

■ Submitted: 13 Mei 2022

■ Revised: 05 June 2022

■ Accepted: 16 June 2022

## The Validity of the Execution Auction of Booty of Motor-vehicle Theft by the State Prosecutors Office

Andreanto<sup>1</sup>, Supriyono<sup>2</sup>, Anang Dony Irawan<sup>3</sup>

<sup>1</sup> Universitas Jember

Jl. Kalimantan No. 37, Krajan Timur, Sumbersari, Kec. Sumbersari, Kabupaten Jember, Jawa Timur 68121

<sup>2,3</sup> Universitas Muhammadiyah Surabaya

Jl. Raya Sutorejo No. 59, Dukuh Sutorejo, Kec. Mulyorejo, Kota Surabaya, Jawa Timur 60113

\* Correspondence email: anangdonyirawan@fh.um-surabaya.ac.id

**ABSTRACT** This study aims to determine the role of the state prosecutor's office in the management of evidence and looted goods and to determine the validity of the auction process for the execution of motor vehicle theft stolen goods by the state prosecutor's office. This research is a normative juridical research using a statutory approach. From the results of the study, it can be seen that the execution auction of the booty of motor-vehicle theft carried out by the state prosecutors is considered valid if it meets the prerequisites, namely the existence of a "confiscated" order in a court decision that has been *inkracht* and fulfills the principle of publicity and fulfills the provisions as stated in the Regulation of the Attorney General of the Republic of Indonesia Number 10 of 2019 concerning Amendments to the Regulation of the Attorney General R.I. No. PER-002/A/JA/05/2017 concerning Auctions and Direct Selling of Confiscated Goods or State confiscated Goods or Executed Confiscated Goods.

**KEYWORDS** Execution auction, booty, motor-vehicle theft, state prosecutor

### INTRODUCTION

In the trial process, the proof stage is very important. Therefore, the existence of evidence becomes something that is inseparable in the evidentiary process, one of which is in the process of examining cases of motor vehicle theft (*curanmor*).

In the case of the crime of motor vehicle theft, the evidence is the motorized vehicle (*ranmor*) itself, where the *ranmor* is the legal property of a person and the criminal (the thief) has been caught by the police, the *ranmor* will be confiscated by police investigators. Management of confiscated objects and confiscated goods is a consequence of the confiscation of objects/goods related to a criminal act committed by investigators.

In criminal law, it is known that there are basic and additional penalties. In Article 10 of the Criminal Code (KUHP) there is an additional crime in the form of confiscation of certain goods. What is meant by certain items here is evidence. The confiscation of certain goods is carried out based on a decision from the Attorney General's Office of the Republic of Indonesia, and such goods can be auctioned, used by the government for state or social interests, or destroyed. The rules related to evidence are widely explained in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). Both from the search process, confiscation or confiscation to the process of auctioning evidence. Provisions regarding general provisions for confiscation are regulated in Chapter V Part Four Articles 38-46 of the Criminal Procedure Code. Meanwhile, the management of confiscated objects is specifically regulated in Articles 44-46 of the Criminal Procedure Code.

In addition to being the object of a crime, *ranmor* is also often used as a means to commit crimes, for example in the crime of robbery, theft with violence and so on. In this case, the *ranmor* will also be evidence in the trial court. This confiscation is carried out for the purpose of proof in the court examination process. While the legal owner of the *ranmor* is proven by the ownership of the proof of ownership of the motorized vehicle/BPKB and the motorized vehicle registration certificate/STNK, the person concerned will have the capacity as a victim witness or reporting witness who will provide information to investigators that the *ranmor* is actually his.

In fact, the existence of confiscated evidence has become a new problem for both investigators and prosecutors. The existence of confiscated evidence that has no owner because the owner is not known to make the number is increasing day by day. The confiscated evidence will be accommodated in the State Confiscated Objects Storage House (Rupbasan). *Rupbasan* is a place for objects confiscated by the State for the purposes of the judicial process (Pemasyarakatan, n.d.). With the increasing number of confiscated *ranmor*, of course, the burden of *Rupbasan* will be heavier to maintain the value of the confiscated goods.

