


Implementation of Criminal Execution of Tax Fines Against Decision Number: 249/PID.SUS/2022/PN. TPG

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Abstract

Introduction: Taxes are obligations requiring citizens to pay a specified amount of money to the state. Following the enactment of the Tax Harmonization Law in 2021, tax law enforcement in Indonesia has been directed toward recovering state revenue losses.

Purposes of the Research: This study aims to describe and analyze the implementation of criminal fine execution in tax cases as outlined in Decision Number: 249/Pid.Sus/2022/PN.Tpg.

Methods of the Research: The study employs a normative legal approach through library research, which includes references such as laws, articles, and journals. Secondary data were collected through literature review and analyzed using a qualitative juridical approach.

Results Main Findings of the Research: The findings of the study show that the confiscation of land and buildings belonging to the convicts is not in line with Article 39 Paragraph (1) of the Criminal Procedure Code. In addition, the assets had been used as collateral by Bank Mandiri Tanjungpinang, a State-Owned Enterprise, before the investigation began. This results in a lack of legal certainty and becomes an obstacle in the execution process. To ensure legal certainty, the investigation process must be accompanied by the tracking and blocking of the assets found, in the settlement of tax criminal cases in Decision Number: 249/Pid.Sus/2022/PN.Tpg, deliberation or coordination regarding land and building assets can be carried out, because the ultimate goal is to return the results of the execution to the state.

Keywords: Confiscation; Execution; Criminal Tax Fines.

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INTRODUCTION

The purpose of the Government of the State of Indonesia as stated in the 4th paragraph of the Preamble to the 1945 Constitution is to advance public welfare. The state has a responsibility to play an active role in various aspects of people's lives, especially in the economic sector, in order to realize prosperity for all people. The achievement of people's welfare requires funding collected from the community, one of which is through taxes. Article 23 Paragraph (1) of the 1945 Constitution states that the State Revenue and Expenditure Budget is a form of state financial management which is prepared every year with the main purpose of improving the welfare of the people.¹ Article 1 Number 1 of Law Number 28 of 2007 concerning General Provisions and Tax Procedures explains that taxes are mandatory contributions from individuals and entities to the state. Taxes have a coercive nature based on applicable regulations. Tax payments are made without providing direct

¹ M. Irfan Budi Santoso, (2021). *Proses Penuntutan Tindak Pidana Pajak Di Pengadilan Negeri Semarang*. Universitas Islam Sultang Agung (Unissula). Semarang.

benefits to payers, while the funds obtained are used for state purposes in order to realize the welfare of the people optimally.

One of the important roles of taxes is the budget function, which aims to collect as much money as possible into the state treasury to fund various government expenditures. The fiscal position of taxes must be in accordance with the provisions of Article 23A of the 1945 Constitution of the Republic of Indonesia, which explains that tax collection must be carried out according to existing rules. The function of the tax budget and its collection which must be contained in the Law shows that every violation of tax regulations will be subject to tax sanctions, namely criminal sanctions and administrative sanctions. Administrative sanctions are imposed on parties who carry out acts that violate administrative provisions in the field of taxation. On the other hand, criminal penalties will be imposed on individuals or entities who carry out actions that are classified as tax crimes.²

Gunadi stated that one of the purposes of the drafting of Law Number 28 of 2007 concerning General Provisions and Tax Procedures by including provisions or criminal sanctions is to have a deterrent, prevent, and eradicate tax evasion.³ According to the Law on General Provisions and Tax Procedures, criminal sanctions not only have the intention of repaying the perpetrator with suffering, but also to restore financial losses caused by criminal acts in the tax sector. Rochmat Soemitro stated that tax violations can be carried out by a third party. Tax officials who deliberately carry out tax violations, either by abuse of public authority (*detournement de pouvoir*) or deliberately ignore the provisions of the law (*abuse de droit*), are considered tax crimes that violate Indonesian tax laws.⁴

Tax avoidance can be divided into two parts, namely:⁵ 1) Passive tax avoidance refers to actions that hinder the tax collection process in a way that does not involve the active participation of taxpayers. The term "passive" indicates that this refusal does not involve a direct effort by an individual or entity to avoid direct tax liability, but rather to factors related to the economic structure of a country, the level of education and public awareness, morality, and the complexity of the tax system that may be difficult to apply effectively to certain groups in society; 2) Active resistance to taxes involves all measures taken against tax authorities to avoid tax liability. This includes actions such as not reporting income in full, hiding or falsifying financial information, and finding loopholes to reduce tax payments.

Article 1 Number 32 in Law Number 28 of 2007, which includes the third amendment to Law Number 6 of 1983 concerning general provisions and tax procedures, explains that the Investigator, who in this context is a Civil Servant Officer appointed within the Directorate General of Tax Affairs, has special authority to investigate criminal acts in the realm of taxation in accordance with existing laws. Furthermore, Article 44 Paragraph (1) of Law Number 7 of 2021 confirms that only certain Civil Servants within the Directorate General of Tax Affairs have special authority as investigators in tax crimes, with the right to conduct searches to obtain evidence or confiscate goods suspected of being related to tax crime cases.

² Bolifaar Andhy H. "Access To Justice Of Plea Bargaining In Addressing The Challenge Of Tax Crime In Indonesia". *Scientium Law Review*, 1, no. 1. (2022): 7-8.

³ Gunadi, *Panduan Komprehensif Ketentuan Umum Perpajakan (KUP), Edisi Revisi*, Jakarta: Bee Media Indonesia, 2016, p. 549.

