

Legal Status Reconstruction of Collected Goods With Fiduciaries Seized by the State on the Value of Justice

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Abstract: In Indonesia, there is a regulation on confiscation of confiscated goods which does not provide any objection from the owner of the confiscated goods for the state. This condition is also experienced by recipients of fiduciary guarantees who are disadvantaged because fiduciary objects are confiscated for the state based on court decisions in forestry crimes, mineral and coal crimes and oil and gas crimes. The research method used is social legal research, using the constructivism paradigm. The approach method used is the concept approach, social legal research approach and comparative approach. This research uses primary data and secondary data. Data obtained by interview, observation, and literature study. The data collected was analyzed qualitatively. The results of the study found that the regulation on the legal status of goods guaranteed by fiduciaries that were confiscated by the state was not based on justice, because in these arrangements there were no objections that could be submitted by recipients of fiduciary guarantees or third parties who had good faith against fiduciary objects that were seized by the court. In addition, in Law Number 42 of 1999 concerning Fiduciary Guarantees, it is stated that the responsibility of the fiduciary giver to the fiduciary guarantee object is to continue to follow the fiduciary guarantee object, and the fiduciary recipient is not liable for the consequences of the actions or omissions of the Fiduciary Giver, whether arising from contractual relations or arising from unlawful acts in connection with the use and transfer of objects that are the object of Fiduciary Guarantees.

Keywords: Deprivation, Fiduciary, Justice, Reconstruction, Law.

1. Introduction

Evidence related to a crime committed, before an object is determined as evidence, the said object or item is first confiscated so that later it can be used as evidence in a case in court if it meets the requirements to be used as evidence, illegal crime. Most of the logging that is used as evidence in court is goods or objects in the form of wood and tools to obtain the wood illegally or a means of transport in the process of transporting wood that does not have the documents attached to it. The transportation means in question is in the form of a medium for transporting the wood, whether operating in waters or on land [1].

Regarding the confiscation of an object or goods Article 39 of the Criminal Procedure Code that can be subject to confiscation are:

- a. objects or claims of the suspect or defendant which are wholly or partly alleged to have been obtained from a criminal act or as the result of a criminal act;
- b. objects that have been used directly to commit a crime or to prepare it;
- c. objects used to obstruct the investigation of criminal acts;
- d. objects specially made or intended to commit a criminal act;
- e. other objects that have a direct relationship with the crime committed.

Objects that are in confiscation due to civil cases or due to bankruptcy may also be confiscated for the purposes of investigation, prosecution, and trial of criminal cases, if they comply with the provisions of paragraph.

Article 40 of the Criminal Procedure Code: "In the event of being caught red-handed, investigators can confiscate objects and tools that are in fact or reasonably suspected to have been used to commit a crime or other objects that can be used as evidence." Fiduciary according to Law Number 42 of 1999 concerning Fiduciary Guarantees, is the transfer of ownership rights to an object based on trust provided that the object whose ownership rights are transferred remains within the authority of the owner of the object. Meanwhile, fiduciary guarantees are collateral rights over movable objects, both tangible and intangible, and movable objects, especially buildings that cannot be encumbered with mortgage rights, which remain in the control of the Fiduciary Giver as collateral for paying off certain debts, which gives a priority position to the Fiduciary Recipient. against other creditors [2].

Especially regarding illegals Logging regulations in Indonesia stipulate that all forest products resulting from crimes and violations and or equipment including means of transportation used to commit crimes and or violations as referred to in this article are confiscated for the State. On the other hand, this does not rule out the possibility that the means

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of transportation will become evidence in illegal cases logging and has been confiscated for the state referring to the Court's decision is the property of a third party, namely another party who still has the right to own the goods and he does not know anything about the criminal act committed by the user of the means of transportation [3].

For owners of transportation equipment, such as klotok that sail on water or other means of transportation, such as trucks / cars that run on land and they only rent or borrow from someone, they are also confiscated for the state. This is what really makes the owners of the transportation equipment confused because they are only service providers and do not know anything about what is being done by those who borrow their transportation equipment.

This is where the interest of the creditor or Fiduciary Recipient is, if the evidence in the form of truck transportation is confiscated for the state, then the Fiduciary Recipient will suffer a loss for the second time, therefore it is very reasonable and appropriate if the Fiduciary Recipient tries to defend the goods in his possession based on a fiduciary guarantee the [4].

