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Legal Certainty in the Auction of Seized and Confiscated Counterfeit Goods within the State Property Management System

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ABSTRACT

The auction of seized and state-confiscated goods that have been proven to be counterfeit raises legal issues, as it involves the intersecting legal frameworks governing the management of state-confiscated goods, auction regulations, Intellectual Property Rights (IPR) protection, and the principles of Islamic economic law. This study aims to analyse the legal status and eligibility of counterfeit goods as objects of auction, as well as the legal liability arising from their auction without adequate authenticity verification. This study employs normative legal research methods, using statutory and conceptual approaches. The legal materials are analysed qualitatively through legal reasoning and grammatical, systematic, and teleological interpretation. The findings indicate that the status of goods as seized or state-confiscated property does not, in itself, render them eligible for auction. Counterfeit goods whose circulation is prohibited due to violations of IPR regulations should not be reintroduced into commercial circulation through state auctions without due consideration of the applicable legal provisions. The absence of explicit regulations mandating substantive verification of the authenticity of auction objects may create legal uncertainty for good-faith auction winners and give rise to legal liability where auctions are conducted without adequate due diligence. From the perspective of Islamic economic law, the auction of counterfeit goods potentially contravenes the principle of shidq (truthfulness) and the prohibition of tadlis (fraud or concealment of material information). Meanwhile, the principles of hifz al-mal (protection of property), al-'adl (justice), and maslahah (public interest and welfare) require the protection of auction winners and intellectual property rights holders, as well as the prevention of the circulation of goods that may cause harm to other parties. Accordingly,

there is a need to strengthen substantive verification requirements, clarify the allocation of responsibilities between selling agencies and auction officials, and harmonise the regulatory frameworks governing state-confiscated property management, auctions, and IPR protection in order to ensure legal certainty in accordance with the principles of justice and public welfare.

Pelelangan barang sitaan dan barang rampasan negara yang terbukti merupakan barang palsu menimbulkan persoalan hukum karena mempertemukan rezim pengelolaan barang rampasan negara, ketentuan lelang, perlindungan Hak Kekayaan Intelektual (HKI), dan prinsip hukum ekonomi syariah. Penelitian ini bertujuan menganalisis status hukum dan kelayakan barang palsu sebagai objek lelang serta pertanggungjawaban hukum atas pelelangannya tanpa verifikasi keaslian yang memadai. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Bahan hukum dianalisis secara kualitatif melalui penalaran hukum dan penafsiran gramatikal, sistematis, serta teleologis. Hasil penelitian menunjukkan bahwa status barang sebagai barang sitaan atau barang rampasan negara tidak dengan sendirinya menjadikan barang tersebut layak sebagai objek lelang. Barang palsu yang peredarannya dilarang karena melanggar ketentuan HKI tidak seharusnya dikembalikan ke dalam mekanisme perdagangan melalui lelang negara tanpa mempertimbangkan ketentuan hukum yang berlaku. Ketiadaan pengaturan yang secara tegas mewajibkan verifikasi materiil terhadap keaslian objek lelang berpotensi menimbulkan ketidakpastian hukum bagi pemenang lelang yang beritikad baik dan dapat memunculkan pertanggungjawaban hukum apabila pelelangan dilakukan tanpa kehati-hatian yang memadai. Dalam perspektif hukum ekonomi syariah, pelelangan barang palsu berpotensi bertentangan dengan prinsip *shidq* (kejujuran) dan larangan *tadlis* (penipuan atau penyamaran informasi), sedangkan prinsip *hifz al-mal* (perlindungan harta), *al-'adl* (keadilan), dan *maslahah* (kemaslahatan) menuntut perlindungan terhadap pemenang lelang dan pemegang hak kekayaan intelektual serta pencegahan peredaran barang yang merugikan pihak lain. Oleh karena itu, diperlukan penguatan verifikasi materiil, kejelasan pembagian tanggung jawab antara instansi penjual dan pejabat lelang, serta harmonisasi pengaturan pengelolaan barang rampasan negara, lelang, dan perlindungan HKI agar tercipta kepastian hukum yang selaras dengan prinsip keadilan dan kemaslahatan.

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Introduction

Auctions as an instrument of law enforcement raise legal issues when the objects being auctioned consist of state-confiscated goods that, by their very nature, are prohibited from being circulated, particularly counterfeit goods that infringe Intellectual Property Rights (IPR). These issues arise because the management and auction mechanisms for state-confiscated goods generally treat property that has acquired the legal status of state-owned property as eligible for disposal through auction mechanisms. The IPR legal framework, on the other hand, imposes

restrictions on the circulation of goods resulting from intellectual property infringements. Accordingly, this situation raises questions concerning the compatibility of the legality of auctioning state-confiscated goods with the prohibition on the circulation of counterfeit goods, as well as the legal protection afforded to parties who acquire such goods through state auctions.

Auctions have long been recognised by the public as a means of conducting transactions involving the sale and purchase of goods. The prices established through the auction process result from the direct interaction between the seller's offers and buyers' demand through the distinctive bidding mechanism of auctions, thereby generating an optimal price for both parties. Over time, however, auctions have also evolved into an instrument of law enforcement. Auctions constitute one of the legal instruments employed by the state in managing and disposing of state-confiscated goods, both as a follow-up to the implementation of court decisions that have acquired permanent legal force and as a means of optimising state revenue (Saputra, 2022).

