

Utilization of State-Confiscated Property from Corruption Crimes Through Lease Agreements

Naufaldi Noor Hilmiansyah

Universitas Padjadjaran, Indonesia

Email: naufaldi24001@mail.unpad.ac.id

Keywords:

State Convicted Good;
Use; Lease

Abstract

State-confiscated property refers to state property derived from seized objects or items of evidence that have been declared forfeited to the state pursuant to a final and binding court decision, as well as other property declared forfeited through a judicial determination or court decision. Effective management of such assets constitutes an important aspect of state asset administration because it supports accountability and the optimization of economic value for the state. The disposal of these assets is generally carried out through public auction by the State Property and Auction Services Office (Kantor Pelayanan Kekayaan Negara dan Lelang [KPKNL]). However, assets that remain unsold must continue to be maintained to preserve their economic value, which may generate substantial storage, security, and maintenance costs. To address this issue, Regulation of the Minister of Finance of the Republic of Indonesia No. 145/PMK.06/2021 permits the utilization of state-confiscated property through lease agreements. Under this mechanism, certain maintenance and security responsibilities may be transferred to the utilization partner, while the state retains ownership of the property and receives Non-Tax State Revenue (Penerimaan Negara Bukan Pajak [PNBP]). Nevertheless, legal uncertainty remains regarding the characteristics of state-confiscated property that may be leased and the legal enforceability of the resulting lease agreements. Using normative legal research with statutory and conceptual approaches, this study examines the characteristics of state-confiscated property eligible for lease and analyzes the legal validity of such agreements. The findings are expected to provide a conceptual framework for optimizing state asset management and to support the enhancement of Non-Tax State Revenue through legally sound asset-utilization practices.

INTRODUCTION

The enforcement of corruption offenses in Indonesia has historically emphasized criminal sanctions against convicted offenders, while the equally important process of asset tracing and recovery has received comparatively less attention (Istiqomah, 2026; Nugroho et al., 2025; Shalihah et al., 2026; Ywanjono et al., 2024). Asset tracing is essential for investigation, prosecution, and evidentiary purposes. However, once seized assets are transferred to the custody of the prosecutor's office, their maintenance may create a substantial administrative and financial burden. Such assets are often inadequately maintained because of limited resources, which can result in a decline in their economic value. This situation presents a serious concern because state-confiscated property may possess considerable economic value and can potentially contribute to state revenue if managed effectively (Soeherman & Widyaningrum, 2026; Tyogunawan et al., 2026).

Legal developments are expected to respond to evolving societal needs, including increasingly complex transactions involving goods and services (Bahram, 2025; Farrokhi, 2025; Lescrauwaet et al., 2022; Perlman, 2023). One of the legal instruments commonly used in such transactions is a lease agreement. A lease benefits both parties: the lessee obtains the

right to use and enjoy the leased property for a specified period, while the lessor receives rental payments in return. Lease agreements have therefore become important legal instruments in civil transactions, including those involving state property (Albnian & Alhafnawi, 2026; Asnakew et al., 2024; Rannu & Lie, 2024; Rizky & Darmawan, 2024; Turitsyn, 2022).

One category of property that may become the object of utilization is state-confiscated property. State-confiscated property refers to state property derived from seized objects or items of evidence that have been declared forfeited to the state pursuant to a final and binding court decision, as well as other property declared forfeited through a judicial determination or court decision. In corruption cases, confiscation may form part of the recovery of state losses resulting from the unlawful conduct of a convicted offender. Such property may include both movable and immovable assets. State-confiscated property requires adequate security, supervision, and maintenance to prevent deterioration in its economic and functional value before disposal, particularly through auction. In practice, assets such as buildings, houses, and apartment units may remain unused and poorly maintained, causing physical deterioration and reducing their market value at the time of auction.

In 2021, assets related to PT Asuransi Jiwasraya were declared forfeited to the state pursuant to Supreme Court Decision No. 2931 K/Pid.Sus/2021 dated August 24, 2021. The assets were subsequently placed under the management of the prosecutor's office. They included land, buildings, jewelry, watches, cars, motorcycles, and pinisi vessels. These assets were subject to valuation and disposal procedures, including auction. However, when assets remained unsold, continued maintenance was necessary to preserve their economic value for subsequent disposal. The Jiwasraya case illustrates how suboptimal management of state-confiscated property may impose continuing costs on the state while also demonstrating the need for an effective asset-utilization mechanism.

The state is expected to recover financial losses through the disposal of confiscated assets, including through public auction. However, maintaining the security, condition, and value of such assets can require substantial expenditure. This creates a practical dilemma: while the state seeks to maximize recovery from confiscated property, excessive maintenance costs may reduce the net economic benefit ultimately obtained from the assets. Accordingly, alternative utilization mechanisms are required to preserve asset value while reducing the financial burden on the state.

One mechanism permitted under Regulation of the Minister of Finance of the Republic of Indonesia No. 145/PMK.06/2021 in conjunction with Regulation of the Minister of Finance of the Republic of Indonesia No. 115/PMK.06/2020 concerning the Utilization of State Property is the utilization of state-confiscated property through lease arrangements. Under this mechanism, certain costs associated with maintenance, security, and utilization may be borne by the utilization partner. The utilization of state property does not transfer ownership but instead allows the property to generate benefits while remaining under state ownership. Leasing therefore represents one form of utilization intended to improve the efficiency and effectiveness of state asset management.

Regulation of the Minister of Finance of the Republic of Indonesia No. 115/PMK.06/2020 concerning the Utilization of State Property defines leasing as the utilization of state property by another party for a specified period in exchange for monetary consideration. Lease agreements are also governed by the *Burgerlijk Wetboek* (BW),

particularly the general provisions on agreements contained in Book III. Article 1548 of the BW provides the legal basis for lease agreements by regulating the transfer of the right to enjoy the use of property for a specified period in return for an agreed payment. Accordingly, Article 1548 of the BW constitutes an important juridical basis for lease agreements in Indonesia, including those involving state-confiscated property.