2. Research Objectives

- 1) To analyze the regulation of the legal status of goods guaranteed by fiduciaries that are confiscated by the state which are not yet based on justice.
- 2) To analyze the current weaknesses of state confiscation of goods guaranteed by fiduciary
- 3) To find a new concept of the legal status of goods guaranteed by fiduciaries that are confiscated by the state based on the value of justice.

3. Research Method

This research method is social legal research, using the constructivism paradigm. This research uses a conceptual, regulatory, and comparative approach. This research uses primary data and secondary data. The data in this study are primary and secondary data. primary data collection techniques through interviews and observation, and secondary data collected through literature studies. The data collected was analyzed qualitatively. The legal theory used is Pancasila justice, human rights theory, and the rule of law theory as grand theory, the theory of the legal system as a middle theory and the theory of freedom of judges and progressive legal theory.

4. Research Results and Discussion

Fiduciary agreements are basically not bound. Fiduciary is the transfer of ownership rights of an object based on trust provided that the object whose ownership rights are transferred remains in the control of the object owner. Because the object remains in the possession of the owner of the object, fraud/action against the creditor's law cannot be avoided. The nature of the fiduciary agreement is *assessor* (tailgate agreement), meaning that this fiduciary agreement cannot stand alone, but follows/follows other agreements which are the main agreement, namely the loan agreement. Therefore, the consequence of this assessor's agreement is that if the main

agreement is invalid, then legally the fiduciary agreement as an assessor's agreement also becomes null and void [5].

The nature of the guaranteed rights can be distinguished, namely material guarantees and guarantee individual guarantee. Material rights give direct power over the object and aim to give *verhaal* rights (the right to ask creditors to fulfill their receivables) on the proceeds from the sale of certain objects to fulfill their receivables against those who obtain rights, both based on general and specific rights, also against creditors and counterparties and always follow the objects and their rights but also the authority to sell the objects and execution whereas individual rights create a direct relationship between one individual and another which aims to give *verhaal* rights to the creditor over the entire object of the debtor to obtain fulfillment of his receivables.

As collateral for consumer financing transactions are goods purchased with funds or financing from the finance company. If the funds are given, for example, to buy a car, then the car in question becomes the principal guarantee. Usually, the guarantee is made in the form of a "Fiduciary Transfer of Ownership" (Fiduciary).

Bearing in mind that consumer financing is generally goods in the control of the object owner." Based on this definition, it can be interpreted that ownership and rights to objects are transferred to the fiduciary recipient because of trust, but the collateral object is still under the control of the fiduciary recipient. Objects that are objects of Fiduciary Guarantee must be clear in the Fiduciary guaranteed deed both the identification of the object, as well as an explanation of the proof of ownership and for inventory objects that are always changing and or still must explain the type of object, the brand of the object and its quality [6].

A fiduciary guaranteed agreement is an agreement made between a fiduciary giver and a fiduciary recipient, in which the fiduciary giver submits a guarantee based on trust to the fiduciary recipient, for collateral for a debt. Usually, what is submitted by the fiduciary giver is in the form of a motor vehicle BPKB which is the object of the consumer financing agreement. This BPKB is held by the fiduciary recipient until the fiduciary giver pays off his debts to the facility provider.

There are 2 (two) parties/subjects in the Fiduciary Guarantee, namely:

- 1) Fiduciary giver is an individual or corporation owning objects that are objects of Fiduciary Collateral.
- 2) Fiduciary Recipients are individuals or corporations who have receivables whose payments are guaranteed by a Fiduciary Collateral.

About fiduciary guaranteed objects, before the enactment of Law Number 42 of 1999 concerning Fiduciary Guarantees, fiduciary guarantee objects are movable objects consisting of objects in stock, objects in trade, accounts receivable, machine tools and motorized vehicles. However, with the enactment of Law Number 42 of 1999, what can become objects of fiduciary guarantees are regulated in Article 1 paragraph (4), Article 9, Article 10, and Article 20 of Law Number 42 of 1999, objects that become objects of fiduciary guarantees is:

- 1) Objects that can be legally owned and transferred.

- 2) Can be tangible objects.
- 3) Tangible objects including accounts receivable.
- 4) Moving objects.
- 5) Immovable objects that cannot be bound with mortgage rights or mortgage.
- 6) Good things that exist or will be obtained later.
- 7) Can be on one unit of object type.
- 8) Can also be used for more than one type of object.
- 9) Including proceeds from objects that are objects of fiduciary guarantees.
- 10) Stock items.