As has happened in several working areas of the state prosecutor's office, there is a lot of evidence of theft that is 'stalled', because it has not been processed by auction. One example is the Class I Rupbasan Surabaya, where from January 2021 to September 2021 there were 605 registers of Evidence (BB) that entered. Not only at the Class I Rupbasan in Surabaya, most of the Rupbasan in Indonesia also experienced the same thing (JPNN.com, 2021). Of course, this condition is very burdensome for the state because the cost of maintaining the evidence is high.

In addition to the overload factor that occurred in Rupbasan, there were other factors that pushed the importance of the confiscated *ranmor* auction process, including the existence of auction fraud. Currently, auction fraud is increasingly happening with various modes. Some are through telephone lines, Facebook, WhatsApp, Instagram and so on (Supriyono, V. Sholichah, & A. D. Irawan, 2022). Of these many cases, most of them are in the name of the Directorate General of State Assets (DJKN) or the Office of State Assets and Auction Services (KPKNL) which are DJKN's vertical offices, which many people know as the Auction Office / *Kantor Lelang* (Tri Wibowo, 2018). Therefore, to avoid such fraud, it is necessary to have certainty about the procedure for conducting the auction of booty of motor-vehicle theft.

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

The confiscated goods are the property of the convicted person, ownership here can mean that it still belongs to the convicted person at the time the criminal incident was committed or when the case was decided. Confiscated objects for the purposes of the judicial process are confiscated objects which in the provisions of the criminal procedure

are also referred to as confiscated objects, such things are regulated in Article 1 point 4 of PP Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code.

The confiscation of evidence related to a crime often does not take into account the impact that may arise, even though legally the types of objects seized have different methods and consequences. In other words, the problem of managing confiscated objects and confiscated goods is not always due to limited ability to manage but can occur because investigators do not understand the need for confiscation and possession of the goods.

Data from the Ministry of Law and Human Rights states that most of the *Rupbasan* in Indonesia have been overloaded, so that confiscated evidence that should have been stored is no longer accommodated (Pemasyarakatan, 2022). Even though a lot of evidence confiscated by *ranmor* has a fairly high economic value, if it is not maintained properly, it is very possible to experience a decrease in value and quality. If the quality decreases, the economic value will also fall (Kejaksaan Negeri Jakarta Barat, 2016).

For certain confiscated goods which according to the provisions of the Act must be confiscated for the state, but require high maintenance costs while the selling value is decreasing over time, for the sake of asset recovery, with the approval of the Head of the Asset Recovery Center (PPA), sales can be made by auction in accordance with the provisions applicable. The money from the auction sale of the confiscated items is used as evidence in court.

Under these conditions, the confiscated evidence which has permanent legal force which has the potential to be damaged and decrease in economic value can be auctioned off. However, before the auction process is carried out, of course, there are stages that must be passed since the forced attempt was made in the form of confiscation by investigators. The basic principles and legal construction of confiscation of confiscated or confiscated goods are often not comprehensively understood by investigators, including by public prosecutors and judges, apart from particularly in relation to efforts to prove a criminal case in court (Anti-Corruption Clearing House, 2022).

The State Prosecutor's Office as the institution authorized to handle the auction of confiscated or confiscated evidence has a strategic role. Therefore, the state prosecutor's office must be able to guarantee the validity of each auction process for the confiscated evidence. Although in practice there are still many mistakes in the implementation of the auction, resulting in a legal implication on the status of the confiscated goods.

Based on the explanation above, the formulation of the problem can be drawn, namely: what is the role of the state prosecutor's office in managing confiscated evidence and how is the validity of the auction of the execution of stolen stolen goods by the state prosecutor's office?

## RESEARCH METHODS

This research is a normative juridical research using a statutory approach. The statutory approach is used to determine the role of the state prosecutor's office in managing confiscated evidence and to find out the regulations regarding the execution auction process by the state prosecutor's office. The primary legal materials used are the Criminal Code, the Criminal Procedure Code and other laws and regulations. While the secondary legal materials used are books, legal journals and relevant articles.