A lease agreement generally involves a lessor and a lessee. The lessor is the party legally authorized to grant the right to use or enjoy the benefits of an asset, while the lessee receives that right for the agreed period and purpose. A lease does not transfer ownership of the property; rather, it transfers a temporary right of use or enjoyment. The leased property must be used in accordance with the purposes and conditions stipulated in the agreement. If the lessee uses the property contrary to the agreed purpose and causes loss to the lessor or the state, legal consequences may arise in accordance with the terms of the agreement and applicable laws.

Based on this background, this study focuses on two legal issues: the characteristics of state-confiscated property arising from corruption offenses that may qualify as the object of a lease agreement, and the legal validity of lease agreements involving such property. Accordingly, the study aims to analyze the characteristics of state-confiscated property eligible for lease and to examine the legal validity of lease agreements involving assets forfeited to the state as a result of corruption offenses. Theoretically, this study is expected to contribute to the development of legal scholarship concerning the utilization of state-confiscated property and the application of contract law to state asset management. Practically, the findings are expected to provide useful considerations for academics, legal practitioners, and public officials involved in the management and utilization of state-confiscated property through legally valid lease arrangements.

METHOD

Types of Legal Research

This study employed normative juridical research to examine the utilization of state-confiscated property arising from corruption offenses through lease agreements. The normative juridical approach was selected because the study focused on analyzing positive legal norms governing state-confiscated property and lease agreements, as well as assessing their consistency with relevant legal principles.

Problem Approach

The statute approach is carried out by examining all laws and regulations related to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study whether there is a concession and conformity between a Law (UU) and the Constitution (Constitution) or between regulations and laws. The results of the study are an argument to solve the issues faced. The Conceptual Approach starts from the views and doctrines that develop in the legal sciences. By studying the views of doctrines in law, the research finds ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issue at hand. Both approaches are used complementarily to obtain a comprehensive understanding of the issues under investigation.

Source of Legal Materials

The legal materials used in this legal research are sourced from primary and secondary laws. Primary legal material is legal material that is authoritative, meaning it has authority. Primary legal materials consist of legislation, official records or treatises in the makers of legislation and judges' decisions. The primary materials of this study consist of: 1) Civil Code (BW); 2) Law Number 9 of 2018 concerning Non-Tax State Revenue; 3) Regulation of the Minister of Finance Number 115/PMK.06/2020 concerning the Utilization of State Property; 4) Regulation of the Minister of Finance Number 145/PMK.06/2021 concerning the Management of State Property derived from State Booty and Gratification Goods; and 5) Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property Jo. Government Regulation of the Republic of Indonesia No. 28 Year 2020 concerning Amendments to Government Regulation No. 27 of 2014 concerning the Management of State/Regional Property. Secondary legal materials are mainly books including legal theses, theses and dissertations and legal journals, as well as legal dictionaries and commentaries on court decisions. The use of these secondary legal materials is intended to provide a theoretical and conceptual foundation that enriches the analysis of primary legal materials.

Legal Material Collection Procedure

Primary legal materials are in the form of legal norms that govern and secondary legal materials in the form of books, legal journals, articles, and so on which are collected by searching, reading, and studying into a unified unit in the structure of legal research in the form of this thesis. The legal material analysis technique used in this study uses systematic legal interpretation techniques in analyzing legal materials. Systematic legal interpretation techniques are interpretation techniques by connecting one article with other articles in a relevant legislation or other legal articles, or reading the explanation of a law, so as to understand what is meant. The analysis is conducted qualitatively using a deductive approach, drawing conclusions from general applicable legal provisions to be applied to the concrete cases under study.

RESULTS AND DISCUSSION

Characteristics of State Spoils Corruption Crimes That Can Be Used as Rental Objects State Booty

State Property is all goods purchased or obtained under the burden of the State Revenue and Expenditure Budget or derived from other legitimate acquisitions. Based on article 2 of Government Regulation Number 27 of 2014 concerning the Management of State/Regional Property includes: 1) Goods purchased or obtained under the budget burden of the State Budget/APBD; and 2) Goods derived from other legitimate acquisitions. The ones in question come from other legitimate acquisitions including: a) Goods purchased or obtained from grants/donations or the like; b) Goods obtained as an execution of an agreement/contract; c) Goods obtained based on the provisions of laws and regulations; and d) Goods obtained based on a court decision that already has permanent legal force. State-owned goods need to be managed properly so that they can be used and utilized optimally and sustainably to realize the welfare of the people. Based on this description, state property is well managed, one of which is state spoils. State property is State property derived from confiscated property or evidence

that is determined to be confiscated for the State based on a court decision that has acquired permanent legal force, or other goods that based on a judge's determination or court decision are declared confiscated for the state.

State Confiscated Goods are obtained through confiscated goods or evidence, goods can be sourced including corruption crimes (tipikor). Corruption is an act that is done with the intention of obtaining some advantage that is contrary to official duties and other truths. Acts of corruption are basically anti-social, contrary to morals and the rule of law, so if these acts are not prevented or overcome, as a result the public relations system will be disharmonious and will process towards the system of individualism, play suan and the like. In turn, the mentality of individuals, groups or parts of the nation's society is colored by a greedy attitude, the most self-serving lust which will always be done in all kinds of ways. The confiscated goods are based on an inkraht ruling that stipulates that confiscated objects or evidence are confiscated by the state. This inkraht decision serves as a strong juridical basis for the state to manage these confiscated goods.

Confiscated goods need to be settled through management and management by authorized officials in accordance with the Minister of Finance Regulation No.145/PMK.06/2021 concerning the Management of State Property Derived from State Confiscated Goods and Gratification Goods. The management of state spoils is carried out by auction by the prosecutor's office through the Office of State Property and Auction Services (KPKNL). Goods that are not managed can be managed, one of which is utilization by rent. The results of management and management through utilization can result in non-tax revenue revenue (PNBP). Effective management is the key to maximizing the value of state assets while reducing the maintenance burden borne by the state budget.