Then the fiduciary giver (debtor) in article 1 point 5 of the Fiduciary Guarantee Law is an individual or corporation who owns objects that are objects of fiduciary guarantees. This means that the fiduciary giver does not have to be the debtor himself but can also be another party who is the owner of the collateral object who hands over his property to be used as the collateral object. The fiduciary giver has an obligation to maintain collateral, for example merchandise that is used as collateral must be maintained so that the remaining goods exceed the remaining credit value. The debtor can also insure the collateral object, where the costs incurred for this will be borne by the debtor himself [7].

Objects that can be used as objects of fiduciary guarantees are generally movable objects. Movable objects that can be objects of fiduciary guarantees are the same as pawn objects. It is just that in pawning the object is not in the possession of the debtor. Credit agreements with fiduciary guarantees regulate rights and obligations between creditors and debtors. The right is the granting of power to him to act in accordance with his interests. Rights and obligations are interrelated. The implementation of the obligations of a person will then give rise to rights. Rights and obligations in credit agreements with fiduciary guarantees after the enactment of the Fiduciary Guarantee Law Number 42 of 1999 in general between debtors (fiduciary givers) and creditors (fiduciary recipients).

Article 23 paragraph (2) of the Fiduciary Guarantee Law stipulates that "Fiduciary givers are prohibited from transferring, pawning, or renting to other parties objects that are objects of fiduciary guarantees that are not inventory objects, except with prior written approval from the fiduciary recipient". If it turns out that the debtor is still negligent so that the creditor must execute the collateral object, the debtor is obliged to surrender the object that is the object of the guarantee to be executed. After the collateral object is executed and the results are obtained, if the execution results exceed the collateral value, it must be returned to the debtor. And vice versa, if the results of the execution are not sufficient, then it is the debtor's obligation to remain responsible for the unpaid debt [8].

Regulating the rights and obligations between the recipient and the fiduciary giver in the Fiduciary Guarantee Law will provide legal certainty for the parties, if the parties carry out their obligations responsibly and in good faith in accordance with what has been mutually agreed upon, the rights of the parties will also be fulfilled.

Then to guarantee legal certainty for creditors, a deed drawn up by a notary and registered with the Fiduciary Registration

Office is required so that the creditor will obtain a fiduciary guaranteed certificate. By not registering a fiduciary guarantee, the fiduciary agreement deed is categorized as an underhand agreement and its settlement requires the intervention of the court. In a consumer financing agreement in the form of motorized vehicles, especially cars, the finance company will carry out binding fiduciary guarantee objects to cars that have been submitted to the consumer.

This aims to secure the creditor for the agreement he has made from the risk of default on installments or the transfer of the car. By binding the fiduciary guaranteed object in a fiduciary guarantee binding agreement and registering it with the Regional Office of the Ministry of Law and Human Rights, if there is a risk that the consumer is unable to pay off the installments or the consumer transfers the goods (car) to a third party [9].

Meanwhile, according to Article 25 paragraph (1) of Law no. 42 of 1999 concerning Fiduciary Guarantees, there are only 3 (three) things that cause fiduciary guarantees to be deleted. Elimination of debt guaranteed by fiduciary, Relinquishment of the right to a Fiduciary Guarantee by a Fiduciary Recipient or the destruction of the object of the Fiduciary Guarantee.

Comparative Study of The Concept of Confiscation of Goods:

There are many cases of confiscation of fiduciary objects in Indonesia, which have led to prolonged disputes between Fiduciary Recipients and the Government Cq. Republic of Indonesia Attorney. One of the cases of confiscation of fiduciary objects by the State occurred in the jurisdiction of the Ketapang District Court.

In this case the fiduciary object is 1 (one) Mitsubishi brand truck with Number. Police: D-8474- YQ white color with Frame Number: MHMFE74P4DK066051 and Engine Number 4D34TJ27693 (hereinafter referred to as vehicle), Based on the decision of the Ketapang District Court in a criminal case recorded in register Number 95/Pid.Sus/ 2015.PN.Ktp. dated 15 June 2015 with the defendant in the name of HENDI HERIYADI Bin MAT JEMAN (hereinafter referred to as the defendant) was confiscated for the State. In this case the defendant was legally and convincingly proven to have committed the crime of intentionally transporting forest products in the form of wood without being accompanied by a Certificate of Legality of Forest Products (SKSHH) using the means of transportation in the form of the vehicle in question and on the vehicle already placed a fiduciary guarantee [8].