⁴ Sari Dapot Mulia. "Implementasi Penegakan Hukum Terhadap Pelaku Tindak Pidana Pajak Pertambahan Nilai (PPN) dalam Upaya Mengembalikan Pendapatan Negara Berdasarkan UU No. 6 Tahun 1983 (KUP)". *JIMPS: Jurnal Ilmiah Mahasiswa Sejarah*, 8(4), (2023): 4585-4597. <https://doi.org/10.24815/jimps.v8i4.26774>.

⁵ Patel, H. (2023). Analysis Of Tax Avoidance Crimes According To Tax Law And Criminal Law In Indonesia. *Journal Transnational Universal Studies*, 1(1), 17-18.

This confiscation procedure has been regulated according to Article 39 paragraph 1 of the Criminal Procedure Code.

According to Mardjono Reksodiputro, asset confiscation or property confiscation can be carried out in three ways, namely:⁶ 1) Criminal forfeiture is a commonly carried out action in which certain goods are confiscated as a result of a violation of the law. If the goods are proven to be a tool used in carrying out crimes, the court can decide to confiscate the goods for the benefit of the state with inviolable legal force; 2) Administrative seizure includes actions carried out by the executive, who are authorized by law to take certain goods without the need for a trial process first. An example is customs actions and the imposition of customs, where the government has the authority to directly take the goods in accordance with the provisions that have been set. Confiscation of civilian property, which used to be referred to as the expropriation of property abandoned by war, as well as the expropriation of property belonging to orphans.

Investigations into tax violations are considered an integral part of an integrated criminal law structure. This criminal law sub-system includes institutions such as the Police, the Prosecutor's Office, the Court, and the Correctional Institution. An administrative approach can be applied in understanding this system, which sees the four law enforcement agencies as a managerial entity with an organized work structure either horizontally or vertically under the auspices of a larger organization.⁷ Investigations into tax crimes whose violations cause state losses (income) in essence not only have the intention of punishing and providing a deterrent effect to the perpetrators, but especially the purpose of the effort is to restore the financial losses suffered by the state as a result of criminal acts in the tax sector. Articles included in the offense that harms state revenue in the context of tax crimes include Article 38, Article 39, Article 39A, and Article 43 paragraph (1) of Law Number 6 of 1983 concerning general tax procedures and provisions that have undergone repeated changes and the latest amendment is Law Number 7 of 2021 concerning the Harmonization of Tax Regulations.⁸

In an effort to recover assets located in the State of Indonesia, there are obstacles faced by the Prosecutor, namely having to prove with evidence that the property comes from a criminal act, where the confiscation process takes into account the provisions in Article 38 paragraph 1 of the Criminal Procedure Code which requires that there must be a permit from the chairman of the local District Court, in the form of a permit given before or after the investigation.⁹ One of the solutions offered in this study is through asset tracing efforts followed by asset confiscation of tax violators, this instrument is the right effort to maximize the recovery of state revenue, in addition to adding norms related to asset confiscation. On the property of the criminal perpetrator, the impact will have a deterrent effect, because at least it will rethink if there is a tax crime, all his wealth will be confiscated, auctioned for the state.¹⁰ The enforcement of criminal law in the field of taxation has the intention of ensuring

⁶ Atmaji, A., Pinasang, R., & Setlight, M. M. M. (2023). Pengembalian Aset Tindak Pidana Pencucian Uang Berdasarkan Kewenangan Kejaksaan Republik Indonesia. *Jurnal Tana Mana*, 4(1), 287-288.

⁷ Purnomo, C. A. J., & Gunadi, G. (2023). Policy Implementation Process and its Component on Tax Crime Investigation Boundary to Promote an Optimal Tax Revenue: A Literature Review. *Nagari Law Review*, 6(2), 72-75.

⁸ Rajagukguk, P., & Kuntonegoro, H. T. (2022). Tax bailiff roles post assets confiscation on suspect of tax crime in Indonesia. *Journal of Tax Law and Policy*, 1(2), 30.

⁹ Prasetyo, M. B., Hamid, N. I., Asshidieqi, M. F., & Fadillah, S. S. (2023). Analisis United Nation Convention Against Corruption 2003: Perspektif Asas Manfaat Asset Recovery Di Negara Indonesia. *Jurnal Anti Korupsi*, 13(2), 80-81.

¹⁰ Margono, R., Nurjaya, I. N., Negara, T. A. S., & Hadi, H. (2020). The urgency of asset confiscation sanction in tax crimes. *International Journal of Research in Business and Social Science*, 9 (5), 286.

that all provisions of tax law are applied fairly and appropriately, thereby creating justice, legal certainty, and balance between all parties involved in the process.¹¹ The seizure action is the last extreme step taken in the law enforcement process before the suspect is handed over to the court. This process is also known as "beslah," where investigators and public prosecutors in criminal cases often need to seize items as evidence in trials. Confiscation is carried out with the intention of taking goods from the party who controls them and then handing them over to the authorities for the purpose of investigation and examination of cases.¹² According to Article 39 Paragraph (1) of the Criminal Procedure Code, it is stated that goods or bills that are suspected to come from criminal activities or include the proceeds of crimes, goods that are directly used to carry out crimes or to plan them, goods that obstruct the investigation of crimes, goods that are specifically made or used to carry out crimes, and other goods that are directly related to the crime being carried out can be confiscated.