Once classified as state-confiscated goods, their management is subject to the statutory and regulatory provisions governing state property management and auctions. Accordingly, the state assumes the position of the owner, vested with the authority to determine the appropriate form of disposal in accordance with applicable laws and regulations. Auctions are conducted by the State Asset and Auction Service Office (*Kantor Pelayanan Kekayaan Negara dan Lelang* or KPKNL), which serves as the administrative body responsible for conducting auctions based on the principles of legality, transparency, accountability, and legal certainty (Astriani & Ngadino, 2022). These principles are fundamental to ensuring that auction mechanisms are not only procedurally lawful but also fair and capable of providing legal protection to all parties involved.

In essence, state-confiscated goods are assets derived from criminal offences that have been ordered by a court decision to be confiscated by the state (Wahyuni, 2022). Nevertheless, not all state-confiscated goods share the same characteristics in terms of their legal status. A fundamental distinction exists between confiscated goods that are inherently lawful and those that have, from the outset, constituted objects whose circulation is prohibited. Counterfeit goods fall into the latter category. Under various statutory and regulatory provisions, particularly those concerning intellectual property rights and consumer protection, counterfeit goods are classified as goods whose circulation is prohibited and which, under certain circumstances, must be destroyed (Bukit et al., 2022). Law Number 20 of 2016 on Marks and Geographical Indications expressly prohibits the unauthorised use of trademarks and authorises judges to order the confiscation and destruction of goods resulting from such infringements. From a teleological perspective, these provisions are intended to prevent the circulation of counterfeit goods in society and to protect the legal interests of rights holders and consumers. This distinction in the legal characteristics of confiscated goods gives rise to legal issues when counterfeit goods

are treated in the same manner as other confiscated goods and subjected to disposal through state auction mechanisms.

Within the normative framework governing the management of state-confiscated goods, auction mechanisms place greater emphasis on formal administrative requirements, particularly the determination of goods as state-owned property. However, the existing regulatory framework does not explicitly incorporate classifications based on the intrinsic characteristics of the goods, particularly where the objects concerned constitute goods whose circulation is prohibited under the intellectual property rights legal framework. On the one hand, the State Asset and Auction Service Office (KPKNL) performs its administrative functions in accordance with the regulations governing auctions and state property management (Wagino, 2023). On the other hand, various legal principles prohibit the circulation of counterfeit goods due to their potential to harm rights holders, consumers, and the public interest (Agustini et al., 2024). This regulatory misalignment creates a legal grey area that may give rise to normative conflicts between auction law and intellectual property rights law.

These issues become increasingly complex when considered in relation to the verification procedures applicable to auction objects in state auction practices. Under the current auction system, the verification of auction objects generally focuses on administrative examination and the formal legality of supporting documents. Such examination does not yet extend to technical verification of the actual authenticity of the goods, including determining whether they constitute counterfeit goods or products that infringe intellectual property rights. This situation creates the possibility that goods which are, in fact, counterfeit may still be submitted as auction objects by the requesting government agencies and subsequently sold through state auction mechanisms.

The implications of this issue become even more complex when examined in relation to the legal standing of auction winners. Auction winners are generally considered good-faith purchasers, as they acquire goods through an official state mechanism and rely on the presumption of legality of the auction objects (Arrol Vastie Prabamantya & Soegianto Soegianto, 2025). However, where state-confiscated goods that have been auctioned are subsequently proven to be counterfeit and legally ineligible for commercial circulation, uncertainty arises regarding the legal standing of the auction winners and the legal consequences that may be imposed upon them. This situation concerns not only the individual risks borne by purchasers but also the legitimacy of state administrative actions in ensuring legal protection and legal certainty for the parties involved.

The existing legal framework does not provide comprehensive and explicit rules reconciling the management of state-confiscated goods with intellectual property rights protection, particularly in relation to the auction of counterfeit goods. This regulatory gap creates potential inconsistencies within the legal system, with implications for legal certainty, the protection of rights holders, and the legitimacy of state administrative actions. These concerns call for a systematic normative legal

analysis of the legality of designating and auctioning seized goods that infringe intellectual property rights within the framework of state property management. Such an analysis is also necessary to clarify the legal standing and liability of the parties involved, thereby ensuring that auction practices uphold legal certainty while remaining consistent with the objectives of intellectual property rights protection.

Based on the foregoing discussion, this study examines two interrelated legal issues. The first concerns the legal status of seized or state-confiscated goods proven to be counterfeit and their eligibility for auction under the state-confiscated goods management system. This issue is particularly important in determining whether the designation of goods as state-confiscated property automatically makes them eligible for auction, or whether their eligibility is subject to legal restrictions arising from their nature and inherent characteristics. The second concerns the legal liability arising from the auction of counterfeit goods, particularly where the auction takes place without adequate verification of the authenticity of the auction objects. This issue entails examining the forms of legal liability that may arise for the parties involved in the auction process, as well as the legal protection afforded to auction winners who acquire such goods through official state auction procedures.

Literature Review

This study draws on two interrelated theoretical foundations: the theory of legal certainty, reinforced by the principle of legitimate expectations (*vertrouwensbeginsel*), and the doctrine of unlawful acts by public authorities (*onrechtmatige overheidsdaad*), as provided for under Articles 1365 to 1367 of the Indonesian Civil Code. These two frameworks are employed to analyse the auction of seized and state-confiscated goods proven to be counterfeit, particularly in relation to the obligation to conduct substantive verification, which has not been explicitly established within the state auction system.