Placement of fiduciary guarantees on the vehicle is based on the fiduciary guarantee agreement No. 020313200545, dated 28 March 2013 between PT. Adira Dinamika Multi Finance as the fiduciary recipient with Wawan (as the fiduciary giver) and the fiduciary guarantee has been registered with the Fiduciary Certificate Number W11.089693.AH.05.01 Year 2013 from the Authorizer Wawan to PT. Adira Dinamika Multi Finance, Tbk, Bandung Branch, for the object of the financing agreement 0203 1320 0545 dated 28 March 2013 on behalf of Wawan. Because they objected to the decision of the Ketapang District Court in a case on behalf of the defendant, the fiduciary recipient filed a lawsuit against the Government Cq. Republic of Indonesia Attorney. The Fiduciary Acceptor as the Opponent

submits an argument against which in essence states that:

- 1) Pelawan is the legal owner of the vehicle based on the submission of fiduciary guarantees received from Wawan.
- 2) That the fiduciary giver has not completed the obligation or paid off the debt to the contrarian.
- 3) Pelawan argues, as the owner of a vehicle based on the submission of fiduciary guarantees received from Wawan is not directly involved in the crime, then the confiscation of fiduciary objects by the state is a legal error and contrary to the 1945 Constitution.

Based on the fiduciary agreement letter between Pelawan and Mr. Wawan, legally the Pelawan is the rightful owner and therefore the Pelawan has the right to control, as such possession of a fiduciary object by the defendant is not justified according to law. Based on the arguments for the resistance, the opponent submits a request to a panel of civil judges in a case recorded in the case register number 18/PDT.G/2015/PN Ktp.for:

- 1) Declare as a party having a legal statement to file a counterclaim.
- 2) Declare the contestant as the legal owner of the vehicle.
- 3) Ordered the opponent to postpone the execution of the vehicle.
- 4) Ordering the opponent to hand over the vehicle to the opponent.

Furthermore, the Panel of Judges considered the opposing arguments which were principally as follows:

- 1) The fiduciary agreement he received is *accessoir* or follow-up, in essence, a fiduciary object is collateral or collateral for the fiduciary giver's debt, based on the history of payments, the fiduciary giver has never been in arrears or defaulted, so the property rights of the fiduciary object have not been transferred to the contrarian. Even though the fiduciary object has been confiscated by the state, the fiduciary giver still fulfills his obligations to the principal agreement with the fiduciary recipient. Therefore, the argument stating that the applicant is the legal owner of the vehicle is groundless and unacceptable.
- 2) Court decision in criminal case Number: 95/ Pid.Sus /2015/PN. ID card stating that HENDI HERIYADI Bin MAT JEMAN has been legally and convincingly proven guilty of committing the crime of "deliberately transporting timber forest products which are not accompanied by a certificate of forest product legality " as Article 12 letter e jo article 83 paragraph (1) letter b Law of the Republic of Indonesia Number: 18 of 2013 concerning Prevention and Eradication of Forest Destruction in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code. So that the evidence in the form of the vehicle being confiscated for the state, is the correct decision and has permanent legal force, so the opposing argument stating the Court's decision in a criminal case Number: 95/ Pid.Sus /2015/PN. KTP is a legal error is baseless and unacceptable.
- 3) Article 273 Paragraph (3) of the Criminal Procedure Code states "apart from the exceptions referred to in Article 46,

the Prosecutor authorizes the object to the state auction office and within three months to sell it at auction, the proceeds of which are entered into the state treasury for and on behalf of the prosecutor". so that the Public Prosecutor carried out the control and the act of expropriation according to the Judge's Decision, therefore the arguments presented by the opponent were groundless and unacceptable.

Based on these considerations the panel of judges in the Main Case stated and decided:

- 1) Rejecting the plaintiff's lawsuit in its entirety.
- 2) Punish Pelawan to pay the costs incurred in this case in the amount of Rp. 2,711,000.00 (two million seven hundred eleven thousand Rupiah).