The management of State Property needs to be based on principles in accordance with the Government Regulation of the Republic of Indonesia Number 27 of 2014, which states that in managing State Property must be based on functional principles, legal certainty, transparency, efficiency, accountability, and certainty of value: 1) The functional principle is the principle that governs decision-making and applies in solving problems experienced in the field of State Property management which is carried out by the manager and user of goods in accordance with the duties, authorities, and responsibilities of each related party; 2) The principle of legal certainty, which is the principle that governs the management of State Property must be carried out in accordance with the legal basis and applicable laws and regulations; 3) The principle of transparency or openness, which is the principle that governs the implementation of the management of State Property, must be carried out openly to the public. This is carried out so that the public can obtain true, honest and non-discriminatory information about the management of State Property, and the community can help in securing State Property; 4) The principle of efficiency, is a principle that regulates the use of State Property which must be used according to the required standards of needs with applicable limitations in carrying out the main duties and functions of the government optimally; 5) The principle of accountability is a principle that determines that every activity in the management of State Property and the final result must be accountable to the community who has an important role as the holder of the highest sovereignty in the state in accordance with the provisions of the applicable laws; and 6) The principle of value certainty is a principle that in the management of State Property must be supported by the accuracy in calculating the amount

and value of goods in the context of the utilization and transfer of State Property, and used for the preparation of government balance sheets. The consistent application of these principles will ensure professional and accountable management of state-confiscated goods.

The management of state spoils by way of utilization is the utilization of state spoils by not changing the ownership status. The utilization can be done through lease, which is the use of State Property by other parties within a certain period of time and receiving cash rewards. This is in line with the principle that state-confiscated goods remain state assets even while being utilized by other parties, so ownership of these goods remains with the state.

Utilization of State Spoils

The utilization according to the Regulation of the Minister of Finance No.145/PMK.06/2021 concerning the Management of State Spoils Derived from State Spoils and Gratification Goods aims to optimize State Spoils, increase state revenue, prevent other parties from illegally using, utilizing and obtaining results for State Spoils, and considerations of the public interest related to State Spoils. The purpose of this utilization reflects the state's efforts not merely to resolve asset management problems, but also to provide tangible economic benefits for national development.

The use of State Spoils can be proposed in writing by the State Spoils management to the goods manager accompanied: 1) Considerations underlying the proposed Utilization; 2) Proposal for a business plan; 3) The proposed State Confiscation Data is the object of Utilization; and 4) Period of utilization. Utilization does not change the status of the object of use as State Booty and does not need to precede the Determination of User Status. State Spoils that have ended their use will be handed back by the party carrying out the Utilization to the State Spoils Management for management. Utilization through lease aims to optimize the utilization of State Property that has not been used in the implementation of the duties and functions of the state government, obtain the necessary facilities in the context of government administrators or support the duties and functions of goods user agencies, and prevent the unauthorized use of State Property by other parties. State Booty that has ended its use is handed back by the party who carries out the utilization to the management. The implementation of the utilization of State Confiscated Goods is guided by the provisions of the Minister of Finance Regulation No.115/PMK.06/2020 concerning the Utilization of State Property.

The form of utilization of State Property in accordance with Article 8 of the Regulation of the Minister of Finance No.115/PMK.06/2020 concerning the Utilization of State Property can be in the form of leases, loans, utilization cooperation, build and handover, cooperation in the provision of infrastructure, and limited cooperation for infrastructure financing. In this case, the author discusses the form of utilization of State Booty through rent. The definition of rent according to the Regulation of the Minister of Finance No.115/PMK.06/2020 is the use of State Property by other parties within a certain period of time and receiving cash rewards. In the utilization of State Confiscated Goods with lease aims to: a) Optimizing the use of State Property that has not been used in the implementation of the duties and functions of the state government; b) Obtaining the necessary facilities in the context of government administration and/or supporting the duties and functions of the agency that uses goods; and c) Prevent the unauthorized use of State Property by other parties.

The enactment of the Minister of Finance Regulation No.145/PMK.06/2021 concerning the Management of State Property Derived from State Booty and Gratuity Goods, that State

Booty can be utilized through lease. Not all State Booty can be rented to other parties, it is necessary to have several terms and conditions that need to be met to rent State Booty. The utilization of State Spoils is proposed in writing by the State Spoils Management to the Goods Manager accompanied by considerations that underlie the proposed utilization, the proposal for the utilization business plan, and the data of the proposed State Spoils as the object of utilization. The goods manager conducts research that contains the completeness of the documents required with the object of State Spoil proposed by the goods manager. The results of the research are stated in a minutes signed by the goods manager and the state booty manager who submitted the proposal. If based on the results of the research the proposed use is not approved, the management of the goods shall notify in writing to the management of the state booty that submits the proposed use accompanied by the reason. In the event that based on the results of the research the proposed utilization is approved, the goods manager issues a utilization approval letter containing the identity of the user of the goods, data on the state spoils used, and the period of utilization. The implementation of the use of state spoils is guided by the provisions of laws and regulations in the field of management of state-owned goods.

Utilization of State-Owned Property Lease

State financial management needs to be improved in efficiency and effectiveness, namely the management of state property through the creation of policies on the authority to manage state property and implementation in accordance with the policies that have been set. Guidelines for the implementation of the use of state property are regulated in the Regulation of the Minister of Finance No.115/PMK.06/2020 concerning the Utilization of State Property, which regulates the management of goods including the implementation of the use of state property, the object of use of State Property, the period of use of state property, state revenue from the use of State Property, administration of the use of state property and sanctions. The form of utilization of State Property that will be discussed is in the form of rent.

The utilization of State Confiscated Goods through lease aims to implement the orderly, directed, fair, and accountable use of state property in order to realize efficient, effective, and optimal management of state property. The utilization of state property is carried out without interfering with the implementation of the duties and functions of the state government, paying attention to the interests of the state and the public interest, and does not change the status of the object of utilization of state booty. The utilization of rent is a form of optimizing State Property. The government's efforts to provide benefits and provide income in the form of Non-Tax State Revenue (PNBP). The contribution of PNBP from the lease of state-confiscated goods is a potential source of state revenue that needs to be further developed.

All proceeds obtained from the management of state-owned goods must be deposited into the state treasury because it is one of the sources of non-tax state revenue. Non-tax revenue, hereinafter abbreviated as PNBP, is a levy paid by individuals or entities by obtaining direct or indirect benefits for services or the use of resources and rights obtained by the state, based on laws and regulations, which are revenues of the Central Government outside of tax revenues and grants and are managed in the state revenue and expenditure budget mechanism.

