on the other hand, believe that the law is a set of rules that must be followed and that those who break them will be punished. If the community understands the law, it can be claimed that it is effective. In other words, through existing laws and regulations, the community has the awareness to obey the rules that have been set previously.

Public awareness of the law is one of the degrees of measuring the effectiveness of a law. In the case of the execution of court decisions in the return of confiscated objects or evidence. Prosecutors found obstacles in

returning to the rightful party. The public or especially the parties whose names are listed in the court's decision do not necessarily want to receive the confiscated objects back for various reasons. The party entitled to understand that, under current regulations, the prosecutor will return the confiscated object as the executor of the court's decision; however, due to the confiscated object's condition, which has decreased in economic value, the party entitled to refuse to accept the confiscated object. The Prosecutor, on the other hand, had difficulty retrieving the confiscated items because the rightful owner had relocated or was incarcerated. As a result, the community, particularly those who are entitled, plays a vital role in assisting the implementation of the return of confiscated goods. The buildup of confiscated objects Legal take booty might be reduced if the community or the party entitled to participate actively in the judicial procedure.

These four elements have an impact on the prosecutor's ability to carry out his or her duty as an executor of court rulings when it comes to returning confiscated items. There are no rules that explicitly regulate the period of time for taking evidence by the entitled party, and there are no rules that regulate sanctions for prosecutors who have not completed their duties as executor of court decisions. In terms of coordination between the District Attorney's Office and the Rupbasan, it was found that there was a lack of synchrony in the management of evidence. Furthermore, one of the supporting causes for not retaining confiscated things in the Rupbasan is the restrictions of legal facilities and facilities. Given that the goal of holding confiscated items in Rupbasan is to assure their safety. With less resources and facilities, the quality and quantity of confiscated items may suffer.

C. Confiscated Objects Policy in Malaysia

Malaysia has a few legislations which provides for forfeiture of ill-gotten assets. The underline principle is that crime should not benefit the culprit. This article reviews the relevant legislations relating to the forfeiture of ill-gotten assets. The first law which plays a significant role in this area is the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (the AMLA). AMLA, which came into force on 15th January 2002, to tackle the offences of money laundering and terrorism financing and its counter measures. The principal purpose of AMLA is used to combat corruption using strict measures including freezing, confiscating, and forfeiting properties acquired by corrupt

practices and abuse of power.²⁰

Furthermore, in the same context, AMLA provides that money laundering covers an extensive activity or transaction involving the proceeds of an unlawful activity or instrumentalities of an offence. This includes the concealment of the true nature and origin of title or ownership of the illegal properties. In *PP v. Victory Connection & Ors*, the High Court held that the burden on the prosecution was merely to prove on a balance of probabilities that the property was obtained by the accused as a result of or in connection with the offences of money laundering and terrorism financing under AMLA.

AMLA provides that where an offence of money laundering or terrorism financing has been proven against the accused, the court shall make an order to forfeit any property which is proven to fall under one of the following criteria:

- 1) the subject-matter or evidence relating to the commission of such offence;
- 2) terrorist property;
- 3) the proceeds of an unlawful activity; or
- 4) the instrumentalities of an offence.

Also, even if the offence of money laundering or terrorism financing is not proven, a court shall make an order to forfeit such property if the court is satisfied that the accused is not the true and lawful owner of the property, and that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

Before the expiration of twelve (12) months from the date of the seizure or freezing order, the Public Prosecutor may apply to the High Court for an order to forfeit the property which has been frozen or seized even where a person is not prosecuted or convicted for the offence of money laundering under AMLA. If there is no such application, such property shall be released to the person from whom it was seized.²¹

Before making the order for forfeiture in circumstances where the person charged is not the true and lawful owner of the property and that no other person is entitled to the property as a purchaser in good faith for valuable consideration and where there is no prosecution, the court shall, on a balance of probabilities, determine whether such property falls under the above criteria. If yes, the forfeiture

²⁰ AML/CFT. "Malaysia Anti-Money Laundering & Counter Financing of Terrorism Regime. Bank Negara Malaysia", 2014. Retrieved from <https://amlcft.bnm.gov.my/what-is-money-laundering>

²¹ See also Zaiton Hamin, Normah Omar, and Muhammad Muaz Abdul Hakim. "When property is the criminal: confiscating proceeds of money laundering and terrorist financing in Malaysia." *Procedia Economics and Finance* 31 (2015): 789-796.

order or the judge to whom an application for order to forfeit is made, is required to cause a notice in the gazette to be published, calling upon third parties who claim to have any interest in the property to attend before the court on the date specified to show cause as to why the property should not be forfeited. Any property which is forfeited shall vest in the Government except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration and which is not otherwise null and void under any provision of the AMLA.