Radbruch (1932) posits that law is founded upon three fundamental values that must be realised simultaneously: justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and purposiveness (*Zweckmäßigkeit*). In Radbruch's view, legal certainty requires legal norms to be formulated clearly and applied consistently by the authorities responsible for their implementation, enabling legal subjects to ascertain their rights and obligations. In the context of state-confiscated goods management, the procedures governing auctions have been extensively regulated through various Minister of Finance Regulations and Director General Regulations, as discussed in the subsequent section. Nevertheless, these regulations do not explicitly establish an obligation to conduct substantive verification of the authenticity of goods before they are designated as auction objects. Viewed through Radbruch's theoretical framework, this regulatory gap reflects a deficiency in substantive legal certainty, even where formal procedural requirements have been satisfied.

This deficiency in legal certainty has broader implications when considered in light of the principle of legitimate expectations (*vertrouwensbeginsel*), which is recognised as one of the General Principles of Good Governance and forms part of Indonesian

administrative law (Hadjon et al., 2019). This principle requires government actions, including auctions conducted by the State Asset and Auction Service Office (KPKNL), to be worthy of public trust and supported by an adequate degree of due diligence. As good-faith purchasers, auction winners essentially place their trust in the legitimacy of the state as the authority responsible for conducting the auction. Where goods auctioned by the state are subsequently proven to be counterfeit, without having undergone adequate substantive verification beforehand, such actions may undermine the principle of legitimate expectations that should underpin all governmental conduct.

The second theoretical foundation, namely the doctrine of *onrechtmatige overheidsdaad* (unlawful acts by public authorities), extends the concept of tort under private law to governmental actions undertaken in the exercise of public functions. This doctrine is grounded in Article 1365 of the Indonesian Civil Code, which requires any party committing an unlawful act that causes damage to compensate the injured party; Article 1366, which extends liability to losses arising from negligence or a lack of due care; and Article 1367, which establishes liability for damage caused by objects under a party's supervision. Taken together, these provisions provide a basis for qualifying governmental conduct as an unlawful act by a public authority where it involves a breach of a legal obligation, an infringement of another party's subjective rights, or a failure to exercise the requisite degree of care in the performance of public authority.

These two theoretical foundations, namely legal certainty in conjunction with the principle of legitimate expectations and the doctrine of *onrechtmatige overheidsdaad*, are applied jointly in this study to analyse the legal status of, and liability arising from, the auction of state-confiscated goods proven to be counterfeit, as further discussed in the Discussion section.

Methods

This study adopts a normative legal research method (*doctrinal legal research*) to examine and analyse positive legal norms governing the designation and auction of seized goods that infringe Intellectual Property Rights (IPR) within the state-confiscated goods management system. The study is prescriptive in nature, as it goes beyond describing the applicable statutory provisions by developing legal arguments to assess the consistency, coherence, and alignment of the relevant legal frameworks, and to formulate a more coherent legal framework that ensures legal certainty (Rifa'i et al., 2023).

This study employs two approaches: the statutory approach and the conceptual approach. The statutory approach involves examining various legal provisions governing the management of state-confiscated goods, the authority of the State Asset and Auction Service Office (KPKNL) in conducting auctions, and the legal framework for intellectual property rights protection, particularly provisions concerning trademark infringement and restrictions on the circulation of infringing goods. The conceptual approach is used to examine relevant legal concepts,

including seized goods, state-confiscated goods, prohibited goods, the principle of legality, the principle of legal certainty, and the protection of good-faith parties. These approaches provide a systematic analytical framework for addressing the legal issues examined in this study.

The primary legal materials examined in this study include Law Number 20 of 2016 on Marks and Geographical Indications, Law Number 8 of 1999 on Consumer Protection, Law Number 1 of 2004 on State Treasury, Government Regulation Number 27 of 2014, as amended by Government Regulation Number 28 of 2020, on the Management of State and Regional Property, and Minister of Finance Regulation Number 213/PMK.06/2020 on Auction Procedures, as well as relevant court decisions. Secondary legal materials consist of books, academic journals, and expert opinions, while tertiary legal materials include legal dictionaries and encyclopaedias.

The legal materials were collected through library research and subsequently inventoried, classified, and systematised according to the research questions (Nurhayati et al., 2021). The materials were analysed qualitatively through legal reasoning, employing grammatical, systematic, and teleological methods of interpretation. The analysis focuses on examining the compatibility and consistency of legal norms, both horizontally across different legal frameworks and vertically within the hierarchy of laws and regulations. This analysis aims to assess the legality of auctioning state-confiscated goods that infringe intellectual property rights, as well as the resulting legal implications for the parties involved, particularly auction winners.

Results and Discussion

1. The Legal Status and Eligibility of Counterfeit Goods for Auction as State-Confiscated Property

a. Analysis of the Legal Status of Counterfeit Goods Following Their Confiscation by the State

Within the criminal justice system, seized goods and state-confiscated goods occupy distinct legal positions. Seized goods refer to objects placed under the custody of law enforcement authorities for the purposes of investigation, prosecution, and judicial proceedings. By contrast, state-confiscated goods are objects that, pursuant to a court decision that has obtained final and binding legal force, have been ordered to be confiscated by the state. This distinction gives rise to different legal consequences concerning the custody, management, and utilisation of such objects (Hasanah, 2017).

Seizure essentially constitutes an investigative measure whereby an investigator takes possession of and/or places an object under their control for evidentiary purposes during the investigation, prosecution, and trial proceedings (Syam et al., 2025). Under criminal procedural law, seized objects remain in the custody of law enforcement authorities throughout the judicial process. This is consistent with Article 130 paragraph (1) of Law Number 20 of 2025 on the Criminal Procedure Code,

which places seized objects under state custody for the purposes of legal proceedings.