The common thread from the description above is that creditors or fiduciary recipients still receive absolute legal protection even if the fiduciary object they receive is declared confiscated for the State, it is just that the position as the preferred creditor will be destroyed or erased if the fiduciary object is confiscated for the State. Therefore, the author is of the opinion that rather than wasting time and money, creditors should not need to file a lawsuit against the Government Cq . Republic of Indonesia Attorney. because the creditor still has the right to collect, except the debtor default or breach of the main agreement, the creditor can file a civil suit to the court while at the same time placing collateral for the objects belonging to the debtor. This collateral confiscation is intended so that the creditor gets a payment guarantee from the debtor if the lawsuit is granted by the Court [10].

Then, in practice, there are not a few attempts or legal steps taken by the owner of the means of transportation to obtain his rights against a decision of confiscation for the sake of the state. Civil lawsuits that often go to the District Court in this case are forestry crimes. Most of the court decisions stated that the plaintiff's claim was unacceptable. One example of a case that occurred in the jurisdiction of Pleihari Regency, South Kalimantan, is in the Pleihari District Court Decision Number 02/ Pdt G./2007/PN.PLH dated 25 July 2007 which settled PT Astra Sedaya Finance's lawsuit against the Government of the Republic of Indonesia Cq Attorney General RI Cq South Kalimantan High Prosecutor's Office, Cq Pleihari District Attorney Cq Public Prosecutor at Pleihari District Attorney.

Regarding the regulation of confiscation of confiscated goods which does not regulate objections from third parties, the author also explores the views of practitioners regarding this matter. Edi Rahmad, SH, M.Kn. (Judge at the Muara Teweh District Court) believed confiscated goods were not confiscated which were proven to belong to a third party. that even though the elucidation of Article 16 of the Law of the Republic of Indonesia Number 18 of 2013 Concerning the Prevention and Eradication of Forest Destruction , states: " In addition to forest products which are not accompanied by a certificate of legality of forest products, means of transportation, both land and water used to transport forest products intended to be confiscated for the state, it is intended that the owner of the transportation service/transporter is also responsible for the legitimacy of the forest products being transported".

Article 78 paragraph (15) of the Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry, states "All forest products from crimes and violations and/or means of transportation including means of transportation used to commit crimes and/or violations referred to in this article are confiscated for the State", however, in imposing liability on the owner of the transportation service/carrier, it is necessary to first look at the fault of the owner of the transportation service/carrier if not met. If there is an element of error, then it would be unfair for the owner of the transportation service/transporter if he is also responsible for the legitimacy of the forest products being transported.

However, a different view was put forward by Ikhsan Ismail (judge at the South Sulawesi Unaaha District Court). 41 of 1999 concerning Forestry which was last amended to become Article 78 paragraph (12) as stipulated in RI Law 11 of 2020 concerning Job Creation Article 36 number 19, Article 164 letter a RI Law No. 3 of 2020 concerning Amendments to RI Law Number 4 of 2009 concerning Mineral and Coal Mining and Explanation of Article 16 RI Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, all evidence related to forestry or mining crimes should be confiscated for the state regardless of the legal status of ownership of the evidence [11].

In general, in a legal system in this world, there is a distinction between criminal law and civil law. This difference in the legal system also applies to the competence of a judiciary, procedural law, including the law of evidence. The traditional view sees crime as a crime that threatens the interests of society. Therefore, criminal law is made with the intention of protecting the interests of the people who are threatened by the crime, by determining the rules and sanctions that can act against the perpetrators of crimes [12].

As for the comparative study in Australia, at first it also carried out the acquisition of assets or property which was the same as that practiced in countries that adhere to the common law system. Law, which is based on the concept of *deodand* and *attainder*.

But common law instruments they left the ancient law. The Australian government imposes the Customs Act 1901 as confiscation laws, which allow for *in rem* forfeitures to be carried out, but its application is only for embezzled goods, especially on transport ships.

The Customs Act 1901 was later amended to apply to illegal drugs that are included as commonwealth offenses. Then in the 1980s, in line with the increasing attention of the international world on organized development crime, the practice of money laundering, the circulation of narcotics and illegal drugs, as well as the circulation of money proceeds from crime, Australia imposes of Crime Act 1987 (POC). Then in the same year, Mutual Assistance in Criminal Matters Act 1987 was also promulgated, which allowed Australia to negotiate and form bilateral agreements regarding assets recovery from crime. Furthermore, in 1988, Australia enacted a Financial Transaction Reports Act 1988 (FTRA) which requires the reporting of cash transactions and [13] transactions.

