

Reformulation of the Regulation of Judges Decisions on the Confiscation of Private Legal Entity Assets by the State from the Perspective of Pancasila Justice

Ramlin Ahmad¹, Sri Endah Wahyuningsih², Jawade Hafidz³, Anis Mashdurohatun⁴

1 Doctoral Program, Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

2,3,4 Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

DOI: <https://doi.org/10.56293/IJMSSSR.2026.6010>

IJMSSSR 2026

VOLUME 8

ISSUE 1 JANUARY - FEBRUARY

ISSN: 2582 – 0265

Abstract: Legal protection for the entire Indonesian nation through legal instruments is an absolute thing that must be realized, because there is no meaning in protecting the entire nation and the bloodshed of Indonesia if there is still injustice felt by society due to law enforcement that is not based on legal instruments that do not rely on values. justice. The existence of law in society cannot actually be interpreted as a means of ordering people's lives, but can also be used as a means of changing the mindset and behavior patterns of citizens. In order for the evidentiary process to run smoothly and produce correct facts, the panel of judges and prosecutors will present evidence that is related and necessary for a criminal act whose truth is to be proven. Evidence from a criminal act of corruption is the object of an offense that has been committed, for example evidence resulting from a criminal act of corruption such as cars, electronic devices, houses, land and other valuable assets resulting from a criminal act of corruption is returned to the state. The main objective of tracking evidence resulting from embezzlement and money laundering is to return it to the rightful party or the party who suffered the loss, but in the case of a criminal act of embezzlement and money laundering committed by PT First Travel, all assets as evidence are confiscated by the State in their entirety. As a state of law, the government should be able to uphold legal efforts aimed at ensuring legal certainty and justice for victims so that the benefits of law in society are fulfilled. The type of research used in this paper is Normative Juridical Law research. Normative Juridical Law Research is a research method conducted by analyzing legal issues regarding the regulation of judges' decisions, weaknesses related to the regulation of judges' decisions and the reconstruction of regulations regarding judges' decisions in cases of private legal entity assets seized by the state based on justice values based on norms, principles, and applicable laws and regulations. This research is also known as a library approach, because it is conducted by studying books, laws and regulations, and other documents related to the research. Article 39 of the Criminal Procedure Code (KUHAP) states that items obtained from criminal acts or used in criminal acts can be confiscated. However, the principles and values of Pancasila Justice as a legal basis require that asset confiscation not only be based on the Criminal Procedure Code, but must also consider the rights of victims, justice, legal certainty, and legal benefits for all parties involved. This needs to be done by strengthening the protection of property rights and evaluating the relevance of confiscation by the state through fair, transparent, and accountable methods, as well as paying attention to justice for victims and efforts to restore them through more equitable legal steps.

Keywords: Reconstruction Regulations, Private Legal Entity Assets, Pancasila Justice

1. Introduction

The existence of law in society cannot be interpreted as merely a means to regulate social life, but rather as a tool capable of changing the mindset and behavior of citizens. The complex changes in social life also influence the operation of the law in achieving its goals. Therefore, legal action should be able to eliminate any conflicts that are expected to arise in society. [1]

Indonesia as a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia places law as the primary instrument in realizing justice, legal certainty, and benefits for all citizens. The existence of law is not merely interpreted as a tool for social order, but also as a means to protect human rights, guarantee equality before the law, and create a balance between the interests of the state and the interests of citizens. Therefore, law enforcement should be oriented towards the values of substantive justice, not merely

formal legal certainty. [2]

In criminal justice practice, particularly in criminal cases involving private legal entities, serious problems arise when the assets of these legal entities are confiscated for the state through a judge's decision. Asset confiscation, which should be an instrument for restitution, often creates new injustices, especially for victims. In many cases, assets derived from victims' contributions or rights are completely confiscated by the state, thereby eliminating the opportunity for victims to receive compensation for their losses. [3]

This phenomenon is evident in a number of high-profile cases that have captured public attention, including the PT First Travel case, a fraudulent investment case involving the Binomo platform, and other embezzlement and money laundering cases. In the PT First Travel case, thousands of prospective Umrah pilgrims, mostly from lower-middle class backgrounds, suffered significant material losses. However, a court ruling ordered the assets of the private legal entity to be confiscated by the state, rather than returned to the victims. This ruling sparked controversy because the state did not directly suffer any material losses, while the victims lost their right to restitution.