This study aims to explain the process of confiscation in Tax Crimes in Indonesia and identify the implementation of confiscation in Decision Number: 249/Pid.Sus/2022/PN. Tpg and analyze the implementation of the criminal execution of taxpayer fines in Decision Number: 249/Pid.Sus/2022/PN. Tpg, in that case, the expected result is to find out how the confiscation procedure should be (Das Solen) with the truth (Das Sein) as in Decision Number: 249/Pid.Sus/2022/PN. Tpg, so that in the analysis later it can provide answers to the convict's property to be executed.

One of the cases in Decision Number: 249/Pid.Sus/2022/PN. Tpg on behalf of Teddy Layanto Als Teddy Als Alung in 2022 investigators of Civil Servant Officials within the Director General of Tax Enforcement carried out a seizure of Land and Buildings in the name of Laij Florence with an area of 436M2 which was obtained on December 19, 2007 and in 2010 it was known that the Land and Building became collateral/collateral at Bank Mandiri Tanjungpinang, in that case, the property/wealth in the form of Land and Buildings is not related to the criminal act carried out by the convict, namely not submitting the Annual Income Tax Notification and the Annual Value Added Tax Notification Letter for the 2016 - 2019 tax year which in the verdict that: Stipulating evidence in the form of Land and Buildings in the name of Laij Florence Certificate of Property Rights Number 2553 in the name of Laij Florence with an area of 436M2 confiscated by the State As well as the proceeds of the sale/auction are calculated as the payment of the principal tax payable. Following this, three study questions that need to be considered arise, namely: 1) What is the process of confiscation in Tax Crimes in Indonesia?; 2) How is the confiscation carried out in Decision Number: 249/Pid.Sus/2022/PN. Tpg? 3) How is the implementation of the criminal execution of taxpayer fines in Decision Number: 249/Pid.Sus/2022/PN. Tpg?.

LITERATURE REVIEW

A. The Authority to Confiscate

Foreclosure includes a procedure in which the government takes over private property without compensation, as part of a law enforcement process. It is carried out to support investigations, prosecutions, and trials related to a case, especially in the context of criminal law. This process is officially recognized as a legal action that allows certain items to be

¹¹ Gunadi, "Panduan Komprehensif Ketentuan Umum Perpajakan (KUP)", Edisi Revisi. (Jakarta: Bee Media Indonesia), 2016.

¹² Dandel, D. C. L. (2018). Penyitaan Harta Benda Hasil Tindak Pidana Menurut Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana. *Lex Crimen*, 7(10), 158.

temporarily confiscated from certain individuals or groups for the legal interests of the person concerned.¹³

The definition of confiscation, which is stated in Article 1 point 16 of the Criminal Procedure Code, includes a series of steps carried out by investigators in taking over and keeping under their control goods, whether movable or not, tangible or not, all of which are carried out for the purpose of proof in the process of investigation, prosecution, and trial.¹⁴ Taking into account the above meaning, the term used seems to be more technical in the context of civil law, such as "takeover", which suggests that the confiscated object appears to have originally belonged to the investigator and then returned to him in its original condition. Therefore, the term "takeover" is not suitable to be used in the context of confiscation in criminal cases. It is best to remove the term "takeover" and replace it with "put", using "put", so that it is clearer if the action is coercive in nature, as opposed to "keeping" which is more related to the civil context.

Despite the controversy over the inappropriate choice of words in the context of confiscation according to the criminal procedure law regulated in the Criminal Procedure Code, what is emphasized is the "coercive effort" carried out by investigators in:¹⁵ a) Confiscating or taking a number of special items from a person who is suspected of being involved, possessing, or storing them. This act is authorized by law and is carried out in accordance with existing rules, not in an illegal or unlawful manner; b) After the goods are confiscated by the investigators, then placed or stored under their control.

The description of the act of confiscation in the article of the Criminal Procedure Code, there are at least several aspects that can be understood related to the process:¹⁶ a) Confiscation includes investigative steps as described in Article 1 point 1 of the Criminal Procedure Code which stipulates that the investigator refers to the Police or Civil Servant Officials specially appointed by the Law to carry out investigative duties. In addition, Article 7 paragraph (1) letter d of the Criminal Procedure Code emphasizes that the investigator has the authority to carry out confiscation as part of his responsibility. It is also clarified by Article 38 paragraph (1) that confiscation can only be carried out by investigators with written permission from the local district court leader. From this series of provisions, it can be concluded that confiscation according to the perspective of the Criminal Procedure Code is the exclusive authority of the investigator. It has the intention of enforcing legal clarity to avoid confusion as has happened in the past, where the National Police and the Public Prosecutor have the authority to confiscate as a result of circumstances that both have investigative authority, a situation that is improved by the Criminal Procedure Code by establishing the principle of differentiation and specialization of official functions;¹⁷ b) Confiscation includes official actions carried out by taking over or keeping under the control of the authorities, whether movable or immovable, as well as tangible or intangible objects. This action is part of the judicial process that is carried out in accordance with written instructions or court decisions; c) The object of confiscation includes various types of goods, ranging from moving to non-movable, as well as tangible or not; d) The seizure is intended

¹³ Monita, Y., Hafrida, H., Arfa, N., & Siregar, E. (2021). Kajian Normatif Tentang Penyitaan Barang Bukti Dalam Tindak Pidana Korupsi. *Jurnal Sains Sosio Humaniora LPPM Universitas Jambi*, 5(2), 1249.