This legal status is essentially temporary, as seized objects do not automatically become state property. Their final legal status is determined by the court's decision. Article 135 of Law Number 20 of 2025 provides that seized objects must be returned to the entitled party unless they are ordered to be confiscated by the state, destroyed, or retained because they are still required as evidence. Accordingly, the conversion of seized objects into state-confiscated goods takes place only after a court decision declaring their confiscation by the state has obtained final and binding legal force.

This distinction is also reflected in the regulatory framework governing the management of seized objects and state-confiscated goods. Seized objects are defined as objects confiscated for the purposes of judicial proceedings, whereas state-confiscated goods refer to objects that, pursuant to a court decision that has obtained final and binding legal force, have been declared confiscated by the state (JDIH of the Ministry of Finance, n.d.). This definition is consistent with Article 1 point 4 of Minister of Finance Regulation Number 199/PMK.06/2022, which defines state-confiscated goods as objects confiscated by the state pursuant to a court decision that has obtained final and binding legal force.

Under criminal law, the confiscation of property constitutes one form of an additional criminal penalty. Article 10 of the Indonesian Criminal Code recognises the confiscation of certain property as one of the types of additional penalties that may be imposed on offenders (Auli, 2023). In principle, property subject to confiscation is not limited to items directly used in the commission of a criminal offence but may also include proceeds of crime and property derived from the proceeds of criminal activities (Wahyuni, 2022). Accordingly, the confiscation of any property must have a legal basis and a sufficient connection to the criminal offence examined in the judicial proceedings.

The confiscation of property cannot be carried out unilaterally by law enforcement authorities; rather, it must be based on a court decision that has obtained final and binding legal force (Elvanpanca, 2025). This demonstrates that the change in the legal status of an object from seized property to state-confiscated property is a legal consequence of a court decision, rather than merely the result of administrative action taken by law enforcement authorities (Kaban & Kholiq, 2025).

Once a court decision declaring the confiscation of an object by the state has obtained final and binding legal force, the object acquires the status of state-confiscated property and falls under the state's management. Such property may be managed through various means, depending on its condition and nature, including utilisation, transfer of ownership, destruction, or auction (Astuti, 2023). Accordingly, the status of an object as state-confiscated property does not automatically mean that it must be auctioned. Rather, this status provides the legal basis for determining the appropriate form of subsequent management, taking into account the object's

nature, condition, economic value, and the applicable statutory and regulatory provisions.

This distinction is particularly important in the case of counterfeit goods or goods that infringe intellectual property rights. Even after counterfeit goods have acquired the status of state-confiscated property, such a change in status does not automatically alter their legal character as goods whose circulation is prohibited or restricted. Accordingly, the transfer of control over such goods to the state must be distinguished from any change in their underlying legal characteristics. Counterfeit goods must therefore continue to be assessed in light of the legal provisions governing the prohibition of the production, trade, distribution, and use of goods that infringe intellectual property rights.

Accordingly, counterfeit goods that have been confiscated by the state acquire the legal status of state-confiscated property under the state's custody and management. However, this status does not automatically render such goods eligible for recirculation or commercial sale. The determination of the appropriate form of management must still take into account the nature of the goods and the applicable legal provisions prohibiting their circulation. On this basis, the issue is no longer whether the goods have become state property, but whether their legal characteristics satisfy the requirements for them to be offered as objects of state auction.

b. Analysis of the Eligibility of Counterfeit Goods as Objects of State Auctions

An auction is a method of selling goods conducted through a prescribed process in accordance with applicable laws and regulations. Article 1 paragraph (1) of Minister of Finance Regulation Number 122 of 2023 on Auction Procedures defines an auction as a public sale of goods in which prices are offered through written and/or oral bids, either in ascending or descending order, with the aim of obtaining the highest price, following prior publication of an auction announcement.

In the context of state-confiscated goods, auctions form part of the management mechanisms applicable to property that has acquired a specific legal status. Article 2 of Minister of Finance Regulation Number 122 of 2023 governs the implementation of mandatory auctions, which may be based on court decisions or orders, equivalent legal instruments, or applicable statutory and regulatory provisions (Maskanah et al., 2024). Accordingly, state-confiscated goods may, in principle, be offered for auction, provided that they satisfy the applicable legal requirements.

Nevertheless, not all state-confiscated goods are automatically eligible for auction. Article 6 paragraph (1) of Minister of Finance Regulation Number 122 of 2023 sets out the characteristics that goods must possess to qualify as auction objects, including having economic value and being capable of being traded, used, utilised, or enjoyed. This provision indicates that auction objects must satisfy certain substantive

requirements. Accordingly, the mere fact that an object constitutes an asset or is under the state's control is insufficient to establish its eligibility for auction.

Article 6 paragraph (2) of Minister of Finance Regulation Number 122 of 2023 also allows intangible rights to be offered as auction objects, including receivables, rights of enjoyment, intellectual property rights, and other economic rights. This provision demonstrates the broad scope of objects that may be auctioned. Nevertheless, such objects must still possess characteristics that enable them to be legally transferred, utilised, or enjoyed by other parties.

In managing state-confiscated goods, the characteristics of the goods constitute an important consideration in determining the appropriate form of management. Not all state-confiscated goods are necessarily subject to auction, as certain goods may, by virtue of their nature or specific legal requirements, be required to be destroyed or prohibited from re-entering commercial circulation (Astuti, 2023). Accordingly, the eligibility of such goods for auction must be assessed by considering the general requirements governing auction objects alongside the specific legal provisions applicable to the characteristics of the confiscated goods concerned.