Parties Who Lease State Booty

Based on the Regulation of the Minister of Finance No. 115/PMK.06/2020, the party that can lease State Property (BMN) is the Minister of Finance as the Goods Manager for BMN under its management, and the Prosecutor's Office as the Goods User with the approval of the

Goods Manager for BMN who is in the Goods User. Parties that can become tenants include SOEs, BUMDs, village-owned enterprises, individuals, government activity support units, and other business entities. The diversity of parties that can become tenants demonstrates the flexibility of the state-confiscated goods utilization policy.

Rentable Objects

Objects that can be rented include BMN in the form of land and/or buildings and BMN other than land and/or buildings that are in the Goods Manager or Goods User. Land and/or buildings can be rented partially or completely, including spaces above or below ground level. If only part of it is rented, the area of the rental object is adjusted to the part used.

Rental Period and Term

Based on Article 13 PMK No. 115/PMK.06/2020, the lease period is generally a maximum of 5 years from the time the agreement is signed and can be extended with the approval of the Goods Manager. For infrastructure cooperation, the lease term can reach 50 years, while certain business activities that take more than 5 years can be given a maximum term of 10 years and can be extended. The execution of the lease can use a period of years, months, days, or hours. The amount of the rental rate is determined by the Goods Manager or Goods User in accordance with his authority.

Amount and Rental Adjustment Factors

The use of BMN through lease generates Non-Tax State Revenue (PNBP). Based on Article 15 of PMK No. 115/PMK.06/2020, the amount of rent is calculated based on the cost of rent multiplied by the rent adjustment factor. The basic rate for land and/or buildings is determined through an assessment to obtain a fair value as the basis for determining the rental price. The adjustment factor is adjusted to the type of tenant activity. Profit-oriented business activities are subject to a factor of 100%, with certain exceptions such as 75% secondary cooperatives, 50% primary cooperatives, and 25% MSMEs. Non-business activities, such as public services and national education, are subject to a factor of around 30%-50%, while social activities such as religion and humanitarian activities are subject to a factor of 2.5%. The amount of rent is also adjusted to the payment period, both annual, monthly, daily, and hourly.

Rent Payment

After the prospective tenant obtains approval, the lease agreement is outlined in the agreement. Rent payments are made in cash and at once before the agreement is signed by depositing it into the State General Cash Account. This provision aims to ensure that state revenues from the use of BMN are recorded and managed in accordance with applicable regulations. This advance payment also provides certainty for the state regarding the revenue to be obtained.

Termination of Lease

The lease ends when the term in the agreement has been completed and not extended, the agreement is terminated by the Goods Manager or Goods User, or there are other provisions based on laws and regulations. Termination can also be made if the tenant does not fulfill his obligations under the agreement. In these conditions, the Prosecutor's Office as the Goods User can terminate the lease in writing without going through the court after giving a warning to the tenant. After the utilization period ends, the state spoils are returned to the Prosecutor's Office for further management in accordance with applicable regulations.

Scope of Lease Agreement

Regional property is everything that is purchased or acquired on the burden of the regional revenue and expenditure budget, as well as those derived from other legitimate acquisitions. Regional property can be carried out based on technical considerations by paying attention to the public interest, as long as it does not interfere with the implementation of the duties and functions of local government. The use of regional property has been applied by the Public Broadcasting Institute of Radio of the Republic of Indonesia (LPP RRI) Denpasar, a state-owned public broadcasting institution established and regulated under the law of the Republic of Indonesia as the legal holder of the land that will be leased to Ni Wayan Sutiki as the tenant of the state-owned property. The parties agree and agree that what is stated in the clauses in the agreement regarding the purpose and purpose of leasing land owned by the Public Broadcasting Institution of Radio of the Republic of Indonesia is used for housing. As well as the rental period agreed upon by the parties, which is for 3 (three) years, starting from December 23, 2020 to December 22, 2023. Regarding the rental price, it has been agreed to be Rp 3,473,350 (three million four hundred and seventy-three thousand two hundred and fifty rupiah) with payment in the form of bills. With this, both parties have fulfilled the elements of rent-rent, namely prices and goods and then bind themselves in the lease-lease agreement.

Based on this description, state spoils are confiscated objects or confiscated goods based on a court decision that has permanent legal force, or based on the determination of a judge or court decision that is declared confiscated for the state. The loot needs to be settled, the settlement can be done through management and management. The settlement of state spoils through management is carried out by auction. The settlement of state spoils through management in the event that the spoils have not been sold, can be determined by user status, transfer, utilization, destruction, or elimination. The definition of utilization can be in the form of a lease without changing the user's status. The use of booty needs to take into account the functions needed by the state to provide benefits to the state in the form of money whose income is included in non-tax state revenue (PNBP). The management of state-owned property has been implemented by the Public Broadcasting Institute of Radio of the Republic of Indonesia (LPP RRI) Denpasar, a state-owned public broadcasting institution with Ni Wayan Sutiki as an individual who rents state-owned property. The agreement was approved after an agreement on goods and prices. This demonstrates that the principle of consensuality in lease agreements also applies to state-owned goods.

Legal Validity of Lease Agreements for Renting State-Owned Booty Proceeds of Corruption

Legal Framework of Lease Agreements

In Article 1233 of the BW, it is stated that each engagement is born either by consent, or by law, which can be interpreted as an alliance born by agreement or law. The definition of an agreement according to Article 1313 of the BW is an act by which one or more people bind themselves to one or more other people. From the formulation of the article, it can be concluded that what is meant by an agreement in the article is an agreement that gives rise to an agreement (*verbintenisscheppende overeenkomst*) or an agreement that is *obligatoir*. According to Soedikno Mertokusumo, an agreement between two or more parties is based on the agreement of the parties to cause legal consequences, and determine legal regulations or rights and

obligations that are mutually binding and if rights and obligations are violated, then there are consequences that the violator can be subject to legal consequences and sanctions.