The Depok District Court's Decision No. 83/Pid.B/2018/PN.Dpk, which was later upheld by the Bandung High Court and the Supreme Court through Decision No. 3096 K/Pid.Sus/2018, demonstrates a tendency for judges to consider asset confiscation as the most normatively safe legal solution. However, this approach ignores the substantive dimension of justice and the sense of justice felt by the community, particularly crime victims. Under such circumstances, the law has the potential to lose its social legitimacy. [4]

This issue highlights a regulatory gap in Indonesia's criminal justice system. Provisions in the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and other related laws, such as the Money Laundering Law, do not provide clear boundaries for the confiscation of private legal entity assets, particularly regarding the priority of restoring victims' rights. Consequently, judges have extensive discretion without clear guidelines, resulting in decisions that tend to be formalistic and solely oriented toward state interests.

On the other hand, the principle of justice, rooted in the values of Pancasila, demands that every judge's decision be not only legally valid but also morally and socially just. Pancasila justice places humanity, social justice, and a balance of interests as the primary foundations of law enforcement. In the context of the confiscation of private legal entity assets, the value of Pancasila justice should be realized through the protection of victims' rights, proportionality in asset confiscation, and a clear separation between assets derived from crime and assets that are truly the property or rights of third parties acting in good faith.

The inconsistency between judicial practices and Pancasila's values of justice demonstrates that existing regulations are not fully capable of addressing the complexity of contemporary legal issues. Judges' decisions that confiscate the assets of private legal entities for the state without considering restitution for the victims' losses not only violate the sense of justice but also contradict the very purpose of law, which is to provide justice, certainty, and benefit in a balanced manner. [5]

Based on these conditions, a regulatory reconstruction is needed for judicial decisions in cases of asset confiscation involving private legal entities. This reconstruction is not only normative and juridical in nature, but also philosophical, placing the values of Pancasila justice as the primary foundation. Regulatory reconstruction is expected to provide clear guidelines for judges in issuing decisions, so that asset confiscation is no longer carried out automatically in favor of the state, but rather proportionally considers the rights of victims, the interests of the state, and the principles of social justice.

Thus, this research is important and relevant for in-depth review of existing regulations, identifying their weaknesses, and formulating a regulatory reconstruction model for judicial decisions in cases of private legal entity assets seized by the state based on Pancasila justice values. This research is expected to provide theoretical and practical contributions to national legal reform, particularly in realizing a more just, humane, and victim-oriented justice system.

2. Research Methods

The research method used in this dissertation is normative legal research with a qualitative, prescriptive-analytical approach. Through statutory, conceptual, case-based, and philosophical approaches, this research comprehensively examines legal regulations and judges' considerations regarding the seizure of private legal entity assets by the state. The use of primary, secondary, and tertiary legal materials analyzed qualitatively allows the researcher to assess the alignment of judicial norms and practices with the values of Pancasila justice. Using deductive inference techniques, this research method systematically leads to a reformulation of legal regulations oriented toward legal certainty, expediency, and substantive justice based on Pancasila.

3. Results and Discussion

3.1. Regulation Of Judges Decisions in Cases Of Private Legal Entity Assets Confiscation by The State Are Not Based on Justice Values

3.1.1. The Role and Regulation of Judges in Law Enforcement in Indonesia

The judiciary is a key pillar in law enforcement and the pursuit of justice in Indonesia. Judges hold a strategic position as the final arbiter in the criminal justice process, particularly through the decisions they render in a case. Judges' decisions serve not only to enforce positive legal norms but also as instruments for achieving substantive justice for all parties, particularly victims of crime. [6]

In practice, the role of judges often faces serious challenges due to the tendency toward a legalistic-positivistic approach to law enforcement. Judges tend to be strictly bound by the wording of the law without engaging in progressive interpretations that take into account the values of justice, expediency, and legal certainty in a balanced way. As a result, the resulting decisions often do not reflect the public's sense of justice.

This problem is increasingly evident in cases of asset seizures involving private legal entities, particularly in cases of fraud, illegal investment, and money laundering. Existing regulations, such as the Criminal Code, the Criminal Procedure Code, and the Money Laundering Law, authorize judges to seize assets deemed to be the proceeds or means of a crime. However, these regulations do not clearly distinguish between the assets of the perpetrator, the assets of the private legal entity, and assets that are the property of the victim or a good-faith third party. [7]

Due to this unclear norm, judges frequently issue decisions confiscating the assets of private legal entities for the state without adequately considering the origin of the assets and the interests of the victims. This situation demonstrates that regulations and judicial decision-making practices are not fully oriented towards the values of substantive justice.