## RESULTS, DISCUSSION AND ANALYSIS

### *Definition of Evidence*

According to the Regulation of the National Police Chief No. 10 of 2010 concerning Procedures for Management of Evidence within the Indonesian National Police (Perkap 10/2010). In Article 1 number 5 of Perkap 10/2010 it is stated that evidence is movable or immovable, tangible or intangible objects that have been confiscated by investigators for the purposes of examination at the level of investigation, prosecution and examination in court (Kapolri, 2010). In addition, evidence is also mentioned in several articles of the Criminal Procedure Code. Article 40 of the Criminal Procedure Code states that "In the case of being caught red-handed, the investigator may confiscate objects and tools that are evidently or reasonably suspected to have been used to commit a criminal act or other objects that can be used as evidence". Evidence is also stated in the Elucidation of Article 46 paragraph (1) of the Criminal Procedure Code, namely "Objects subject to confiscation are required for examination as evidence..." .

Confiscation is defined as the process, method, act of seizing or taking private property by the government without compensation. The law enforcement process validates the existence of an action in the form of confiscation. Therefore, confiscation is a legal action in the form of taking over from control temporarily goods from the hands of a person or group for the purposes of investigation, prosecution and trial. Meanwhile, according to Article 39 of the Criminal Procedure Code, objects that can be confiscated include (Indonesia, n.d.-b) :

1. Objects or claims of a suspect or defendant which are wholly or partly obtained from a criminal act or partly the proceeds of a criminal act;
2. Objects that have been used directly to commit a crime or prepare it;
3. Objects used to hinder the investigation of criminal acts;
4. Objects specially made to commit a crime;
5. Other objects that are directly related to the crime committed.

In other words, objects that can be confiscated as stated in Article 39 paragraph (1) of the Criminal Procedure Code can be referred to as evidence (Ratna, 1989). In addition, in the *Herziene Inlandcsh Regulation (HIR)* there is also a matter of evidence. Article 42 of the HIR states that employees, officials or authorized persons are required to look for crimes and violations and then seek and confiscate goods used to commit a crime as well as goods obtained from a crime. Elucidation of Article 42 of HIR mentions items that need to be exported, including (Indonesia, n.d.-a):

1. Goods that are the target of a crime (*corpora delicti*)
2. Goods that occur as a result of a crime (*corpora delicti*)
3. Goods used to commit a crime (*instrumenta delicti*)
4. Items which can generally be used to incriminate or alleviate the defendant's guilt (*corpora delicti*).

Apart from the meanings mentioned by the law book, the notion of evidence is also put forward with doctrine by several legal scholars. According to Andi Hamzah, evidence in a criminal case is evidence regarding where the offense was committed (the object of the offense) and the goods with which the offense was committed (the tools used to commit the offense), including goods that are the result of an offense (Hamzah, 2008).

### ***Definition of Auction and Execution Auction***

According to Article 1 point 1 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 13/PMK. 06/2018 Regarding Auction of Confiscated Goods, State Loot, or Executed Seized Objects From the Prosecutor's Office of the Republic of Indonesia, what is meant by auction is the sale of goods that are open to the public with a written and/or verbal price offer that is increasing or decreasing to reach the price. highest, which is preceded by the Announcement of the Auction. In accordance with Article 5 of the Regulation of the Minister of Finance Number 27/PMK.06/2016 of 2016 concerning Auction Implementation Guidelines, based on the type of auction, it can be divided into 3 types, namely (Rachmadi, 2019):

- a. Execution Auction, which is an auction to implement court decisions/stipulations, other documents that are equivalent to it, and/or implement provisions in laws and regulations. There are 15 auctions included in the execution auction, namely the execution of PUPN, courts, taxes, bankruptcy estate, Article 6 UUHT, confiscated objects Article 45 of the Criminal Procedure Code (Police/Prosecutor/Judges), confiscated objects Article 271 of Law 22/2009 concerning LLAJ, confiscated objects Article 94 Law 31/1997 concerning Military Courts, confiscated goods (Prosecutors), fiduciary guarantees, goods not controlled by the ex-Customs State, findings, evidence returned but not taken by the owner, pledges, and items confiscated by the KPK.
- b. Mandatory Non-execution Auctions, namely auctions to carry out the sale of goods which are required by laws and regulations to be sold by auction.
- c. Voluntary Non-execution Auctions, hereinafter referred to as voluntary auctions, are auctions of private property, persons or legal entities/business entities that are auctioned voluntarily.

