

Legal Sustainability of Evidence to Provide Benefits to the Authorized in the Investigation Process

(Study in the Legal Area of the West Sumatra Regional Police)

Burahim Boer¹Elwi Dani², Aria Zurbeti³, Yoserwan⁴

Faculty of Law, Andalas University, Padang^{1,2,3,4}

* Corresponding author: Burahim Boer,
Faculty of Law, Andalas University, Padang
Email: burahimregapat@yahoo.com

ABSTRACT

Introduce. Law enforcement aims to fulfill three elements that must always be considered, namely; legal certainty (Rechtssicherheit), benefit (Zweckmassigkeit), and justice (Gerechtigkeit). The ideal decision is a decision that provides a sense of justice, a sense of benefit, and legal certainty proportionally and equally. **Method.** This study uses the normative law research method, namely researching, tracing, assessing, and analyzing with the object. **Result.** Evidence in the form of wood that was confiscated and auctioned off in 2006 and the auction proceeds in the form of money remain used as evidence from 2006 to 2020, the value of money in 2006 compared to 2020 has decreased in value, even as long as this money is used as evidence it cannot be used because money is deposited in a holding account without interest. **Conclusion.** Legal Certainty in goods Evidence to avoid similar cases concerning deprivation of assets that are not supposed to be done by the courts and the State author advises several parties to avoid such things: For the public, to be more careful in choosing the wood and the transaction process

Keywords: Legal Certainty, Benefit, Justice, Evidence, Investigation

1. INTRODUCTION

Humans live in groups where one group has different interests. In one group there are also many human individuals whose needs differ from each other. This inevitably triggers a conflict of interest that can lead to chaos. For that, this situation requires the existence of laws^{1,2,3,4}. Philosophically, this is known as Ubi SocietasIbiIus. Law functions as a tool to protect weak humans who can be oppressed by other humans. On that basis, the law must be implemented and enforced because it is through law enforcement that this law becomes a reality^{5,6,7,8}. Law enforcement aims to fulfill three elements that must always be considered, namely; legal certainty (Rechtssicherheit), benefit (Zweckmassigkeit), and justice (Gerechtigkeit)^{9,10}. The proof is a series of truth-seeking processes that must be supported by valid evidence and evidence that has been confiscated. Valid evidence consists of witness statements, expert statements, letters, instructions, and statements from the defendant^{11,12,13,14}. Meanwhile, the evidence is a movable or immovable object, tangible or intangible which has been confiscated by an investigator for examination at the level of investigation, prosecution, and examination in court^{15,16,17,18}. Evidence (bewijsgoed) is goods used to commit an offense, including goods resulting from an offense. Evidence will be confiscated by the investigator during

the investigation process for proof because it will be shown by the judge to the accused and/or witnesses at the time of the trial. Legal certainty is one of the "three basic legal values" which means that it can be equated with legal principles^{19,20,21,22,23,24}. A verdict or court decision must be following the law because the judge must judge based on the law. Decisions must also contain justice, be objective and impartial. Therefore, the ideal decision provides a sense of justice, a sense of benefit, and legal certainty proportionally and equally. In criminal proceedings materially or formally, the parties involved are obliged to provide legal certainty. Legal regulations contained in the Criminal Code are general principles because they are regulated in laws^{25,26,27,28,29,30,31,32,33,34}. As a general rule, all regulations contained in the Criminal Code are not only addressed to the public or certain parties, but to anyone who can be regulated by the formulation of general principles^{35,36,37,38,39,40}.