Furthermore, criminal procedural law allows seized objects to be auctioned under certain circumstances even before a court decision has obtained final and binding legal force. Article 131 paragraph (1) of Law Number 20 of 2025 permits seized objects that are perishable, pose a danger, or incur high storage costs to be auctioned in accordance with the applicable provisions. The proceeds from such sales are subsequently treated as part of the evidentiary process and the legal determination of the status of the objects concerned. This provision demonstrates that auctions within the criminal justice system are not determined solely by state ownership, but also by the condition and characteristics of the objects and the purpose of their management.

With respect to state-confiscated goods covered by a court decision that has obtained final and binding legal force, an auction may, in principle, be conducted provided that the goods meet the requirements for auction objects. For instance, goods confiscated by the Prosecutor's Office may be auctioned through an enforcement auction conducted by a Class I Auction Officer at the State Asset and Auction Service Office (KPKNL), in accordance with the applicable regulations governing the management of state-confiscated goods. However, the eligibility of such goods for auction remains subject to limitations arising from their nature and charac

Accordingly, the eligibility of counterfeit goods as objects of state auctions is subject to two sets of requirements. First, the general requirements applicable to auction

objects, namely that the goods possess economic value and are legally capable of being traded, used, utilised, or enjoyed. Second, specific requirements arising from the legal characteristics of counterfeit goods, particularly where applicable laws and regulations prohibit their sale or circulation.

On this basis, counterfeit goods confiscated by the state cannot be deemed eligible for auction solely on the grounds that they constitute state-owned or state-confiscated property. Their eligibility for auction must first be assessed in light of whether they may lawfully be traded or transferred to members of the public. Where the nature of the counterfeit goods renders them legally ineligible for trade or circulation, their status as state-confiscated property cannot, in itself, serve as sufficient legal grounds for proceeding with an auction. In such circumstances, destruction or other forms of disposal permitted under the applicable laws and regulations become relevant alternatives.

Accordingly, the relationship between legal status and eligibility for auction must be understood sequentially. Confiscation by the state determines the legal status of the goods in terms of state custody and management, whereas their legal characteristics determine whether they are eligible for auction. In the case of counterfeit goods, further examination is therefore necessary to assess whether their status as state-confiscated property is compatible with the legal provisions prohibiting the trade and circulation of counterfeit goods. This is where potential legal issues arise if the auction process focuses solely on compliance with administrative requirements without examining the legal characteristics and lawfulness of the goods being auctioned.

2. Analysis of Legal Liability Arising from the Auction of Counterfeit Goods

a. Obligations to Verify the Authenticity of Objects in Auctions of State-Confiscated Goods

Under the state auction mechanism, the verification of auction objects is generally governed by various statutory and regulatory provisions. Such verification is intended to ensure that both the parties and the objects involved in an auction satisfy the applicable legal requirements, thereby enabling the auction to be conducted lawfully, transparently, and accountably (Nurul Itsna Fawzi'ah et al., 2025). Verification of auction objects is particularly important because the goods submitted for auction must not only have a clear legal status but must also satisfy the requirements for objects that may lawfully be transferred through the auction mechanism.

In the context of auctions involving state-confiscated goods, the State Asset and Auction Service Office (KPKNL) serves as the technical implementing body through its Class I Auction Officers. Minister of Finance Regulation Number 199/PMK.06/2022 stipulates that state-confiscated goods originating from the Prosecutor's Office of

the Republic of Indonesia constitute objects of enforcement auctions conducted by Class I Auction Officers at KPKNL. This institutional position indicates that KPKNL conducts the auction process on the basis of an application submitted by the authorised agency in its capacity as the seller, rather than independently determining the legal status of the goods to be auctioned.

In conducting an auction, the Auction Officer is authorised to determine the legal standing of the parties and the legal status of the auction objects, as provided under Article 11 letter b of Minister of Finance Regulation Number 124 of 2023 on Class I Auction Officers. This authority indicates that the Auction Officer does not merely serve as the technical official responsible for conducting the bidding process, but also performs an examination function to assess the legality of the objects submitted for auction. Accordingly, it must be ensured that each object submitted for auction has a sufficient legal basis to be sold through the auction mechanism.

In addition, the Auction Officer is authorised to conduct administrative verification of auction participants and their bid security deposits, as provided under Article 10 letter b of Minister of Finance Regulation Number 124 of 2023. Such verification forms part of the auction preparation process and is intended to ensure that the parties involved satisfy the applicable administrative requirements. With respect to the auction objects, the Auction Officer is also authorised to inspect or examine them where necessary. Furthermore, where justifiable grounds exist, the Auction Officer has the authority to refuse to proceed with the auction.

The technical provisions governing auction preparation further prescribe the examination of auction requirement documents. Director General of State Assets Regulation Number 11/KN/2014 identifies the examination of such documents as one of the stages in preparing for an auction. This examination serves as an initial mechanism for ensuring that the documents forming the basis for conducting the auction satisfy the prescribed requirements.

With regard to auction objects, Minister of Finance Regulation Number 122 of 2023 also requires the seller to submit or present the original ownership documents to the Auction Officer before the auction takes place. These documents may subsequently be made available for inspection by prospective bidders before the auction begins. Where the original documents are merely presented for inspection and are not submitted to the Auction Officer, the seller remains obliged to show them to prospective bidders and to provide a written statement confirming the existence of the documents and undertaking to deliver them to the buyer after the auction has been completed.