From the explanation above, the auction of confiscated objects is included in the execution auction.

### ***Process Flow of the Confiscation of Theft Evidence***

The existence of confiscated objects begins with the submission of evidence of a suspect who has committed the crime of theft, then the evidence must be submitted or confiscated to a police investigator who is then transferred to the prosecutor's office as a public prosecutor in order to investigate, process further, and also to treat confiscated *ranmor* the (Kejaksaan Negeri Jakarta Barat, 2016).

The process of handing over confiscated objects from police investigators to the prosecutor's office is referred to as the second stage process. The public prosecutor's team from the prosecutor's office will study, record and record according to the conditions of the confiscated *ranmor*. Certainty in the investigation is needed for the *ranmor* owner so that the condition of the confiscation is known before being handed over to the prosecutor's office. If the judge's decision determines that the confiscated object can or can be handed over to the owner, then the owner can accept the confiscated object. However, if the confiscated *ranmor* is not taken care of or taken until a predetermined or determined schedule, then the *ranmor* will be confiscated by the state or can be taken by the community through the mechanism or auction regulations.

### ***The Role of the State Prosecutor's Office in the Management of Evidence and Loot***

The Prosecutor's Office as an independent law enforcement agency is universally a central institution in the criminal justice system, which has the duties and responsibilities to coordinate/control investigations, conduct prosecutions and carry out decisions/decisions of judges who have the power permanent law (*inkracht van gewijsde*), and has responsibility and authority over all confiscated evidence, both in the prosecution stage for the sake of proving the case, as well as for the sake of execution. In addition to having the authority to execute evidence, the Indonesian Prosecutor's Office also has the authority to manage the evidence which the Judge in his decision stipulates that the evidence be confiscated by the state (Santosa, 2020).

The management of evidence and looted goods is handled by the Section for the Management of Evidence and looted goods. In managing the loot, the Prosecutor's Office has 5 ways, including (Menteri Keuangan, 2007):

a. Direct Selling

The direct sale of booty carried out by the Attorney General's Office is regulated in Article 24 of the Attorney General's Regulation Number: Per - 002/A/JA/05/2017. What is meant by direct sales here is that the Prosecutor in carrying out his duties to manage the confiscated goods makes direct sales which can be followed by all Indonesian people without going through the State Auction Office if after an assessment by the State Wealth and Auction Service Office (KPKNL) the item is worth not more than from Rp. 35,000,000, - (thirty five million rupiah). For goods which after the KPKNL assessment has a value above Rp. 35,000,000, - (thirty five million rupiahs), the Prosecutor's Office cooperates with the State Auction Office to conduct an auction of the confiscated goods. This direct sale is carried out by the Asset Recovery Prosecutor who is appointed by the Head of PPA at the Attorney General's Office or the Head of the Sub-Division of Development at the District Attorney's Office, in the presence of 2 (two) witnesses consisting of the Head of the General Crime Section or the Special Criminal Section who handles confiscated objects and/or the confiscated goods and the parties or representatives of the agencies related to the confiscated goods and/or the confiscated goods in question.

b. Auction Sale

Auction sales are regulated in the Regulation of the Minister of Finance Number 03/PMK.06/2011 concerning Management of State Property Derived from State Loot and Gratification Goods. In this case, the Prosecutor's Office authorizes the KPKNL to conduct the sale by auction of State looted goods within 3 (three) months, the proceeds of which are deposited into the state treasury as Non-Tax State Revenue in the form of general receipts at the Prosecutor's Office. Auction sales are carried out by the Prosecutor's Office if the goods to be sold have a value above Rp. 35,000,000 (thirty five million rupiah).