In Article 1319 of the BW, agreements are divided into two types, namely named (nominate) and unnamed (innominate) agreements. A named (benoemd, specified) agreement is an agreement that has been specifically regulated and given a specific name by law. Named agreements are specifically regulated and given specific names by law. The named agreement is regulated in book III of the BW starting from chapters V to XVII plus title VIIA BW. A named agreement is called a special agreement, a special agreement is an agreement that has its own name, which means that the agreements are regulated and named by the law-maker. Based on the type that occurs the most daily. Special treaties are found in Chapters V to XVIII of the BW. Outside of named agreements, there is also an unnamed agreement, which is an agreement that is not regulated in the BW, but is found in the community. The birth of this agreement is the principle of freedom of contract, entering into agreements or autonomous parties. Anonymous agreements are agreements that have not been specifically regulated in the law. The birth of this agreement is based on the principle of freedom to contract to enter into agreements.

An agreement or contract is made because of a difference of interest between the parties who seek to be united by means of negotiation to reach an agreement for the common good. The urgency of contract arrangement in business practice is to ensure that the exchange of interests (rights and obligations) takes place proportionately for the parties, so that a fair and mutually beneficial contractual relationship is established. The rights and obligations of the parties can be outlined in the contractual clauses to provide legal protection and legal certainty in order to achieve common goals. The stages in contract formation consist of: 1) Pre-contract: This stage is carried out by the parties before the contract is formed. The parties negotiate about each other and then exchange rights and obligations in the contractual relationship; 2) Contract formation: It is at this stage that a contractual relationship between the parties is born; and 3) Contract implementation: This stage is the implementation (performance) of the exchange of rights and obligations based on the agreement of the parties. This stage is also called the postcontractual phase. The three stages must be based on the principles of contract law.

The contract design process consists of several stages, namely research, outlining, and wording. By conducting research, the contract drafter will have a sufficient understanding of the contract that is formulated. The following, regarding the drafting of the contract framework, the guidelines that should be used: a) Systematic, complete and clear: With a systematic, complete, and clear framework, it will make it easier for the parties to understand each other's rights and obligations outlined in the contract; b) One clause one concept: Each clause made in the contract has one concept. By applying the principle of contract, it will be well understood by third parties, such as judges; c) Title on each clause: Giving a title to each clause will make it easier to trace the contract in question; d) Applying the 3P (predict, provide, protect) principle; The existence of predictions of the possibilities that occur in the execution of the contract will be easier to anticipate by providing a clause that regulates if these possibilities occur. The clause made is also intended to protect the interests of the parties; and e) Supporting clauses at the end: The placement of supporting clauses after the main clause shows that the drafting of the contract is carried out systematically.

BW provides guidelines in regulating and forming agreements to be made. The following are the general principles of the agreement as stipulated in the BW, namely:

Personality Principles

The principle of personality is a principle that determines that a person who will make and/or make a contract is only for the benefit of the individual. In the provisions of Article 1315 of the BW which states that "In general, no person can bind himself on his own behalf or ask for the establishment of an agreement, it will only be valid and binding for himself" and Article 1340 of the BW states that "An agreement is only valid between the parties who make it". From these two formulations, it can be seen that the agreement made by the parties, for the sake of the law, will only be binding on the parties who make it.

The Principle of Consensuality

An agreement comes into effect when it is agreed upon by those who bind it. In an agreement, it is enough agreement from those who make the agreement. That the agreement is valid if an agreement has been reached regarding the main provisions of the agreement. The provisions on the principle of consensuality are contained in Article 1320 of the BW of the terms of the agreement regarding the agreement that binds him. Based on this consensuality, it is believed that the source of contractual obligations is the convergence of wills or consensus of the parties who make the contract. The principle of consensualism is believed to respect mutual agreement indirectly as well as respect human dignity. Subekti (2014) stated that this is the peak of increasing human dignity which is concluded from the Dutch proverb "een man enn man, een word een word", which means that with the determination of a person's words, that person is increased in dignity as a human being.

The Basis of Freedom of Contract

In the agreement on the use of State Booty, the government's actions in making utilization are civil actions so that the agreements made remain subject to the rules that apply in treaty law in Indonesia, including the principles contained in it, one of which is the principle of freedom of contract. The principle of freedom of contract is a principle that has a central position in contract law, although it is not stated as a rule of law, but this principle of freedom of contract has a very strong influence on the contractual relationship between the parties. The principle of freedom of contract is the pillar of the civil law system, especially the law of engagement regulated by book III of the BW.

Book III BW adheres to an open system, meaning that the law (i.c. Book III BW) gives the parties the flexibility to regulate their own legal relationship patterns. The provisions on the principle of freedom of contract are found in Article 1338 paragraph (1) of the BW "All agreements made legally shall be valid as law for those who make them". In other words, through the principle of freedom of contract, legal subjects have new agreements that have not been regulated in the BW in order to be able to follow the needs of the community due to the development of the times. This is in line with the need to regulate the utilization of state-confiscated goods, which is a new phenomenon in Indonesian legal practice.

The Basics of the Sunt Servanda Pact

The principle of Pacta Sunt Servanda or also known as the principle of legal certainty. This principle relates to the consequences of the agreement. The principle of pacta sunt servanda is the principle that the judge or a third party must respect the substance of the contract made by the parties, as befits a law. They may not intervene in the substance of the contract

made by the parties. The principle of *pacta sunt servanda* can be concluded in Article 1338 paragraph (1) of the BW, which reads: "An agreement made legally shall be valid as a law." With the consensus of the parties to the agreement, the agreement gives rise to the binding force of the agreement as it should be in law (*pacta sunt servanda*). What a person declares in a relationship becomes the law for them. This principle is the binding force of the agreement. This is not a moral obligation, but also a legal obligation whose implementation must be obeyed.

The Basis of Good Faith

The provisions of the principle of good faith are stated in Article 1338 paragraph (3) of the BW "The agreement must be carried out in good faith". The provisions contained in this principle require that an agreement be implemented in good faith. Good faith can be divided into 2 (two) types, namely: a) Relative Good Faith: In relative good faith, one pays attention to the actual attitude and behavior of the subject; and b) Absolute Good Faith: In absolute good, judgment lies in common sense and fairness and an objective measure is made to assess the circumstances (impartial judgment) according to objective norms. Subjective good faith, that is, before the agreement is implemented, the parties must show honesty. Usually, subjective good faith exists at the negotiation stage, where the parties openly provide information about who they really are by providing evidence in the form of documents about themselves. Objective good faith, i.e. at the time of the implementation of the agreement must be in accordance with propriety or justice.