¹⁴ Rahim, M. I. F., Rahim, S. A. P., Rahim, M. A. H. A., Rahim, A. R., & Rahim, A. (2020). Penyitaan Barang Bukti Tindak Pidana pada Tingkat Pemeriksaan Persidangan. *Pleno Jure*, 9(1), 47-57.

¹⁵ Harahap M. Yahya. "Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan". (Jakarta: Sinar Grafika), 2021

¹⁶ Muhammad Ibnu Fajar Rahim, Sitti Arkanul Pascahyati Rahim, Muhammad Aman Hijrah Akbar Rahim, Ahmad Ranuwirawan Rahim, Abdul Rahim (2020). *Op. Cit.* p. 20.

¹⁷ Harahap M. Yahya (2021). *Op. Cit.* p 265.

to support the investigation, prosecution, and judicial process by providing the necessary evidence. However, evidence obtained from confiscation has a different role in proof compared to other evidence. The evidence can be used as a clue and strengthen the judge's beliefs, but their evidentiary strength depends on the judicial context and its use in shaping the judge's beliefs.

The confiscation of evidence, as stipulated in Article 38 paragraph (1) of the Criminal Procedure Code, includes the exclusive authority of investigators. This provision emphasizes that only investigators have the authority to confiscate evidence as physical or real evidence, which is very important to uncover the facts of the crime. The confiscation act is considered part of an investigation effort that can only be carried out by investigators. However, although this norm is strict, in practice at the trial stage there is often the discovery of evidence that has never been confiscated by investigators, but has significant relevance to criminal cases that are being tried by the public prosecutor. However, if referring to Article 38 of the Criminal Procedure Code, it is therefore clear that confiscation can only be carried out by investigators during the investigation stage and not by the public prosecutor, as an application of the principle of Functional Differentiation between the roles of investigators and public prosecutors.¹⁸

B. Form and Procedure of Confiscation

Referring to the regulations governing the seizure process, the law confirms the differences in several methods of carrying out seizures, as regulated:¹⁹ Ordinary Confiscation and Its Procedures: There needs to be an official approval in the form of a "Confiscation Approval Letter" issued by the Chief of the District Court. Before carrying out the confiscation, the investigator must first ask permission from the Chairman of the local District Court. In the permit application, the investigator is required to provide an explanation and a strong reason why the seizure needs to be carried out. The purpose of this seizure is to obtain relevant evidence for the purposes of investigation, prosecution, and court trials. Does the Chief District Court have the authority to refuse a request for permission? Although it is not expressly regulated in the law, logically, the Chief Justice of the District Court has the potential to reject the permit application. One of the main reasons for granting a confiscation permit is to ensure supervision and control so that the confiscation is carried out appropriately in accordance with the law and is not abused. Therefore, the Chief Justice of the District Court has the right to reject the request for permission submitted by the investigator. However, the refusal must be based on clear legal and legal considerations, not solely without a well-founded reason.²⁰ Displaying or indicating identification: According to Article 128, it is important to show the "identification mark" of the position to the individual whose goods are to be confiscated. This step is intended to give the person confidence if they are interacting with the investigating officer. This rule states that without first showing identification, the individual whose goods will be confiscated has the right to refuse the seizure and the action carried out. Showing the object to be taken by the authorities in accordance with the provisions stated in Article 129: The investigator is obliged to show the goods to be confiscated to the individual who is the owner or has a connection with the goods. If the individual is unavailable, investigators can

¹⁸ Muhammad Ibnu Fajar Rahim, Sitti Arkanul Pascahyati Rahim, Muhammad Aman Hijrah Akbar Rahim, Ahmad Ranuwirawan Rahim, Abdul Rahim (2020). *Op. Cit*, p. 10.

¹⁹ Harahap M. Yahya (2021). *Op. Cit*. p 266.

²⁰ *Ibid*.

face their family members. The purpose of this procedure is to ensure transparency of the goods to be confiscated. When the item is shown to the individual or their family, the investigator has the right to ask for information about the origin of the item.

The process of taking and demonstrating the confiscated goods must be directly supervised by the village head or the head of the ward, who is accompanied by two witnesses as an official and reliable action: When the investigator wants to carry out the confiscation, the presence of at least three witnesses is required to be brought to the location where the confiscation is carried out. Their presence consisted of the Village Head or the head of the ward, as well as an additional 2 other witnesses in accordance with the provisions stated in Article 129 Paragraph (1). Prepare an official report on the process of taking evidence in detail: Article 129 Paragraph (2) regulates the process of making minutes in detail. After the minutes have been prepared, the investigator must read it in front of the individual from whom the object was confiscated, or to the family, as well as to three witnesses. If they have understood and agreed to the content of the minutes so that the investigators can provide a date in the minutes. As a final step, everyone involved must sign the seizure report, including the investigator, the individual whose object was confiscated from him or his family, and the three witnesses.²¹

Submitting Derivatives of Seizure Minutes: The duty of investigators to send reports on confiscation results to lawmakers is very important, because it can ensure that the actions of investigators in carrying out confiscation are truly supervised and controlled in accordance with their authority. Wrapping Confiscated Objects: Article 130 regulates the procedure for wrapping confiscated objects to ensure their safety. This packaging includes weighing or counting the number of objects according to their type, recording the date of confiscation, recording the identity of the party from whom the object was confiscated, and adding signs and stamps of office. All of these processes must be signed by investigators. If packaging in accordance with the rules described in Article 130 Paragraph (1) is not possible, then the alternative is to make a written note that is affixed or directly related to the confiscated object. Seizure in Necessary and Urgent Circumstances: 1) Without a "Letter of Permission" from the Chief of the District Court; 2) Only Limited to Movable Objects; 3) Must immediately "report" to get "approval". Confiscation in the condition of Hand Captured; Indirect confiscation; Confiscation of Letters or Other Writings.