c. Usage Status Setting (PSP)

PSP is regulated in the Regulation of the Minister of Finance Number 03/PMK.06/2011 concerning Management of State Property Derived from State Loot and Gratification Goods. What is meant by Determination of Use Status is a method of managing the confiscated goods carried out by the Indonesian Attorney General's Office by using the looted goods to be used by Internal Agencies such as the Corruption Eradication Commission, BNN, the Attorney General's Office itself and other agencies.

d. Donated to Local Government Agencies

The granting of booty to local government agencies is also regulated in the Minister of Finance Regulation Number 03/PMK.06/2011 concerning Management of State Property Derived from State Loot and Gratification Goods. What is meant by "granting" is that an item of booty can be donated to a Regional Government Agency which in practice is given in a condition when the item is related to the operational needs of the said Regional Government Agency.

e. Annihilated

The purpose of being destroyed here is that after the judge's decision determines that an item of evidence is to be confiscated by the state, but after investigation the item is not justified or cannot be auctioned or the status of its use or grant is determined, the looted item must be destroyed.

### ***The Validity of the Execution Auction of Booty of Motor-vehicle Theft by the State Prosecutors Office***

A process related to evidence, confiscated or confiscated goods must be carried out legally according to law. The execution auction process is considered valid if it meets the prerequisites set out in the applicable regulations. Prosecutors' Regulation of the Republic of Indonesia Number 10 of 2019 concerning Amendments to the Regulation of the Attorney General of the Republic of Indonesia. No. PER-002/A/JA/05/2017 concerning Auctions and Direct Selling of Confiscated Objects or State Confiscated Goods or Executed Confiscated Objects contains auction arrangements for assets under the authority of the Prosecutor's Office with certain special conditions (not as usual). The essence of the regulation is that assets in the form of confiscated objects, confiscated goods, confiscated objects of execution that have certain "special conditions" can still be submitted for auction to the KPKNL. Certain conditions in question are such as the absence of supporting documents, there are differences in object data, unclear decisions, missing decision files, and so on.

The Prosecutor's Office is an executor in implementing court decisions, among others through its power to execute auction sales of objects related to criminal proceedings. As regulated in Article 1 number 6 letter b in conjunction with Article 13 of the Criminal Procedure Code which states that the public prosecutor is the prosecutor who is authorized by this law to carry out prosecutions and carry out judges' decisions (Indonesia, n.d.-b).

Execution auctions of confiscated goods for the implementation of court decisions require a strong legal basis, namely the existence of a ruling that clearly states that a certain object is declared confiscated, so that the act of seizing and selling the auction has a strong legal basis. The importance of the inclusion of a "confiscated" order in a court decision that has permanent legal force is also intended to show that a decision to confiscate material rights has fulfilled the principle of publicity. Thus the public can know that the status of an object has really been "confiscated" through a court decision with permanent legal force, henceforth interested parties can (given the opportunity) make an objection (fair).

The status of the *ranmor* that has been auctioned off will certainly change. In the looted *ranmor* that is auctioned there will be a further transfer for the validity of the *ranmor* being registered to get the BPKB and STNK. In terms of registration and identification (regident) *ranmor* looted goods are regulated in the Regulation of the National Police Chief

Number 2 of 2012 concerning Registration and Identification of Motorized Vehicles (Kapolri, 2012).

## CONCLUSIONS

From the explanation above, it can be concluded that the auction process for the execution of stolen goods is considered valid if it meets the prerequisites, namely the existence of a "confiscated" order in a court decision that has been *inkracht* and fulfills the principle of publicity, and fulfills the provisions contained in the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 10 of 2019 Regarding the Amendment to the Regulation of the Attorney General R.I. No. PER-002/A/JA/05/2017 concerning Auctions and Direct Selling of Confiscated Goods or State confiscated Goods or Executed Confiscated Goods. To guarantee this, there must be good collaboration between law enforcement officers starting from investigators from the Police, the Prosecutor's Office and the Court.