In addition to document examination, the auction briefing mechanism, known as aanwijzing, may also serve as a means of providing information about the auction objects. Article 15 paragraph (1) of Minister of Finance Regulation Number 122 of 2023 stipulates that an auction briefing is mandatory for certain categories of auction objects, including intangible goods, securities, and movable goods subject to a specified minimum limit value. During the briefing, the seller provides a description of the auction object, additional information relevant to the object, and clarification

of the contents of the auction announcement. The outcome of the briefing must be recorded in official minutes, as provided under Article 15 paragraph (4) of the same regulation.

Taken together, these provisions demonstrate that the state auction system has established mechanisms for verifying auction objects. However, a substantive examination of these mechanisms reveals that they are primarily directed towards verifying formal legality, documentation, legal status, the existence and physical condition of the objects, rather than conducting technical examinations of the goods' material authenticity. This is evident from the provisions that place particular emphasis on the examination of auction requirement documents, the legal status of auction objects, ownership documents, and descriptions of the objects' condition.

Auction regulations also do not specifically impose an obligation on Auction Officers to conduct forensic or technical examinations of the authenticity of goods through expert assessments, laboratory testing, or specialised inspections of marks and other product characteristics relevant to intellectual property rights. This regulatory framework therefore reveals a normative gap between the obligation to examine the legal status of auction objects and the need to establish their material authenticity, particularly in the case of goods that may pose a risk of intellectual property rights infringement.

This issue becomes particularly significant where the auction objects have characteristics that make their authenticity difficult to establish solely on the basis of administrative documents. Counterfeit goods, particularly those infringing trademarks or other intellectual property rights, may have physical features that closely resemble those of genuine products. Consequently, an examination of ownership documents alone may not always be sufficient to identify such infringements (Putra, 2014). It is therefore important to clarify the allocation of responsibilities between KPKNL, as the auctioning authority, and the selling agency, as the party submitting the objects for auction, in order to determine which party bears responsibility for the material authenticity of the goods.

In the practice of managing state-confiscated goods, the assessment of their legal status and condition is generally carried out by the originating agency before an auction application is submitted to KPKNL. The selling agency is responsible for the substantive accuracy of the auction objects and the supporting documents submitted with the auction application through a Statement of Absolute Responsibility (Surat Pernyataan Tanggung Jawab Mutlak or SPTJM). Accordingly, once the auction application has been submitted, the Auction Officer at KPKNL examines the applicable requirements and the legal status of the objects on the basis of the documents provided by the seller. Under this framework, a legal issue arises where, after the auction has been completed, the goods sold are subsequently found to be counterfeit. In such circumstances, a distinction must be drawn between the formal validity of the auction process and the material authenticity of the auction objects. An auction may satisfy all administrative requirements at the time it is conducted, yet subsequently give rise to legal issues if the objects sold are found

to be counterfeit or constitute goods whose circulation is prohibited under the applicable laws and regulations.

Accordingly, the verification requirements applicable to auctions of state-confiscated goods should not be confined to compliance with administrative requirements. Where goods present a risk of intellectual property rights infringement, additional verification mechanisms are necessary to ensure that the objects to be auctioned are legally tradable and do not contravene legal provisions protecting the rights of other parties. This need is particularly significant because auction winners acquire goods through an official mechanism administered by the state and therefore have a legitimate interest in receiving accurate information about the objects they purchase (Lestari & Saidatina, 2025).

Accordingly, the obligation to verify auction objects should be distinguished between formal and substantive verification. Formal verification concerns the completeness of documents, the seller's authority, the legal status of the objects, and other administrative requirements. Substantive verification, by contrast, concerns the actual condition and characteristics of the goods, including their authenticity where there are indications of intellectual property rights infringement. The absence of a mechanism that expressly regulates substantive verification of goods presenting such risks constitutes one of the normative issues in the implementation of auctions involving state-confiscated goods.

b. Legal Liability Arising from the Auction of Counterfeit Goods

In the management of seized and state-confiscated goods, auctions constitute one of the available disposal mechanisms for optimising the economic value of goods that have become state property. Nevertheless, not all seized or state-confiscated goods are eligible for auction. Goods whose circulation is legally prohibited should instead be disposed of through other mechanisms, including destruction. A legal issue arises where goods that should not be reintroduced into circulation are nevertheless auctioned to the public, particularly where such goods are subsequently found to be counterfeit and to infringe intellectual property rights.

Conceptually, counterfeit goods generally refer to goods that use or imitate signs protected by intellectual property rights without the authorisation of the legitimate rights holder. Such goods may include products that infringe trademarks, copyrights, industrial designs, patents, or other forms of intellectual property protection. The circulation of goods that infringe intellectual property rights may cause both economic and reputational harm to legitimate rights holders (Putra, 2014).

Given these characteristics, goods proven to infringe intellectual property rights should, in principle, not be treated in the same manner as ordinary goods that may be freely traded. Their reintroduction into circulation may perpetuate the presence of infringing goods in the market. Accordingly, in managing goods seized through enforcement actions, those that are legally prohibited from being recirculated must be distinguished from goods that may lawfully be sold through auction (Sutra Disemadi & Mustamin, 2020).