In the process of criminal cases in Indonesia, evidence plays a very important role, where evidence can make clear about the occurrence of a criminal act and in the end will be used as material to support the judge's conviction on the defendant's guilt as charged by the public prosecutor. Evidence can also provide clues as to whether or not a defendant is guilty. To impose a sentence requires power because the law itself is inseparable from the power^{41,42}. The relationship between law and power can be formulated with the slogan "Law without power is wishful thinking, power without the law is tyranny". The main characteristic of law when compared to norms is that law requires a power to support it, whereas norms do not. Power is needed because the law is compelling. Without power, law enforcement in society will experience obstacles. The more orderly and orderly society is, the less dependent on power will be. Legal certainty for evidence in the investigation process is not regulated in the Criminal Procedure Code, because the evidence will be used for evidentiary purposes starting from the process of investigation, prosecution, and court proceedings. According to the law, as regulated in the Criminal Procedure Code, evidence can be confiscated. Evidence that has been confiscated will be returned to the rightful if there has been a verdict from a judge who has permanent legal force^{43,44,45}. Based on the criminal case process as described above, obtaining an inkraacht decision will take quite a long time, and During this process, the evidence cannot be fully returned to the rightful owner. With the existence of these laws and regulations, it is hoped that during the investigation process, evidence can be returned to the owner as a person who is deemed entitled. Based on Article 46 of the Criminal Procedure Code, there is a very good chance that evidence can be returned to those who are entitled, but if it is not needed for investigation or prosecution Evidence can not be returned because it is contrary to Article 39, Article 44 and Article 181 of the Criminal Procedure Code, where confiscated evidence is following Article 39 of the Criminal Procedure Code and is kept and is prohibited from being used by anyone following Article 46 of the Criminal Procedure Code because it will be shown to the accused or witnesses. at court proceedings (Article 181 KUHP)^{46,47,48,49,50}. For the evidentiary process to run smoothly and produce accurate facts, the panel of judges and prosecutors will present evidence that is relevant and necessary in a criminal act to be proven true. The items that will be presented in court are known as "evidence". All evidence is shown by the judge to the accused by ensuring whether the defendant recognizes the evidence and if necessary it will be shown to the witnesses, following Article 181 paragraph (1) and (2) of the Criminal Procedure Law, the purpose of showing the evidence the anticipation of that evidence has nothing to do with the case against the defendant are not used as evidence, in addition to possibly confuse the evidence, so do not get the items as evidence unknown to the defendant or witness⁵¹.

2. RESEARCH METHOD.

This study uses the normative law research method, namely researching, tracing, assessing, and analyzing with the object the legal certainty of evidence to provide benefit to those entitled to the investigation process.

3. RESULT & DISCUSSION

Data in the West Sumatra Regional Police show that in the investigation process, investigators never return or hand over evidence to those who are entitled until there is a decision that has permanent legal force, including against the case. This can be seen in the table below.

NO	Case	Evidence	MeasuresInvestigator	EvidenceStatus	Barriers	Remarks
1	2	3	4	5	6	7
1.	The crime of Illegal Logging in March 2006	Form Wood Proceeds of Crime	1. Confiscating Evidence 2. Auction Evidence 3. Auction Results Evidence used and stored by investigators	are still in Confiscation investigators	The case has not yet been delegated to the Public Prosecutor (JPU)	The value of money from the auction proceeds in 2006 compared to now in 2020 has decreased in value
2.	Illegal Logging Crime in March 2007	Results of Crimes in the Form of Timber	Confiscation of Evidence	Still in Confiscation Investigators	The case has not Delegated to the Public Prosecutor (JPU)	Evidence confiscated in 2007 is now of no economic value
3.	Illegal mining crime in 2016 The	the tool used in the form of an excavator	1. confiscated evidence of 2. care/borrowing from the owner	Still in Confiscation Investigators	The case has not delegated to the Public Prosecutor (JPU)	Status Evidence that is still in care should not be transferred, pawned, or sold to other parties because the status is still evident in the

Source: Case Data of the Directorate General of Criminal and Criminal Investigation at the Regional Police of West Sumatra