## REFERENCES

- Anti-Corruption Clearing House. (2022). Tata Laksana Benda Sitaan Dan Barang Rampasan. Retrieved April 22, 2022, from <https://acch.kpk.go.id/en/artikel/paper/48-riset-publik/695-tata-laksana-benda-sitaan-dan-barang-rampasan>
- Hamzah, A. (2008). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika.
- Indonesia. *Herzien Inlandsch Reglement*.
- Indonesia. *Kitab Undang-Undang Hukum Acara Pidana*.
- JPNN.com. (2021). Rupbasan Surabaya Over Kapasitas, Sangat Membebani Negara, Lihat. Retrieved April 22, 2022, from <https://www.jpnn.com/news/rupbasan-surabaya-over-kapasitas-sangat-membebani-negara-lihat>
- Kapolri. *Peraturan Kapolri Nomor 10 Tahun 2010 Tentang Tata Cara Pengelolaan Barang Bukti di Lingkungan Kepolisian Negara Republik Indonesia*. , (2010).
- Kapolri. *Peraturan Kapolri Nomor 2 Tahun 2012 tentang Registrasi dan Identifikasi Kendaraan Bermotor*. , (2012).
- Kejaksaan Negeri Jakarta Barat. (2016). Begini Alur Benda Sitaan dari Diterima Kejaksaan Sampai Dilelang. Retrieved from <https://www.kejari-jakbar.go.id/index.php/arsip/berita/item/350-begini-alur-benda-sitaan-dari-diterima-kejaksaan-sampai-dilelang>
- Menteri Keuangan. *Peraturan Menteri Keuangan Nomor 96/PMK.06/2007 Tentang Tata Cara Pelaksanaan Penggunaan, Pemanfaatan, Penghapusan, Dan Pemindahtanganan Barang Milik Negara*. , (2007).
- Pemasyarakatan, D. (n.d.). Panduan RUPBASAN. Retrieved from <http://sdp.ditjenpas.go.id/manual/3.6.2/PanduanRUPBASAN.html>
- Pemasyarakatan, D. (2022). Info Rupbasan. Retrieved April 22, 2022, from <http://www.ditjenpas.go.id/category/kabar-rupbasan>
- Rachmadi. (2019). Lelang Eksekusi dan Lelang Non-eksekusi akan "berpisah jalan"?



Retrieved April 23, 2022, from [https://www.djkn.kemenkeu.go.id/artikel/baca/12784/Lelang -Eksekusi-dan-Lelang-Non-Eksekusi-akan-berpisah-jalan.html#:~:text=Lelang Eksekusi%20 yaitu lelang untuk,ketentuan dalam peraturan perundang-undangan](https://www.djkn.kemenkeu.go.id/artikel/baca/12784/Lelang-Eksekusi-dan-Lelang-Non-Eksekusi-akan-berpisah-jalan.html#:~:text=Lelang%20Eksekusi%20yaitu%20lelang%20untuk,ketentuan%20dalam%20peraturan%20perundang-undangan)

- Ratna, N. A. (1989). *Barang Bukti Dalam Proses Pidana* (A. Hamzah, Ed.). Jakarta: Sinar Grafika.
- Santosa, P. I. (2020). CRIMINAL LAW CONSIDERATIONS (Ratio Decidendi). *Indonesian Journal of Law And Policy Studies*, 1(2), 90–105.
- Supriyono, S., V. Sholichah, & A. D. Irawan. (2022). Urgensi Pemenuhan Hak-Hak Konstitusional Warga Negara Era Pandemi Covid-19 di Indonesia (The Urgency of Fulfilling the Constitutional Rights of Citizens in the Era of the Covid-19 Pandemic in Indonesian). *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia*, 1(2), 55–66. <https://doi.org/https://doi.org/10.35912/JIHHAM.v1i2.909>
- Tri Wibowo. (2018). 5 Tips Hindari Penipuan Lelang Yang Mengatasnamakan DJKN/KPKNL.