Provisions governing the destruction of state-owned goods are set out, among others, in Minister of Finance Regulation Number 178/PMK.04/2019. Article 33 letter d points 3 and 4 stipulate that goods classified as state property may be designated for destruction where their export or import is prohibited, or where their destruction is required under the applicable laws and regulations. These provisions demonstrate that the status of goods as state property does not automatically render them eligible for sale or auction, as their inherent characteristics and any specific legal requirements applicable to them must also be taken into account.

In the field of customs and excise, goods that infringe intellectual property rights may fall within the category of Goods Resulting from Enforcement Actions (Barang Hasil Penindakan). Director General of Customs and Excise Regulation Number PER-8/BC/2024 provides that Goods Resulting from Enforcement Actions that have been designated as state-controlled goods or state-owned goods and are required by law to be destroyed may be destroyed by the investigation unit. This provision is set out in Article 99 paragraph (1).

The destruction mechanism nevertheless takes evidentiary interests into account. Article 99 paragraph (4) of Director General of Customs and Excise Regulation Number PER-8/BC/2024 stipulates that a small portion of the goods subject to destruction must be set aside for evidentiary purposes. The destruction must subsequently be documented in official minutes, as provided under Article 99 paragraphs (5) and (6). These provisions demonstrate that destruction forms part of the mechanism for disposing of goods resulting from enforcement actions that are legally prohibited from re-entering circulation.

A similar principle is reflected in Attorney General's Guideline Number 24 of 2021 concerning the handling of seized objects during the prosecution of criminal cases. Seized objects are classified according to their intended final disposition, including objects to be returned, objects to be confiscated by the state, and objects to be confiscated for destruction. The latter category includes objects whose circulation is legally prohibited, such as narcotics, psychotropic substances, and counterfeit medicines. Accordingly, this framework reflects the principle that objects which, by virtue of their nature or applicable legal provisions, are prohibited from circulation should not be reintroduced into public circulation.

When this principle is applied to goods that infringe intellectual property rights, counterfeit goods are distinguishable from ordinary state-confiscated goods, which may retain economic value and remain legally tradable. Although counterfeit goods may possess physical economic value, this does not necessarily mean that they have legitimate economic value as goods available for trade. Accordingly, once counterfeit goods have been placed under state control or have become state property, a further assessment is required to determine whether they may lawfully be transferred to another party or must instead be destroyed.

Where goods are subsequently found to be counterfeit after having been auctioned, questions arise as to which party should bear legal responsibility. From the perspectives of administrative and civil law, the selling agency occupies an important

position because it determines and submits the objects for auction, while providing assurances as to the substantive accuracy of the documents and objects through the auction application process. Meanwhile, KPKNL and the Auction Officer perform the technical functions involved in conducting the auction within the scope of the authority conferred upon them by the applicable laws and regulations.

Accordingly, liability cannot be attributed solely to KPKNL merely because the auction was conducted through that institution. Rather, liability must be assessed by reference to each party's authority, conduct, legal obligations, and any fault or negligence on its part. Where counterfeit goods are submitted by the selling agency with formally complete documentation, while the Auction Officer has duly carried out the examinations required within the scope of their authority, responsibility for the substantive accuracy of the auction objects generally remains attributable to the agency that submitted and warranted those objects. Conversely, where a particular official had actual knowledge of, was confronted with clear indications of, or negligently failed to address circumstances requiring the exercise of their authority, that official's liability must be assessed in light of their specific conduct.

c. Civil Liability Arising from the Auction of Goods Infringing Intellectual Property Rights

From a civil law perspective, the auction of goods proven to infringe intellectual property rights may give rise to legal liability where such conduct causes loss or damage to another party, particularly the owner or holder of the infringed trademark. The principal legal basis for such liability is the doctrine of unlawful acts (perbuatan melawan hukum or PMH), as provided under Article 1365 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata).

The doctrine of unlawful acts (perbuatan melawan hukum or PMH) may also be applied to governmental conduct through the doctrine of onrechtmatige overheidsdaad, which refers to unlawful acts committed by the government or government authorities in the exercise of their public functions. In this context, governmental conduct may be challenged where the exercise of public authority causes loss or damage as a result of a violation of law, an infringement of another party's subjective rights, or a failure to observe the duty of care required in the exercise of public powers (Ilmiyah, 2023).

Where state-confiscated goods that are subsequently found to be counterfeit are auctioned despite being legally ineligible for circulation, the conduct may potentially constitute an onrechtmatige overheidsdaad if a breach of legal obligations or negligence in the exercise of public authority can be established. Accordingly, the existence of loss or damage alone is insufficient; the assessment must also consider the relationship between the conduct or omission of the relevant official or agency and the legal obligations that should have been fulfilled.

Article 1366 of the Indonesian Civil Code further provides that a person is liable for loss or damage caused by their negligence or lack of due care (Ilmiyah, 2023). This provision is relevant where the agency managing the goods, or the party responsible

for the auction objects, fails to undertake verification that would reasonably be required to assess the legal status and characteristics of the goods to be auctioned.

Where sufficient indications exist concerning the authenticity of the goods but no appropriate examination is conducted, resulting in counterfeit goods being auctioned and causing loss or damage, such negligence may constitute a basis for assessing legal liability. Conversely, where no indications could reasonably have been identified and all procedures falling within the official's authority have been duly performed, liability must still be assessed by reference to the elements of an unlawful act and the specific facts of the case.

Article 1367 of the Indonesian Civil Code also governs liability for loss or damage caused by persons under one's responsibility or by objects under one's supervision. In the context of government, this provision may be applied in analysing institutional liability for acts committed by public officials in the performance of their duties and within the scope of their authority. Accordingly, where an auction involving goods that infringe intellectual property rights is conducted as part of the state's management of state-confiscated goods, liability must be assessed by examining the relationship between the official's conduct, the institution's authority, and the resulting loss or damage.