Historically in Australia there have been 2 (two) asset

regimes confiscation, namely conviction based confiscation legislation and non-conviction-based confiscation. POC is conviction-based confiscation. Legislation requires that a criminal lawsuit (conviction) must first be filed to be able to commit assets confiscation. Traditionally, this regime protects the procedural rights of a suspect or accused by requiring a criminal prosecution process prior to the acquisition of assets (conviction before forfeiture) and the competent authority to prosecute has the burden of proof.

The state of Western Australia is the first to adopt a non-conviction regime-based forfeiture through Misuse of Drugs Act 1981, but only used for serious psychotropic crimes. Then Confiscation of Profit Act 1981 was enacted in 1981, which provided a more comprehensive space for the civil regime forfeiture in Western Australia. However, like federal laws such as the POC, these state regulations only allow for assets to be confiscated or expropriated following a criminal complaint.

Then in 1990 the state of New South Wales enacted the Criminal Code assets Recovery Act whose nature is non-conviction based and has proven to be much better at recovering stolen assets compared to POC. Over the five years since 1992, it was recorded that AU\$4.5 billion was collected and laundered in Australia, and federal regulations of a nature were conviction-based was only able to return approximately AU\$ 7.5 million.

By getting bigger and gotten gains namely assets resulting from criminal acts that were not successfully returned, then in 1999 the Australian National Law Reform Commission proposed to impose a non-conviction regime-based confiscation at the national level, conviction regulations-based states that the rules are non-conviction based will help to complicate the economic basis for the formation of a criminal organization and inhibit their activities.

The main weakness of the conviction-based regime is the requirement that the assets to be confiscated or confiscated must be closely related to the crime committed charged against the defendant for the crime. The failure of the conviction-based regime to achieve its goal of crippling criminal organizations resulted in the regime non-conviction based is growing in popularity in Australia.

Conviction rules based has advantages including: (1) confiscation of assets without having to first file a criminal lawsuit; (2) process confiscation is generally carried out independently apart from the process of criminal lawsuits; and (3) the authorities only need to prove it did crime or involvement in an illegal act according to civil standards [14].

But the state of Western Australia imposed a Criminal Property Confiscation Act (CPCA), which is different in many ways compared to the others, and this regulation is considered as the NCB Asset regulation Forfeiture with the widest reach in Australian history, including:

- a. This regulation applies retrospectively
- b. The confiscation can be carried out without the presence of the defendant
- c. Reverse proof
- d. Criminal sanctions can be imposed without having to file a criminal complaint

- e. Confiscation can be carried out without any evidence that the owner of the asset has committed no crime
- f. Top confiscation — unexplained wealth”, in which assets need not be related in any way to criminal acts
- g. There is no concept of proportionality between the alleged crime and the extent to which confiscation can be carried out in accordance with the applicable law
- h. The possibility of exceptions to legal professional standards or other professional services required to obtain information.
- i. There are regulations regarding the confidentiality of bank data, etc.
- j. There are no regulations regarding the obligation to set aside a portion of confiscated assets for attorneys' fees.
- k. And others.

The CPCA has not escaped criticism regarding innocent owner. However, the CPCA has provisions to protect innocent third parties who acquire assets or property in good faith with proper consideration without knowing that the assets originate from a criminal act and does not know that the assets are used for criminal purposes.

Territorial behavior in pursuing assets that are flown out of the state or abroad. However, whether the CPCA is effective in retrieving assets that cross state boundaries will depend on cooperation between states (interstate) and international cooperation, in accordance with applicable domestic law and international law.

Recently, the concept of confiscating assets without punishment for unexplained has also become known wealth or illicit enrichment. illicit concept enrichment, which has similarities with unexplained wealth, also known for example in the United Nations Conventions Against Corruption (UNCAC). Even though Indonesia has ratified it UNCAC through Law Number 7 of 2006, but this Law is still of a general nature and there is no clear procedural law for implement it. According to Yunus Husein, Head of PPATK, in Australia it is generally unexplained wealth is a legal instrument that allows deprivation the assets/assets of a person whose amount is very large but are deemed inappropriate because they are not in accordance with their source of income, and the person concerned is incapacitated [15].

prove (through the reverse proof method) that the said assets were acquired by the Public Prosecutor still having to prove the existence of an amount of wealth that is considered unreasonable; and (2) using civil evidentiary standards, namely balance of probability, which is light/low compared to the standard of criminal proof (beyond reasonable doubt). The use of civil evidentiary standards is due to the process of confiscating assets unexplained wealth, as well as other non-criminal appropriation processes (NCB assets forfeiture) is carried out through civil proceedings, not criminal because the object is the goods (in rem) that you want to confiscate, not punishment of the person [16].