An agreement born from an agreement is indeed desired by two or two parties who make an agreement, while an agreement born from the law is held by law beyond the ability of the parties concerned. When two people enter into a covenant, they intend for a legal covenant to be entered into between them. Truly they are bound to each other because of the promises they have given. This bond of alliance is broken only when the promise has been fulfilled.

Elements of the State Confiscated Lease Agreement

A lease-lease agreement is a non-procurement contract, aiming for public services that generate revenue through the results of the contract made. Non-procurement contracts that are carried out in the context of the use of state/regional goods/assets such as lease contracts are contracts that aim to utilize state/regional assets/goods, but in this contract the state/regional assets/goods that are used as the object of the contract, will not be a transfer of ownership from the government to other parties. Lease-lease agreements are basically for a certain time, while rent-leases without a certain time are not allowed. The lease does not end with the death of the lessee or tenant. Likewise, because the goods rented are transferred. Based on the description above, the need for the elements listed in the lease-lease agreement. According to Abdulkadir Muhammad (1986), an agreement must certainly have elements in order for an agreement to be reached, in an agreement there are elements: 1) There are parties, at least two people: These parties are referred to as the subject of the agreement. The subject of this agreement can be a private person or a legal entity. The subject of this agreement must be able or authorized to perform legal acts as stipulated in the law; 2) The existence of an agreement between the parties: Consent here is permanent, in the sense that it is not a new level of negotiation, negotiation is a preliminary step towards an agreement. The form of reality in an agreement can be shown by the acceptance of one party to the offer of the other party; 3) The existence of

the objectives to be achieved from the agreement: The purpose of entering into an agreement is primarily to meet the needs of the parties, and its nature must not be contrary to public order, decency and not prohibited by law; 4) The existence of achievements that will be implemented: With approval, there is an obligation to carry out an achievement. Achievement is an obligation that must be fulfilled by the parties in accordance with the conditions; 5) The existence of certain forms, both oral and written: This form needs to be determined, that a certain form of an agreement has binding force and evidentiary force. The agreement can be made orally, meaning with words that are clearly intended and the purpose is understood by the parties, it is sufficient, unless the parties want it to be made in writing; and 6) The existence of certain conditions as the content of the agreement: These certain conditions are actually the content of the agreement, because with those conditions it can be known that there are rights and obligations of the parties. These requirements usually consist of basic requirements and complementary or additional requirements.

Valid Terms of Agreement

Based on Article 1320 BW, there are four valid conditions for the agreement, namely agreement, the competence of the parties, a certain thing, and causa that is allowed. The first two conditions are subjective conditions because they relate to the parties, while the last two conditions are objective conditions because they relate to the object of the agreement. If the subjective conditions are not met, the agreement can be cancelled, whereas if the objective conditions are not met, the agreement is null and void.

Deal

An agreement is a free agreement from the parties to enter into an agreement. Based on the principle of consensuality, an agreement is basically born from the agreement between the parties. The agreement must be freely given without coercion, fraud, or misrepresentation that could cause defects of will. In the state booty rental agreement, an agreement occurs between the Prosecutor's Office as the party that manages or leases the goods and the lessee, both individuals and legal entities. The agreement includes the object and amount of the rental fee which is then stated in the agreement.

Ability to Make Agreements

Proficiency means that the parties have the legal ability to perform legal acts. Under Article 1329 of the Criminal Code, everyone is inherently capable of making agreements, unless otherwise provided by law. Article 1330 of the BW mentions incompetent parties, including immature people and people under guardianship. In making an agreement, a person must meet the provisions regarding age and applicable legal conditions. If the agreement is made by an incompetent party, the agreement can be requested to be canceled according to the provisions of the law. The subject of law consists of human beings and legal entities. A legal entity is an organization or association that has its own rights and obligations, is separate from its members, and has separate assets. In the lease of state confiscation, the lessee can be individuals or legal entities, such as SOEs, foundations, cooperatives, limited liability companies, firms, and other business entities. The Prosecutor's Office as a state institution can also make agreements in accordance with the authority and provisions of laws and regulations.

A Certain Thing

A certain thing means that the agreement must have a clear object or at least be determinable in its type and amount. The object is the basis of the rights and obligations of the

parties. In the state booty rental agreement, the rental object must be clear, both in the form of movable and immovable objects. Loot that can be rented includes houses, apartments, shophouses, motor vehicles, bags, watches, jewelry, ships, and land and/or buildings. In its implementation, the Prosecutor's Office handed over the rented goods, while the tenant was obliged to pay the rent according to the agreement.

Permissible Causa

Permissible causa means that the content and purpose of the agreement must not be contrary to the law, decency, and public order as stipulated in Article 1337 of the BW. Agreements made without cause, with false causes, or with prohibited causes have no legal force under Article 1335 of the Dutch Civil Code. Therefore, the state booty rental agreement must have a valid purpose and be implemented in accordance with the applicable laws and regulations.

Based on these provisions, the valid conditions of the agreement in the lease of state booty must be fulfilled by the parties and related to the object being leased. If the subjective conditions are not met, the agreement may be cancelled at the request of the interested party. On the other hand, if the objective conditions are not met, the agreement is null and void so that from the beginning it is considered to have never existed.

Lease Lease Agreement

According to article 1548 of the BW, a lease-lease agreement is an agreement in the name of one party that binds itself to provide an item to the other party for use at a certain time and with the payment of a price that has been agreed by the payment party. According to M. Yahya Harahap (2014), a lease is an agreement between the renting party and the tenant. The renting party handed over the goods to be rented to the renter to be fully enjoyed. Leases, as with sale and purchase and other agreements in general, are a consensual agreement. This means that he has and binds at the moment of reaching an agreement on the main elements, namely goods and prices. The rules on renting contained in the seventh chapter of book III of the BW, apply to all types of rents, regarding all types of goods, both movable and immovable, whether using a certain time or not using a certain time, since "certain time" is not an absolute condition of the lease-lease agreement.