C. Confiscated Objects

Article 39 and Article 1 point 16 are interconnected in providing restrictions on objects that can be confiscated, with Article 1 point 16 stipulating provisions regarding the types of objects that can be the object of confiscation. The basic principle in the process of confiscating objects emphasizes that only a few objects that are related to a criminal act can be confiscated in accordance with the provisions of the Criminal Procedure Code. If an object has no connection or involvement with the criminal act being investigated, therefore it cannot be confiscated. Therefore, the confiscation of various objects that are not related to the criminal incident that is being handled is considered an unlawful act, and therefore illegal. Consequently, affected individuals can apply for compensation through Pretrial if it is still in the investigation stage, or through the District Court if the case has entered the trial stage.²² The principle of foreclosure is a coercive act in which one party takes over the

²¹ Hartono, G. (2021). Tinjauan Yuridis Pengambilan Tujuan Dan/ Atau Surat Dalam Pasal 52 Ayat (2) Huruf D Peraturan Daerah Kota Mojokerto Nomor 3 Tahun 2013 Tentang Pengelolaan Kewajiban Umum. *Actual*, 11(1), 40-47.

²² *Ibid*.

property of a person (whether it is a suspect or a defendant) before a formal decision on the case is enforced. Basically, this act of confiscation can be considered as theft and a violation of human rights because it is carried out before there is a final legal decision. However, on the other hand, in some conditions, for example for the benefit of the community for the settlement of criminal cases, the law allows confiscation as an exception. Article 44 Paragraph (2) letter j of Law Number 7 of 2021 concerning Harmonization emphasizes that investigators are authorized to stop the suspect's assets in accordance with existing regulations and confiscate the suspect's assets in accordance with the applicable criminal law by meeting the conditions of obtaining permission from the leadership of the local district court. The process of confiscating assets, whether moving or not, follows the procedures stipulated in the Criminal Procedure Code.

The Criminal Procedure Code has stipulated provisions regarding objects that can be confiscated as a result of intentional crimes. Article 39 of the Criminal Procedure Code provides a detailed explanation if the confiscation process depends on certain circumstances, where there is an optional (option to confiscation) and mandatory (mandatory confiscation) possibility. There is an emphasis on items that can be confiscated, such as for example motor vehicles purchased from the proceeds of crime, although not directly, as decided in the Supreme Court Decision Number: 12 K/Kr 1960 dated November 13, 1962. On the other hand, in the *Herzienne Indonesisch Reglement* dated June 2, 1933, the same thing was also affirmed, namely that some goods were purchased using money from crimes, including in the context of legal entities such as firms or companies, even though their ownership was not completely absolute.

The Criminal Procedure Code regulates the confiscation of evidence in criminal cases, such as in corruption cases, which can be concluded that:²³ a) Article 1 number 16 of the Criminal Procedure Code regarding confiscation; b) Article 39 paragraph (1) regarding Evidence that can be confiscated; c) Article 184 paragraph (1) of the Criminal Procedure Code regarding valid evidence; d) Article 7 of Law Number 48 of 2009 concerning Judicial Power. Property that exists is not all of the suspect or defendant must be confiscated; It is necessary to carry out a previous study to ascertain whether the property is related to the case being handled, and whether the property can be used as legal evidence to be confiscated. The procedure for confiscating a number of evidence from criminal acts, including corruption, must comply with the provisions that have been regulated in Article 39 paragraph (1) of the Criminal Procedure Code and existing regulations. If this procedure is not followed correctly, then the confiscated evidence can be declared invalid and will not be considered by the judge in his decision. In addition, if it turns out that the evidence is not related to the criminal act being investigated, the judge is authorized to order the return of the evidence to the defendant or the owner who has the right. Therefore, it is important for the District Court to sharply assess the relevance and urgency of the request for a confiscation permit submitted by the investigator.²⁴

METHODS OF THE RESEARCH

This study adopts a normative legal study method by using literature study techniques to investigate guidelines such as laws, articles, or journals related to the topic and title being studied. It has the intention of using the material as the basis or main foothold in compiling

²³ *Ibid.*

²⁴ Harahap M. Yahya (2021). *Op. Cit.*, p. 277.

this article.²⁵ The type of study applied to this legal study is the study of normative or doctrinal juridical law, which focuses on the systematic explanation of the rules that govern a certain aspect of law.²⁶ The approach used by the researcher involves an approach to legislation and a case approach. Meanwhile, data collection techniques involve the use of secondary data, including primary legal materials such as Court Decisions and Laws and Regulations, secondary legal materials such as journals, books and the results of previous studies. The data analysis method applied is qualitative analysis that focuses on legal aspects.²⁷

RESULTS AND DISCUSSION

A. Implementation of Confiscation in Decision Number: 249/Pid.Sus/2022/PN. Tpg.

The confiscation of property or wealth in the context of the investigation of tax crimes is a step that can be carried out by the Director General of Tax Taxes to ensure the recovery of losses in state revenue and to support efforts to collect tax revenue. In this effort, the concept of recovering losses in state revenue is not only limited to the payment of fines by tax criminals, but also includes all criminal consequences that must be borne by them. Although the payment of fines does not directly contribute to tax revenue, the act of confiscation of property is carried out to confirm if the perpetrator of the tax crime will be liable for the sanctions imposed. In addition, this action also has the intention of increasing certainty if the perpetrator of the crime will comply with his obligations. In the context of supporting the collection of tax revenues, the confiscation of property is also intended to have a deterrent effect for the perpetrators, therefore they do not repeat the same violation. In addition, this action is also intended to create fear among potential perpetrators, so that they are formed not to carry out tax crimes.²⁸