D. Confiscated Objects Policy in Thailand and Nigeria

The proceeds of crime in Thailand are derived from several criminal activities, namely, illicit drug trafficking, human trafficking, illegal smuggling of workers, smuggling of contraband, illegal oil trafficking, illegal logging, arms trade, contract killings, kidnapping, money laundering, bribing of government authorities and corruption. These activities have not only intimidated and disgusted people but also threatened the safety of lives and property, causing serious damage to national security, both economically and socially. Money and assets gained from illicit acts are frequently laundered and used to fund further illegal activities. The proceeds of crime can make criminals wealthy and healthy, particularly the organized ones. With their wealth, the criminal groups can have strong influence over government authorities by bribing them to keep officials out of their way or prevent them from obstructing the organization's activities.

The Criminal Procedure Code, Part 2 Investigation, provides the investigator with the power to gather evidence to prove the facts of the offence and the guilt of the offender. Pursuant to Section 132, for the purpose of gathering evidence, the investigator can search the property for articles obtained through an offence or used or suspected of having been used for the commission of an offence. By conducting the search of property and articles found, the investigator can identify and trace the proceeds of crime. The investigator can order a person who possesses the articles related to the commission of the to hand over such articles as evidence. The power to gather evidence under the Criminal Procedure Code covers all crimes.

The Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, B.E. 2534 (1991), which applies only to narcotics offences, established the Properties Examination Committee to identify and trace the proceeds of crime. The Permanent Secretary of the Ministry of Justice chairs the Committee and is assisted by the Secretary General of the Office of Narcotics Control Board. The Secretary General acts as secretary of the Committee and supervises all regular

work. Section 16 provides the Committee with the power to examine property connected with the commission of an offence relating to narcotics²⁵ and make determinations whether property is connected with the commission of an offence relating to narcotics. In case of urgent necessity, the Secretary General may issue a provisional order for the examination of the properties of the alleged offender, and then report to the Committee. To examine the property, the Committee and the Secretary General can issue a letter of inquiry requesting, or issue an order requiring, any person concerned to give statements or give explanations or to submit any account, document or evidence for examination, which also includes examination through the banks, the Securities Exchange and the financial institutions. The Committee or the Secretary-General may assign a competent officer to conduct the examination of the property on its or his or her behalf. The competent officer can enter dwelling place, premises or conveyance where there is a reasonable ground to suspect that the property believed to be connected with the offence is hidden therein, for the purposes of searching or examining, seizing or attaching the properties.

In the further context, Nigeria, also has its own law concerning how to return the confiscated objects especially in criminal cases. In a bid to ensure the accountability and transparency of funds and properties recovered by anti-corruption agencies in Nigeria, the Senate has passed the Proceeds of Crime (Recovery and Management) Bill, 2022. The year 2022 commenced with various seizures, forfeitures and confiscation of items derived from unlawful activities. While a number of orders for forfeitures were granted, anti-corruption agencies have quite a number of applications before the court seeking orders for forfeitures.

The bill, sponsored by Senator Suleiman Abdu Kwari was passed during plenary on Wednesday after a report by the Joint Committee on Anti-Corruption and Financial Crimes; and Judiciary, Human Rights and Legal Matters was considered.

4 CONCLUSION

The role of the Prosecutor as the executor of court decisions on the return of evidence has not been effective. The results showed that: (1) The return of evidence was carried out in accordance with the existing standard operating procedures. However, in its implementation, there are still many obstacles. (2) The execution of court decisions is influenced by 4 (four) factors, including the law itself, the

community, law enforcement officers, as well as legal facilities and facilities. These factors affect the implementation of the return of confiscated objects where, in terms of the time period for taking evidence by the rightful party, it has not been strictly regulated, including relating to the threat of imposing sanctions for the prosecutor as the executor who does not immediately complete the execution of court decisions. Furthermore, one of the causes of the degradation in the quality of confiscated products is a lack of legal capabilities and facilities. As a result, the party has the option of refusing to accept the confiscated goods. On the other hand, one of the causes of the accumulation of confiscated property and state treasure is a lack of coordination between authorities, in this case the Prosecutor's Office and the Rupbasan. These elements, among others, have an impact on how well court judgments are carried out in terms of returning evidence.

5 DECLARATION OF CONFLICTING INTERESTS

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*It is not wisdom but
Authority that makes a
law*

Thomas Hobbes