3.1.2. Yudicial Independence and Decision Autonomy from the Perspective of Victims' Rights Protection

Judicial independence is a fundamental principle in a state governed by the rule of law, guaranteeing judges' freedom from all forms of intervention. This principle is intended to enable judges to decide cases objectively, fairly, and based on conscience. However, this independence should not be interpreted narrowly as absolute freedom without moral and social responsibility.

In the context of private legal entity asset confiscation cases, judicial independence is often used to justify decisions that disregard victims' rights. Judges prioritize state interests through asset confiscation, even though the state is not always the party directly harmed. Conversely, victims who have suffered real losses are denied adequate redress. [8]

Judicial autonomy should be directed toward prioritizing the principle of restorative justice, namely, restoring the victim's losses as the primary goal of sentencing. However, in Indonesian criminal justice practice, the paradigm of sentencing remains retributive and repressive, so victim-centered recovery has not been a primary consideration in judicial decisions.

Cases such as First Travel, Indra Kenz, Doni Salmanan, and Harvey Moeis demonstrate a tendency for private legal entity assets to be confiscated by the state without a clear mechanism for returning the assets to the victims. This reflects the judicial system's weak commitment to victims' rights and the suboptimal role of judges in achieving humanitarian and social justice. [9]

3.1.3. Basic Regulations of Judges' Decisions on Victims' Rights Based on the Principles of Justice

Constitutionally, every citizen has the right to legal protection and fair treatment before the law as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. This principle requires that every judge's decision is not only legally valid, but also morally and socially just.

However, regulations governing judges' decisions regarding the confiscation of private legal entity assets do not explicitly address the principles of victim protection and the proportionality of asset confiscation. There are no provisions requiring judges to conduct a fairness test, a proportionality test, or a separation between assets derived from criminal acts and assets legitimately belonging to the legal entity or third parties.

As a result, judges' decisions tend to ignore victims' rights to compensation and restitution. Assets confiscated for the state are often not returned to victims, even though they were actually funded by the public. This situation contradicts the Pancasila principle of justice, which emphasizes a balance between legal certainty, humanity, and social justice. [10]

Thus, it can be concluded that the regulations governing judicial decisions in cases of confiscation of private legal entity assets still contain normative and philosophical gaps. These regulations are not fully based on the values of justice, particularly justice for victims. Therefore, a reconstruction of the regulations and the paradigm of judicial decisions is needed to be more oriented towards substantive justice, protection of victims' rights, and in line with the values of Pancasila justice.

3.2. Weaknesses Of Regulations on Judge Rulings in Cases Assets of Private Legal Entities Were Confessed by The State

3.2.1. Weaknesses of Legal Substance

Legal substance is the main foundation in law enforcement because it contains norms, principles, and rules that serve as guidelines for judges in deciding cases. In the context of the confiscation of private legal entity assets by the state, the current legal substance shows various fundamental weaknesses. Although the principle of equality before the law has been expressly guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, its implementation in judges' decisions does not fully reflect substantive justice. [11]

The main weakness lies in the lack of clear regulations regarding the limits of asset confiscation for private legal entities. While the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), and the Money Laundering Law (TPPU) grant the state the authority to confiscate assets resulting from criminal activity, these norms do not clearly define the mechanism for separating assets derived from criminal activity from legitimate assets belonging to legal entities or good-faith third parties. Consequently, judges have extensive discretion, but without clear regulatory guidelines.

In practice, asset confiscation is often carried out in a total manner (total forfeiture) without a proportionality test and without adequate proof of the assets' origin. This creates injustice, especially for victims who are denied compensation for assets that were originally funded by their own funds. The state, which in many cases does not suffer direct losses, is the one who benefits from the confiscation.

Furthermore, the substance of existing laws remains heavily oriented toward repressive and retributive approaches. The goal of criminal sanctions is more focused on punishing the perpetrator, rather than redressing the victim's losses. Yet, in cases involving private legal entities, such as mass fraud and illegal investment, the victim is the most affected party and requires real legal protection.

Thus, this substantive weakness in the law demonstrates that asset confiscation regulations do not adequately reflect the values of justice, utility, and human rights protection. This situation is one of the main causes of judicial decisions that are biased toward victims and inconsistent with the values of Pancasila justice. [12]

3.2.2. Weaknesses in terms of legal structure

Legal structure relates to the institutions and law enforcement officials who implement and enforce legal norms. In cases of asset seizure of private legal entities, structural weaknesses are evident in the suboptimal coordination and synergy between law enforcement agencies, from investigators and prosecutors to judges.

During the investigation and prosecution stages, law enforcement officials tend to focus on proving criminal acts and seizing assets for the state, without a clear strategy for restoring victims' rights. Public prosecutors rarely file demands explicitly requesting the return of seized assets to victims. As a result, judges tend to follow this pattern in their rulings.