Before the last amendment was carried out in Law Number 28 of 2007 concerning the methods and General Provisions of Taxation through Law Number 7 of 2021 concerning the Harmonization of Tax Regulations, the basis for tax investigators in carrying out asset confiscation is explained in Article 7 paragraph (2), Article 39 paragraph (1) of the Criminal Procedure Code and Article 44 paragraph (2) letter e of the Law on General Provisions and Procedures of Taxation 2007. These articles authorize tax investigators to conduct searches to obtain evidence in the form of books, records, and other documents, as well as to carry out seizures of such evidence. Furthermore, the explanation of Article 44 Paragraph (2) of the Law on General Provisions and Tax Procedures explains that the authority of tax investigators includes the confiscation of both movable and immovable goods, such as bank accounts, securities, receivables owned by the Taxpayer, as well as the Tax Insurer, or other parties who are made suspects. However, in practice, this legal basis only allows the seizure of assets for evidentiary purposes and only applies to assets related to tax criminal cases. However, to ensure that there is recovery of losses in state revenue, it is important to secure assets through confiscation, which are related to tax crimes or unrelated.²⁹

²⁵ Albert H Wounde, Dominikus Rato, Fendi Setyawan, "Implementasi Nilai-Nilai Filsafat Hukum Dalam Pembentukan Hukum Di Indonesia," CREPIDO 4, no. 1 (2022): 301. <https://doi.org/10.55681/seikat.v2i3.569>.

²⁶ Peter Mahmud Marzuki. 2011. *Penelitian Hukum*. Kencana Prenada Media Group, Jakarta, p. 32

²⁷ Henro Susanto, Mustofa Kamil, Hasnah Aziz. "Kajian Yuridis Terhadap Tindak Pidana Perpajakan Dalam Penerapan Transfer Pricing". *Jurnal Pemandhu*, 3, no 2. (2022): 113.

²⁸ Burhan, A. U. A., & Gunadi, G. (2022). Optimalisasi Wewenang PPNS DJP dalam Penyitaan dan Pemblokiran Aset untuk Pemulihan Kerugian Pendapatan Negara. *Owner: Riset dan Jurnal Akuntansi*, 6(4), 4205.

²⁹ *Ibid*

In Decision Number 246/Pid.Sus/2022/PN. Tpg, the confiscation action was carried out on assets owned by Teddy Layanto, also known as Teddy Alung, a Director at CV. Development Sustenance. Teddy Layanto has been registered as a taxpayer since October 10, 1997 and was authorized as a Taxable Entrepreneur on October 14, 1997. CV. Rezeki Pembangunan deliberately did not report the Annual Income Tax Return and the Annual Value Added Tax Return for the tax period 2016 to 2019. Before the investigation by tax officials, the assets had been pawned at Bank Mandiri Tanjungpinang. Investigators then carried out confiscation and blocking in accordance with a request from the Ministry of Agrarian and Spatial Planning/National Land Agency on June 6, 2022. In the same year, investigators from the Director General of Tax Enforcement carried out confiscation of land and buildings registered in the name of Laij Florence, the wife of Teddy Layanto, with Land Title Number Number 2553 located on Jl. Melur Gang. Jambu, Kijang Village, East Bintan District, Bintan Regency, Riau Islands Province. The land and building were acquired on December 19, 2007.

The Panel of Judges in the court process, considers various legal aspects related to the evidence submitted. One of the considerations that is the focus is the ownership of Land and Buildings recorded in the name of Laij Florence with the Land Title Number Title Letter Title Number: 2553, which is located on Jl. Melur Gangg. Guava Kijang Village, East Bintan District, Bintan Regency, Riau Islands Province, with a size of 436M2. The goods have been confiscated by the State, and the proceeds of the sale or auction are considered as tax debt payments. Therefore, Decision Number: 246/Pid.Sus/2022/PN. Tpg, which was issued on behalf of Teddy Layanto Als Teddy Als Alung, essentially states:³⁰ 1) The defendant Teddy Layanto Alias Teddy Alias Alung was sentenced to 2 years in prison and a fine of 3 times the amount of Rp. 6,040,354,703, namely Rp. 18,121,064,109,-. So the total is Rp. 24,161,418,812,- as payment of fines. If the defendant does not pay the fine within one month after the Court Decision has permanent legal force, then the Prosecutor is authorized to confiscate and auction the defendant's property to pay off the fine. If it turns out that the defendant's property is insufficient to pay the fine, then the sentence will be replaced with imprisonment for eight months; 2) Confiscating land and building properties registered in the name of Laij Florence, who has a Certificate of Ownership Number 2553 with an address at Jalan Melur Gang Jambu, Kijang Village, East Bintan District, Bintan Regency, Riau Islands Province, which has an area of 436 square meters, for the benefit of the state. Income from the sale or auction of the property will be considered as payment of tax debts that must be paid.