The lease agreement must be adjusted to the conditions of the validity of the agreement, and can be seen in the grouping of the main elements that must be in the lease agreement, namely: 1) The essential element is the part of the agreement that must always be present in the agreement, the absolute part, without which the agreement cannot exist. The main elements of a lease agreement are goods or prices; 2) The element of naturalia, is the part of the agreement that is regulated by law, but can be replaced by the parties, so that the part is regulated by law by law that regulates or adds to it; and 3) The Aksidentalita Element, is what is added by the parties. The law does not regulate it, so the desired thing is also not binding on the parties because it is not in the law, if it is not contained, it means that it is not binding.

The parties involved in the lease agreement are the lessee and the lessee. The leasing party is a person or legal entity that rents goods or objects to the lessee while the renting party is a person or legal entity that rents goods or objects from the leasing party. In a lease agreement, the goods are handed over not to be owned but only to be used and/or only in the nature of handing over mere power over the goods that are rented. The lease agreement made has met the conditions for the validity of the agreement as per article 1320 BW, then the

agreement is binding on both parties as binding by law, in accordance with the reading of article 1338 BW which stipulates that "all agreements legally made shall be valid as Law for those who make them". The words "all agreements lawfully made shall be valid as Law for those who make them" As in article 1338 of the BW above, it means that the parties must abide by the agreement as well as obey the Law. If someone violates the agreement they made, it is considered the same as violating the law, which has certain legal consequences, namely in the form of legal sanctions.

Subject and Object of the Lease-Lease Agreement

A lease-lease agreement involves two parties, namely the lessee and the lessee. The tenant can be an individual or a legal entity, while the leasing party is the party who owns or controls the rented goods. Legal subjects consist of human beings and legal entities who have rights and obligations and can carry out legal acts in accordance with applicable regulations. In the lease of State Property (BMN), the party that can rent is the Minister of Finance as the Goods Manager if BMN is under its management, or the Goods User, namely the Prosecutor's Office, if BMN is in the Goods User with the approval of the Goods Manager. Parties that can rent include SOEs, BUMDes, BUMDes, individuals, and other business entities such as PTs, foundations, cooperatives, firms, and joint ventures. The object of the lease-lease agreement consists of the rented goods and the rental price. Based on PMK No. 115/PMK.06/2020, BMN rental objects include land and/or buildings, either partially or entirely, as well as goods other than land and/or buildings that are in the possession of the Goods Manager or Goods User. In the context of state booty, the object of rental can be in the form of movable or immovable objects, such as land, buildings, vehicles, jewelry, watches, and ships, as long as their status and control are legal according to law.

Rights and Obligations of the Lessor Party

The leasing party has the right to receive payment of rent in accordance with the agreement and provide a warning if the tenant does not fulfill his obligations in using or maintaining the goods. Based on the terms of the lease, the renting party is obliged to hand over the goods to the tenant, maintain the goods so that they can be used according to the purpose of the rental, and provide a guarantee of peace to the tenant during the rental period. In the rental of state spoils, the Prosecutor's Office as a Goods User carries out the use of goods in accordance with applicable provisions with the aim of optimizing the use of BMN that has not been or is not used in the implementation of government duties. The rented goods must be delivered in conditions that allow them to be used in accordance with the purpose of the agreement.

Rights and Obligations of the Tenant Party

The tenant has the main obligation to use the goods in accordance with the agreed purpose and pay the rent on time as stipulated in Article 1560 BW. The tenant is also obliged to comply with all the provisions of the agreement and is not allowed to use the goods for other purposes that may be detrimental to the renting party. If the use of the goods is not in accordance with the agreement and causes losses, the renting party may request the cancellation of the lease as per Article 1561 of the BW. Tenants can be individuals or business entities, such

as PTs, foundations, cooperatives, firms, and limited partnerships. The rights and obligations in the lease agreement cannot be transferred to a third party without the consent of the lessor party. Similarly, changes to the form or use of the rental object must obtain approval in accordance with the terms of the agreement. The lease agreement may terminate because the lease has been terminated and not extended, or because certain conditions have been agreed upon in the agreement. Based on Article 1570 of the BW, if the agreement is made in writing, the lease ends for the sake of law after the term expires without the need for special termination. In addition, based on Article 1575 of the BW, the death of one of the parties does not automatically terminate the agreement because his rights and obligations can be passed on to the heirs. The agreement also does not in principle end only because there is a transfer of ownership of goods through buying and selling, unless otherwise specified in the agreement.

Risks in a Lease Agreement

The definition of risk is an obligation to bear a loss that occurs as a result of an event or events that befall the object of the agreement, beyond the fault of each party. Article 1533 regulates the risks in the lease agreement by discussing during the rental period that the rented goods are completely destroyed or lost due to an accidental event, the lease agreement is void for the sake of the law. In the issue of risk in this lease agreement, it arises if the rented goods are destroyed while the lease agreement is still ongoing. In this case, there are two possibilities, including: 1) The rented goods were completely destroyed: If the destruction of the rental object or rented goods occurs due to overmacht or forced circumstances or sudden unavoidable circumstances and not due to the actions of the tenant, the renting party or a third party, then the lease agreement becomes void. The risk is then divided in two between the renting party and the tenant. After the rental goods are destroyed, the renting party can no longer demand the rental price. The meaning of completely destroyed here means that the item can no longer be used normally even though there is a remnant of the item; and 2) Rented goods partially destroyed: The meaning of partial destruction here is if what is destroyed materially is only partially and as a result of the destruction of the rented goods or objects can still be used, the rented goods or objects can still be used and enjoyed properly for the part that is still left behind. In this case, the tenant can have between two options, namely the tenant can ask the renting party for a reduction in the rental price whose reduction is balanced with the part of the destroyed goods and the tenant can demand payment from the renting party for the rental agreement.

If several provisions in the government contract are violated, civil law enforcement can be carried out through a lawsuit to the general court. In the case of making a lease contract, one of the parties does not fulfill the obligations that must be met, then it can file a default lawsuit. With this, if the prosecutor's office rents out goods that are state institutions commit default, a civil lawsuit can be filed in the general court or vice versa. This demonstrates that although the prosecutor's office is a state institution, in lease agreements its position is as a civil law subject subject to civil law provisions.