On the other hand, the Supreme Court, as the highest judicial institution, has not provided consistent guidelines or jurisprudence regarding the just confiscation of private legal entity assets. This lack of guidelines has led to differences in decisions between courts in cases with similar characteristics. The cases of Indra Kenz, Doni Salmanan, and First Travel demonstrate inconsistent decisions, both regarding asset status and victim protection.

Structural weaknesses are also evident in the lack of oversight mechanisms for judicial decisions. While judges have independence in deciding cases, there are no effective instruments to ensure that this independence is used to achieve substantive justice, not merely formal legal certainty. As a result, judicial decisions confiscating private legal entity assets for the state often escape critical evaluation regarding their impact on victims and society.

Thus, the existing legal structure does not fully support the realization of a justice system oriented toward victim protection and social justice. This weakness reinforces the tendency for disproportionate decisions to be made that do not reflect the values of Pancasila justice.

3.2.3. Weaknesses in terms of legal culture

Legal culture reflects the attitudes, values, and mindsets of law enforcement officers and the public toward the law. In the context of the seizure of private legal entity assets, the legal culture remains dominated by a positivistic and formalistic paradigm. Law is viewed solely as a statutory text that must be applied rigidly, without considering the social context and the impact of decisions on victims. [13]

The legal culture among law enforcement agencies still tends to prioritize state interests over those of individuals and victims. The confiscation of assets for the state is often seen as a symbol of successful law enforcement, even though substantively, such decisions fail to provide justice for victims. This paradigm is reinforced by a lack of understanding and internalization of the value of restorative justice within the criminal justice system.

Furthermore, low public trust in the judiciary is also part of the problem of legal culture. Judges' decisions that confiscate the assets of private legal entities without compensating the victims create a perception that the law is biased against the common people. This has the potential to undermine the legitimacy of the judiciary and hinder efforts to enforce the law fairly.

From the perspective of Pancasila's values of justice, this legal culture contradicts the principles of just and civilized humanity and social justice for all Indonesians. Therefore, changing the legal culture is a crucial prerequisite for reconstructing regulations and judicial decision-making practices to be more oriented toward substantive justice and the protection of victims' rights.

3.3. Reconstruction Of Regulations on Judges Decisions in Cases Of Private Legal Entity Assets Confiscation by The State Based on Pancasila Justice Values

3.3.1. Regulatory Reconstruction Based on the Principles of Pancasila Justice

The reconstruction of regulations for the confiscation of private legal entity assets must be based on the Pancasila justice paradigm, the philosophical foundation of the Indonesian rule of law. Pancasila justice not only emphasizes legal certainty but also integrates the values of humanity, morality, and social justice. Philosophically, the reconstruction aims to shift the paradigm of criminal justice from a repressive approach to substantive and restorative justice. Judges' decisions should no longer solely punish the perpetrator and benefit the state, but should also consider the restoration of victims' rights as a primary goal. [14]

Legally, regulatory reconstruction includes affirming the limits of asset confiscation, including:

- 1 Clear separation between the assets of the perpetrator of the crime, the assets of private legal entities, and the assets of third parties;
- 2 The obligation to prove the origin of assets before deciding to confiscate them;
- 3 The application of proportionality and fairness tests in every decision regarding asset confiscation;
- 4 Emphasis that assets originating from the victim's losses must be prioritized for compensation, not confiscated by the state.

This reconstruction aims to eliminate the regulatory gap that has so far provided space for legalistic judicial decisions and ignored social justice.

3.3.2. Reconstruction of the Regulations for the Implementation of Compensation Based on the Consumer Protection Law

In cases involving private legal entities, the victims are generally injured consumers. Therefore, Law Number 8 of 1999 concerning Consumer Protection is strongly relevant as a normative basis for implementing compensation. Regulatory reconstruction places the compensation mechanism as an integral part of criminal decisions. Judges not only decide on the principal penalty and additional penalties in the form of asset confiscation, but are also required to consider restitution for consumer losses. Therefore, asset confiscation does not stand alone but is integrated with the obligation to restate the victim. This approach strengthens legal protection for victims and prevents structural injustice, where victims lose their rights to assets that were originally funded by their own funds. This reconstruction also emphasizes that the state should not profit from the victim's suffering. [15]

Regulatory reconstruction must also provide adequate space for the public to seek compensation through effective legal remedies. Victims need clear and simple access to file compensation claims, whether through criminal, civil, or alternative dispute resolution mechanisms. In this context, judges are encouraged to be more proactive in protecting victims' rights, including by accommodating requests for restitution and compensation in their decisions. These legal remedies embody the principles of social and humanitarian justice, which are at the core of Pancasila justice. [16]

4. Conclusion

This study concludes that regulations governing judicial decisions in cases of state confiscation of private legal entity assets are not based on Pancasila values of justice. Existing legal provisions still grant judges broad authority to confiscate assets without clear normative boundaries regarding the separation of assets resulting from criminal activity, private legal entity assets, and third-party assets. Consequently, asset confiscation decisions tend to prioritize state interests over protecting victims' rights.