B. Implementation of Criminal Execution of Taxpayer Fines in Decision Number: 249/Pid.Sus/2022/PN. Tpg.

It is important to pay attention to three essential aspects in Law Enforcement: legal certainty, justice, and the usefulness of the law. Legal certainty guarantees firmness in rules, justice ensures fair application for all parties, and the usefulness of the law refers to the goals that must be achieved. A law that does not uphold justice becomes useless, as well as a law that loses its direction or benefit, in essence, an effective regulation is one that is able to regulate and enforce justice for all individuals affected by it.³¹ According to Article 30 paragraph (1) letters a and c in the revision of Law Number 11 of 2021 concerning the

³⁰ Putusan Pengadilan Negeri Tanjungpinang Nomor : 249/Pid.Sus/2022/PN. Tpg, p. 55-61.

³¹ Zerani Naomi Montolalu, Diana Darmayanti Putong, Janeman Lanawaang (2024). "Kajian Yuridis Penegakan Pidana Perpajakan Indonesia". *Jurnal Constituendum*, 2, no 1, (2022).

Attorney General of the Republic of Indonesia, the Prosecutor's Office is given the responsibility and right to run courts and investigations in criminal cases. In addition, the Prosecutor's Office also has a role as a law enforcement agency that regulates and supervises the course of the case handling process (*dominus litis*).

Various obstacles are faced in the effort to implement taxation-related criminal law enforcement with a focus on recovering losses in state revenue. Along with the provisions of Article 30 paragraph (2) of the Criminal Code which replaces fines with imprisonment if the fine is not paid, many judges in tax criminal cases consider this alternative. As a result, the state will have to bear the cost of detaining inmates, while not getting a return from the recovery of losses to state revenue.³² If a person who has been convicted does not fulfill the obligation to pay the fine in accordance with the final legal decision, then the public prosecutor will carry out the confiscation of the property owned by the person concerned to pay the fine. This step is designed with the hope that the perpetrators of criminal acts will feel the encouragement to immediately compensate for the losses that have been caused to the state's finances and to avoid administrative sanctions in the form of fines.³³

Andi Hamzah emphasized that the main focus is on potential deviations from various general principles contained in the Criminal Code when dealing with laws or special regulations. The legal principle of *Lex Specialis Derogate Legi Generali* states that the general provisions of the Criminal Code remain valid unless there is a special provision that overrides them. Thus, if there are no special provisions that regulate, then the general provisions of the Criminal Code are still valid. This means that even though tax crimes are considered part of a special criminal law, but if there are no special regulations in the Law on General Provisions and Tax Procedures that govern it, then various general principles in the Criminal Code for substance and the Criminal Procedure Code for its procedures remain valid. Therefore, if a person does not pay the fine, the consequences will be subject to the provisions stipulated in the Criminal Code and the Criminal Procedure Code,³⁴ In criminal cases, a verdict is considered final and binding if it has been executed (*Inkracht van Gewijsde*). To ensure legal certainty and provide a basis for its implementation, the execution must be included in the decision. In order for the public prosecutor to carry out the execution of the final verdict in a criminal case, the clerk is required to give a copy of the verdict to the public prosecutor.³⁵ The Public Prosecutor is responsible for collecting money because the Judge has decided that if the convict does not pay, therefore his property will be confiscated and auctioned by the Public Prosecutor. The purpose of this confiscation and auction is to cover the fines or replacement money that are set. However, if it turns out that the convict does not have sufficient assets to cover that amount, therefore the convict will be sentenced to imprisonment in lieu of it with a certain duration of not more than a few months.³⁶

In the process of implementing law enforcement against fines that must be paid by taxpayers, as stipulated in Decision Number: 246/Pid.Sus/2022/PN. Tpg on behalf of Teddy Layanto Als Teddy Als Alung, the provisions listed in the Attorney General's

³² *Ibid.*

³³ *Ibid.*

³⁴ Arief Sultony. "Urgensi Regulasi Eksekusi Pidana Denda di Bidang Perpajakan Pasca Undang-Undang Cipta Kerja". *Wajah Hukum*, 5 no 1 (2021). DOI 10.33087/wjh.v5i1.391.

³⁵ Hartika, L., Dithisari, I., & Andriati, S. L. (2022). Urgensi Pelaksanaan Eksekusi Pidana Tambahan Uang Pengganti Oleh Jaksa Eksekutor Dalam Perkara Tindak Pidana Korupsi. *Binamulia Hukum*, 11(2), 129.

³⁶ *Ibid.*

Regulation Number PER-013/A/JA/06/2014 concerning Asset Recovery are applied. One of the important stages in this process is Asset Trace, which refers to various procedures and instructions that have been established:³⁷ a) Property obtained indirectly or directly from criminal activities, including grants or conversion into the property of other persons, individuals or companies in the form of income and capital derived from such activities; b) Property that is used or has been used to carry out a crime or related to a crime, and has been determined by the competent court and has permanent legal force to be confiscated by the state; c) Property owned by the family of the convict, convict or other parties as compensation for the payment of existing losses, fines, compensation or other compensation to the victim or the party who has the right; d) Items found; e) State property, institutions, ministries or State-Owned Enterprises managed by other parties; f) Assets that must be recovered at the request of other countries, according to existing rules; g) Other assets regulated in existing regulations such as which in essence include compensation to the victim or entitled parties.