5. Conclusion

- 1) The regulation on the legal status of goods guaranteed by fiduciaries that have been confiscated by the state is not

based on justice, because in this arrangement there are no objections that can be submitted by recipients of fiduciary guarantees or third parties who have good faith against fiduciary objects that have been seized by the court. In addition, in Law Number 42 of 1999 concerning Fiduciary Guarantees, it is stated that the responsibility of the fiduciary giver to the fiduciary guarantee object is to continue to follow the fiduciary guarantee object, and the fiduciary recipient is not liable for the consequences of the actions or omissions of the Fiduciary Giver, whether arising from contractual relations or arising from unlawful acts in connection with the use and transfer of objects that are the object of Fiduciary Guarantees.

- 2) The weakness of the legal substance is that there are no objections that can be submitted by the recipient of the fiduciary guarantee or a third party against the decision of confiscation. The weakness of the legal structure is that there are different views of judges regarding the arrangement for confiscation of confiscated goods which does not regulate the existence of objections from the owner of confiscated goods which the court confiscates. The weakness of the legal culture is that there are many judges who understand positivism and only prioritize aspects of legal certainty in examining and adjudicating cases, so that they do not provide justice for the owners of confiscated goods that are confiscated under the law.
- 3) Reconstruction of the value of justice in the regulation of appropriation based on the justice values of Pancasila, namely a) does not conflict with religious values and beliefs held by individual citizens b) Protection of one's property rights, c) regulation of the confiscation of third party goods that creates a conducive atmosphere in the nation and statehood, d) accommodation for third party opportunities to fight for their property rights in court, and e) clear, non-discriminatory arrangements and the existence of a third party objection mechanism against the decision to confiscate third party goods. Then the deprivation norms that are not based on justice in Article 46 paragraph (2) of the Criminal Procedure Code, Article 78 paragraph (15) of the Forestry Law, Article 45 paragraph (1) of the Law on Prevention and Eradication of Forest Destruction, Article 104 paragraph (2) of the Fisheries Law, Article 164 of the Law Minerals and Coal, Article 58 of the Oil and Gas Law, and Article 91 of the Criminal Code need to be reconstructed so that they are based on the value of justice.

6. Suggestion

- 1) Regulations on the legal status of goods guaranteed by fiduciary that are confiscated by the state are not based on justice, which is contained in Article 46 paragraph (2) of the Criminal Procedure Code, Article 78 paragraph (15) of the Forestry Law, Article 45 paragraph (1) of the Law on Prevention and Eradication of Forest Destruction , Article 104 paragraph (2) of the Fisheries Law, Article 164 of the Mineral and Coal Law, Article 58 of the Oil and Gas Law, and Article 91 of the Criminal Code are urgently reconstructed in order to provide justice for third

parties who have good faith as owners of confiscated goods based on a court decision.

- 2) There is a weakness in the substance of the current confiscation arrangements which need to be reconstructed immediately by adding third party objection arrangements to the confiscation decisions. Weaknesses in the legal structure in the application of confiscation arrangements without the existence of a non-uniform objection mechanism, are minimized by making a special Supreme Court Regulation regarding the inspection of confiscated goods belonging to third parties with good intentions. Meanwhile, the weakness of the legal culture in the implementation of deprivation arrangements without an objection mechanism, judges are encouraged not to be solely positivism in deciding a case, because the law that is used as the legal basis does not necessarily provide justice.
- 3) Reconstruction of the value of justice and deprivation norms that are not based on justice is urgently needed in Article 46 paragraph (2) of the Criminal Procedure Code, Article 78 paragraph (15) of the Forestry Law, Article 45 paragraph (1) of the Law on Prevention and Eradication of Forest Destruction, Article 104 paragraph (2) The Fishery Law, Article 164 of the Mineral and Coal Law, Article 58 of the Oil and Gas Law, and Article 91 of the Criminal Code need to be reconstructed so that they are based on the value of justice.

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