Weaknesses in these regulations encompass aspects of substance, structure, and legal culture. Legal norms do not clearly regulate proportionality tests and mechanisms for recovering victims' losses, there are no uniform judicial guidelines, and the positivist paradigm remains strong in judicial practice. As a result, judicial decisions often do not reflect substantive justice and social justice.

Therefore, regulatory reconstruction of judicial decisions is imperative, based on Pancasila justice. This reconstruction aims to clarify the limits of asset confiscation, implement proportionality tests, separate legal

subjects and objects, and prioritize asset restitution to victims. This ensures that judicial decisions provide not only legal certainty but also humanitarian and social justice.

References

1. Marwan. *Introduction to Legal Studies*. Jakarta: Ghalia Indonesia, 2004.
2. Joshua, Mishael, and R. Rahaditya. "Quo Vadis Asset Forfeiture in the Crime of Money Laundering as the Fulfillment of Justice for Victims." *Journal, Universitas Tarumanagara*, vol. 6, no. 4 (June 2024). E-ISSN 2622-7045; P-ISSN 2654-3605. <https://review-unes.com/law/article/view/1880>
3. Bachtiar. *Legal Research Methodology*. South Tangerang: Unpam Press, 2018.
4. Febriansyah, Ferry Irawan. "Justice Based on Pancasila as the Philosophical and Ideological Foundation of the Nation." *DiH: Jurnal Hukum* 13, no. 25 (February 2017). <https://doi.org/10.30996/dih.v13i25.1545>
5. Kusumaatmadja, Mochtar, and Bernard Arif Sidharta. *Introduction to Legal Studies: A Preliminary Overview of the Scope and Application of Legal Science*. Bandung: Alumni, 1999.
6. Febriansyah, Ferry Irawan. "Justice Based on Pancasila as the Philosophical and Ideological Foundation of the Nation." *DiH: Jurnal Hukum* 13, no. 25 (February 2017). <https://doi.org/10.30996/dih.v13i25.1545>
7. Suryanto, Fransiskus Rino, and Mathias Jebaru Adon. "The Concept of Social Justice in the Pancasila Principles as an Effort to Overcome Intolerance in Indonesia According to Soekarno." *Journal of Research on Pancasila and Citizenship Education* 3, no. 6 (June 2023). <https://doi.org/10.56393/decive.v3i6.1655>
8. Soekanto, Soerjono. *Factors Affecting Law Enforcement*. Jakarta: UI Press, 1983.
9. Ansori, Lutfil. "Law Enforcement Reform from the Perspective of Progressive Law." *Yuridis* 4 (2017): 148–163. <https://media.neliti.com/media/publications/282166>.
10. Darmodihardjo, Darji. *The Elaboration of Pancasila Values in the Indonesian Legal System*. Jakarta: PT Raja Grafindo Persada, 1996.
11. Sidharta, Arief. *Reflections on Law*. Bandung: PT Citra Aditya Bakti, 1996.
12. Ridwansyah, Muhammad. "Realizing Justice, Legal Certainty, and Legal Utility in the Regulation on Flags and Emblems (Qanun)." *Jurnal Konstitusi* 13, no. 2 (June 2016). <https://doi.org/10.31078/jk1323>
13. Maryati. "Criticism of the Legal Positivism Paradigm and Reflections toward Building a Justice-Oriented Legal Paradigm." *Inovatif: Jurnal Ilmu Hukum* 7, no. 2 (2014): 77. <https://online-journal.unja.ac.id/jumih/article/view/2061>.
14. Chazawi, Adami. *Criminal Law Lessons, Part I: Penal System, Criminal Acts, Theories of Punishment, and the Limits of Applicability*. Jakarta: PT Raja Grafindo Persada, 2002.
15. Aries, Albert. "The Settlement of Minor Theft Cases and Restorative Justice." *Varia Peradilan* 20, no. 247 (June 2006).
16. Sutiyoso, Bambang, and Sri Hastuti Puspitasari. *Aspects of the Development of Judicial Power in Indonesia*. Yogyakarta: UII Press, 2005.