The execution process by the Executing Prosecutor experienced obstacles because the certificate of the Land and Building registered in the name of Laj Florence Title Letter Number 2553 with an area of 436M2 including confiscated objects that had been confiscated by the State and the proceeds of the sale or auction were considered as payment of taxes owed. However, obstacles arose because the certificate was also used as a guarantee by Bank Mandiri Tanjungpinang (a State-Owned Enterprise) only for the land and buildings. In addition, there is no involvement of the convict in a criminal act as stipulated in Article 39 Paragraph (1) of the Criminal Code. Nevertheless, Article 15 of the Prosecutor's Regulation of the Republic of Indonesia Number 2 of 2017 concerning the Auction and Sale of Confiscated Objects or State Confiscated Goods remains a reference in the execution process: "1) In a situation where a court decision states that the certificate or land deed becomes the property of the state without being accompanied by a physical takeover of the land or building stated in the certificate, The settlement of the court decision will involve granting the right to a certificate and the physical takeover of the land or building; 2) To resolve the issue related to ownership of goods confiscated by the state as stipulated in the previous paragraph, the Head of the District Attorney's Office will issue an Execution Confiscation Warrant for the physical takeover of the land or buildings listed in the certificate. This process will be documented in a Minutes of Execution Confiscation which is prepared and signed by the prosecutor who serves as the executor".

Then, in the provisions of Article 4 Paragraph (1) of the Minister of Finance of the Republic of Indonesia Number: 13/PMK.06/2018 concerning the Auction Process of Confiscated Goods, State Confiscated Goods, or Confiscated Goods for Execution from the Prosecutor's Office of the Republic of Indonesia, there is information that states:³⁸ a) Conducting an auction of confiscated goods where the owner or owner of the right to the goods cannot be identified; b) Conducting an auction of confiscated goods where the owner or owner of the goods refuses to accept them; c) Conducting auctions of confiscated goods without clarity of the decision and case files; d) The implementation of auctions of confiscated goods or evidence whose ownership rights are returned to State-Owned Enterprises or Village-Owned Enterprises without any statement if the goods have been

³⁷ *Ibid.*

³⁸ Pasal 4 Peraturan Menteri Keuangan Republik Indonesia Nomor 13/PMK.06/2018 Tentang Lelang Benda Sitaan, Barang Rampasan Negara, Atau Benda Sita Eksekusi Yang Berasal Dari Kejaksaan Republik Indonesia

confiscated; e) The implementation of the auction of confiscated goods or evidence of ownership rights is returned to the institution or ministry without any statement if the goods have been confiscated; f) Implementation of auctions for confiscated goods where related documents are incomplete; g) Implementation of auctions on confiscated goods in the form of certificates or land deeds; h) Conducting an auction of confiscated goods where there is a difference in data between the verdict, minutes, physical identity and statement orders; i) Holding auctions of confiscated goods in paying fines or compensation.

The aforementioned article does not include special provisions regarding Execution Auctions related to property in the form of Land and Buildings that are included in State Booty. In this context, it is contrary to the concept of legal certainty theory which is one of the main principles of law to achieve justice, where the existence of law without certainty will reduce its meaning and usefulness as a guide. Sudikno Mertokusumo (2007:160) explained that legal certainty guarantees that the law is applied clearly so that the party who has the right in accordance with the law can claim his rights and the verdict can be carried out, where the law, in essence, must be certain and fair. Legal certainty provides clear guidelines for behavior, while justice ensures that those guidelines support the order that is considered appropriate. The tangible manifestation of legal certainty is reflected in the implementation and enforcement of the law against an action regardless of who the perpetrators are involved.³⁹ On the other hand, Gustav Radbruch emphasized that legal certainty reflects clarity, firmness, and certainty in rules and regulations. This principle states that the law must be clear and just; It is clear as a guide for behavior, as well as fair because that principle must support a system that is considered fair. In a more specific context, settlement of certificates pledged to state-owned banks related to the decision to take over land and buildings for the benefit of the state is not specifically regulated.

CONCLUSION

The confiscation process in Indonesian law is regulated by various methods of implementation, such as ordinary confiscation and confiscation in urgent circumstances. Investigators are required to obtain a "Confiscation Consent Letter" from the Chief District Court before carrying out the seizure, and must also provide compelling reasons to support the request. The main purpose of the seizure is to obtain evidence relevant to the investigation, prosecution, and trial. Although not explicitly regulated, the Chief Justice has the authority to reject an application for a forfeiture permit if it is not supported by clear legal considerations. In addition, investigators must show identification to the individual whose goods will be seized and show the object to be taken to ensure transparency in the process. The process of picking up goods must also be witnessed by a minimum of 3 (three) people, including the Village Head or the head of the neighborhood, to ensure the validity of the action. After the seizure, the investigator is required to prepare an official report that is read and signed by all relevant parties. In urgent circumstances, seizures can be made without prior permission but must be reported immediately to obtain approval. Only goods that have a connection with a criminal act can be confiscated; otherwise, such actions are considered unlawful and may result in a claim for damages. This process shows that although confiscation is an act that suppresses individual property rights, the law provides

³⁹ Adhinata, M. S. (2022). Kekuatan Eksekusi Hak Tanggungan Yang Dirampas Negara Terkait Korupsi Berdasarkan Undang-Undang Hak Tanggungan (Analisis Putusan Mahkamah Agung Nomor 2701K/PDT/2017). *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan*, 2(1), 391-392.

strict restrictions and procedures to protect human rights and ensure that law enforcement is carried out fairly and in accordance with applicable provisions. This obstacle is contrary to the theory of legal certainty, one of the legal goals oriented towards the creation of justice, there is no special arrangement related to the settlement of certificates that are being pledged to government banks (State-Owned Enterprises) when the land and buildings in question are declared confiscated for the state based on a legal ruling.

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