Based on the data in the table above, it is clear that the evidence in the investigation process does not exist. legal certainty for people who have the right to be the owner of the evidence. If viewed from the aspect of benefit, the usefulness of the evidence material decreases and even does not benefit at all. There is no certainty and usefulness of the evidence for the following reasons: Evidence in the form of wood confiscated and auctioned in 2006 and auction results in the form of money remain used as evidence from 2006 to 2020, the value of money in 2006 compared to 2020 has decreased in value, even this money as long as it is evidence cannot be used because the money is kept in a holding account without interest. Evidence in the form of wood confiscated in 2007 will still have its status as evidence until 2020 without treatment so that the value of the wood is of no use because it is already damaged and can no longer be used. Evidence in the form of heavy equipment confiscated in 2016, its status until 2020 remains evidence that is entrusted with care to the owner and may not be transferred, pawned, or sold to other parties because the status is still evidence. Confiscation and confiscation of goods are categorized as additional penalties, confiscation is regulated in Article 1 number 16 of the Criminal Procedure Law, namely "Confiscation is a series of actions by an investigator to

take over and/or keep under his control movable or immovable, tangible or intangible objects for the benefit of proof in the investigation, prosecution and trial ". There are two types of seizure, namely: Criminal Seizure, the act of an investigator to take over and/or keep under his control movable or immovable objects, tangible or intangible for the sake of proof in the investigation, prosecution, and trial. General Confiscation In Article 1 point 1 of Law Number 37 the Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the definition of bankruptcy is as follows: "Bankruptcy is general confiscation of all assets of the bankrupt debtor whose management and settlement is carried out by a curator under the supervision of the supervisory judge". This condition can cause stress to the victim and society, stress is the body's reaction to situations that seem dangerous or difficult^{51,52,53,54,55,56,57,58,59,60,61}

Confiscation of goods is regulated in Article 39 of the Law Criminal Law, which is intended to seize the property of a defendant which was obtained from a crime or was deliberately used to commit a crime. To be confiscated, the goods must be the property of the perpetrator, so even though the said goods were used by the defendant to commit a criminal act or were the result of a criminal act, the goods are not the convict's property so the goods cannot be confiscated^{62,63,64,65, 66,67,68}. In a criminal procedure, not all confiscated evidence ends in confiscation, there is also evidence that is returned to the party entitled to the said goods. As stipulated in article 46 of the Criminal Procedure Code concerning confiscation, which states "objects subject to confiscation are returned to the person or them from whom the object was confiscated, or to the person or to those who have the most right. Certainty due to law and certainty in or from the law itself. explained that the law must succeed in ensuring the certainty of every node of society. Legal certainty can be realized if the provisions in the law do not contradict each other and in that law, there are no terms that can be interpreted differently. Law enforcement requires legal certainty, legal certainty is justiciable protection against arbitrary actions. The public expects legal certainty because, with legal certainty, the community will be orderly, safe, and peaceful^{69,70,71,72}. People expect benefits in the implementation of law enforcement. The law is for humans, so the implementation of the law must provide benefits, benefits for the community. Legal certainty is not only in the articles in the law but lies in the consistency of these various regulations (not to be contradictory), including in the judge's decision. Legal certainty is seen if it meets the following requirements: There are clear, consistent, and accessible legal rules issued by or recognized because of the (power) of the state; That government agencies implement the legal rules consistently and also obey and obey them; Whereas in principle the majority of citizens agree to the content and accordingly adjust their behavior towards these rules; That independent and impartial judges impartially apply these legal rules. consistent as they resolve legal disputes brought before them; That judicial decisions are concretely implemented⁷³. Legal rules in the form of laws and unwritten laws, thus, contain general rules that serve as guidelines for individuals to behave in social life, both in relationships with others^{73,74,75}

4. CONCLUSION

Evidence in the form of wood confiscated in 2007 will still have its status as evidence until 2020 without treatment so that the value of the wood is of no use because it is already damaged and can no longer be used. Evidence in the form of heavy equipment confiscated in 2016, its status until 2020 remains evidence that is entrusted with care to the owner and may not be transferred, pawned, or sold to other parties because its status is still evidence

5. SUGGESTION

To prevent and avoid similar cases regarding asset confiscation which should not have been done by the courts and the State, the author provides suggestions to several parties so that the same thing does not happen again: For the community, to be more careful in choosing wood and the transaction process. For legal officials to be wise in handling fraud cases involving the losses of many people, don't just stick to the existing regulations, also use the conscience.

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