CONCLUSION

Based on the research findings and discussion, it can be concluded that state-confiscated property constitutes state property originating from seized objects or items of evidence that have been declared forfeited to the state pursuant to a final and binding court decision. The

disposition and utilization of such property may include sale through auctions conducted by the State Property and Auction Services Office (Kantor Pelayanan Kekayaan Negara dan Lelang [KPKNL]) and leasing of assets that remain unsold, while observing the principles of functionality, legal certainty, transparency, efficiency, accountability, and certainty of value. The utilization of state-confiscated property may be carried out by the Prosecutor's Office and the Corruption Eradication Commission with the approval of the Minister of Finance, while the proceeds constitute Non-Tax State Revenue (Penerimaan Negara Bukan Pajak [PNBP]). Under Regulation of the Minister of Finance No. 145/PMK.06/2021, the management of state-confiscated property should be conducted in an orderly and optimal manner to preserve asset value, reduce maintenance costs, and increase state revenue. State-confiscated property that may qualify as the object of a lease agreement must have a definitive legal status as property forfeited to the state, must not interfere with the performance of governmental duties and functions, and must satisfy the requirements prescribed by applicable laws and regulations.

The legal validity of lease agreements involving state-confiscated property arising from corruption offenses depends on the fulfillment of the requirements for a valid agreement under Article 1320 of the Burgerlijk Wetboek (BW), namely consent of the parties, legal capacity, a specific subject matter, and a lawful cause. A lease agreement is a nominate contract regulated under Book III of the BW and is consensual in nature, binding the parties as law pursuant to the principle of *pacta sunt servanda*. In its implementation, the leasing of state-confiscated property must comply with Regulation of the Minister of Finance No. 115/PMK.06/2020 and Regulation of the Minister of Finance No. 145/PMK.06/2021, while also addressing relevant risks, including damage to or destruction of the leased property. Accordingly, the utilization of state-confiscated property through lease agreements constitutes a legally permissible mechanism for optimizing state assets and generating Non-Tax State Revenue. Based on these conclusions, the study recommends that the Attorney General's Office develop standardized guidelines for the management and utilization of state-confiscated property to serve as a reference for regional prosecutor's offices, promote regulatory consistency, and strengthen interagency coordination so that asset management can be conducted more effectively, efficiently, and accountably.

REFERENCES

- Abdulkadir Muhammad. (1986). *Hukum perjanjian*. Alumni.
- Albnian, A. A., & Alhafnawi, M. F. A. (2026). The legal nature of the lease contract. In *Artificial intelligence for sustainable innovation management and risk management: A systems (and network) perspective* (pp. 1229–1241). Springer.
- Asnakew, M. B., Amogne, M. K., Abebe, K. T., & Gebru, M. A. (2024). Land rights, bases of informal settlements and bogus contract documents as a means of urban fringe legal land transactions in Ethiopia. *Cities*, 149, 104954.
- Bahram, M. (2025). Exploring the neglected dimensions: The function and purpose of law in contemporary society. *Al-Daulah: Jurnal Hukum dan Perundangan Islam*, 15(1), 98–128.
- Farrokhi, M. H. (2025). The evolution of contract law: Principles, challenges, and future trends. *Advanced Journal of Management, Humanity and Social Science*, 1(5), 305–315.
- Harahap, Y. M. (2014). *Segi-segi hukum perjanjian* (2nd ed.). Alumni.
- Istiqomah, M. (2026). Asset recovery of corruption proceeds through mutual legal assistance in Indonesia. *Jurnal Legalitas*, 19(1), 82–102.
- Lescrauwaet, L., Wagner, H., Yoon, C., & Shukla, S. (2022). Adaptive legal frameworks and economic dynamics in emerging technologies: Navigating the intersection for responsible innovation. *Law and Economics*, 16(3), 202–220.
- Mertokusumo, S. (1991). *Mengenal hukum*. Liberty.
- Nugroho, F., Hartiwiningsih, H., & Handayani, I. G. A. K. R. (2025). Rethinking subsidiary in

- corruption cases: Indonesian experiences. *Journal of Human Rights, Culture and Legal System*, 5(2), 686–713.
- Perlman, A. (2023). The implications of ChatGPT for legal services and society. *Michigan Technology Law Review*, 30, 1.
- Peraturan Menteri Keuangan Nomor 115/PMK.06/2020 tentang Pemanfaatan Barang Milik Negara. (2020). *Berita Negara Republik Indonesia Tahun 2020 Nomor 972*.
- Peraturan Menteri Keuangan Nomor 145/PMK.06/2021 tentang Pengelolaan Barang Milik Negara yang Berasal dari Barang Rampasan Negara dan Barang Gratifikasi. (2021). *Berita Negara Republik Indonesia Tahun 2021 Nomor 1991*.
- Rannu, D. A., & Lie, G. (2024). Application of standard agreements in lease purchase contracts: Legal implications of business in the realm of civil law. *Syntax Idea*, 6(4), 1930–1939.
- Rizky, M. C., & Darmawan, D. (2024). Legal aspects and implementation of an effective and fair house lease agreement. *Jurnal Hukum Lex Generalis*, 5(10).
- Shalihah, F., Khojaev, B. K., Umirov, F., Husain, M. I., & Putranti, D. (2026). The impact of asset recovery regulations on corruption cases in Indonesian: A leap forward? *Contrarius*, 2(3), 275–294.
- Soeherman, S., & Widyaningrum, T. (2026). Recovery of state assets through the management of assets resulting from criminal acts with the principle of ongoing concern: Maintaining the sustainability of asset settlement. *LEGAL BRIEF*, 14(6), 1210–1218.
- Subekti. (2014). *Aneka perjanjian*. PT Citra Aditya Bakti.
- Turitsyn, D. A. (2022). *Digital contract in the civil legal system*.
- Tyogunawan, A., Din, M., Rizanizarli, R., Darmawan, D., & Johari, J. (2026). Management of confiscated assets by the prosecutor's office: A comparative study between Indonesia and the United States. *Administrative and Environmental Law Review*, 7(1), 21–34.
- Ywanjono, B. M., Hartiwiningsih, H., & Suwadi, P. (2024). Optimizing recovery of state losses: Effective strategy for tracing corrupt assets at the investigation stage. *International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)*, 369–375.