The resulting loss or damage may also affect more than one party. Auction winners may suffer losses because they acquire goods that cannot lawfully be used or traded, while intellectual property rights owners or holders may suffer losses because counterfeit goods re-enter public circulation. Accordingly, the liability framework must provide protection for both interests.

d. Potential Criminal Liability Arising from the Auction of Goods Infringing Intellectual Property Rights

In addition to civil liability, the auction of goods infringing intellectual property rights may also give rise to potential criminal liability. The state, as an abstract legal entity, is generally not recognised as a subject of ordinary criminal liability, whereas criminal liability may be imposed on individuals or, within certain limits, corporations. Accordingly, where counterfeit goods are auctioned, the analysis of criminal liability must focus on the parties whose specific conduct satisfies the elements of the relevant criminal offence.

In the context of trademark infringement, Article 102 of Law Number 20 of 2016 on Marks and Geographical Indications prohibits the trading of goods which a person knows, or has reasonable grounds to suspect, constitute the proceeds of a criminal offence involving trademark infringement (Ilhan Nurdipa & Anita Zulfiani, 2025). This provision is relevant in assessing whether the sale of goods resulting from trademark infringement through an auction mechanism may give rise to criminal consequences, provided that the elements of the offence are satisfied.

Nevertheless, the application of this criminal provision cannot be based solely on the fact that the goods are subsequently found to be counterfeit. It must also be established that the elements concerning the prohibited conduct, the person's

knowledge or reasonable grounds for suspecting the nature of the goods, and their involvement in the prohibited activity have been fulfilled. Accordingly, a person's status as a public official or auction officer does not, in itself, give rise to criminal liability.

Where an official or party involved in conducting the auction knows, or has reasonable grounds to suspect, that the goods being auctioned are counterfeit products resulting from trademark infringement, yet proceeds with conduct that satisfies the elements of trading in such goods, Article 102 of Law Number 20 of 2016 may constitute one of the legal bases requiring further examination. In this context, the element of fault and the person's knowledge of the nature of the goods are essential considerations in determining whether criminal liability may arise.

Furthermore, under certain circumstances, the auction of illegal goods may also be connected to other criminal offences where the process involves procedural manipulation, document falsification, or the receipt of unlawful payments. Where such conduct satisfies the elements of abuse of authority and the other requirements prescribed under criminal law, Article 3 of the Law on the Eradication of Criminal Acts of Corruption may form part of the analysis of criminal liability.

Similarly, where false or misleading information is deliberately provided to auction participants concerning the legal status or characteristics of the goods, such conduct may be examined under the relevant criminal provisions concerning fraud or the provision of false information. Nevertheless, the application of these provisions must remain contingent upon establishing the elements of the relevant criminal offence and proving the conduct and fault of the party concerned.

Accordingly, legal liability arising from the auction of counterfeit goods cannot be determined solely on the basis that the goods are ultimately found to be counterfeit. Rather, liability must be assessed by examining which parties were under an obligation to verify the goods, which parties knew or ought to have known of their condition, the acts or omissions attributable to each party, and the resulting loss or legal consequences. This framework enables a clearer distinction to be drawn between the responsibilities of the selling agency, the Auction Officer/KPKNL, and other parties involved in the auction process.

e. Implications of Auctioning Counterfeit Goods from the Perspective of Islamic Economic Law

The issue of auctioning counterfeit goods also has implications from the perspective of Islamic economic law. Although state auctions are mechanisms established under positive law, the transactions conducted through them remain subject to the fundamental principles of muamalah, particularly those concerning honesty, transparency, the protection of property, justice, and public welfare. In principle, auctions are permissible under Islamic economic law, provided that the essential elements and conditions of a valid transaction are fulfilled and that the transaction does not involve injustice, najasy (deceptive bidding), tadlis (concealment or misrepresentation), or practices that cause harm to other parties (Muhammad Iqbal et al., 2023).

The principle of shidq requires honesty in disclosing information about the object of a transaction. In the context of auctions, information concerning the condition, legal status, and characteristics of the goods must be accurately disclosed so that prospective bidders can make informed decisions. Honesty and transparency are essential principles in Islamic economic transactions, as inaccurate or incomplete information may cause another party to make a decision under conditions of informational imbalance (Maharani, 2020).

Where goods that are, in fact, counterfeit are represented or treated as legally tradable without disclosure of their actual condition, concerns arise regarding compliance with the principle of honesty in transactions.

Furthermore, the prohibition of tadlis is relevant because tadlis involves concealing the condition or defects of a transaction object in a manner that may influence another party's decision. In auctions involving counterfeit goods, uncertainty regarding the authenticity of the goods may place the auction winner at an informational disadvantage, as the purchase is made on the basis of incomplete information. The concealment of defects or discrepancies between the information disclosed and the actual condition of the goods therefore constitutes an issue that may be examined through the concept of tadlis under Islamic economic law (Azara et al., 2026).

From the perspective of hifz al-mal (protection of property), auction mechanisms must prevent losses to auction participants while safeguarding the economic rights of intellectual property rights holders. The protection of property constitutes one of the fundamental objectives of maqashid al-shari'ah, requiring that economic activities do not result in the unlawful appropriation or diminution of another party's assets (Arifyanto, 2025).

Auction winners must be protected from paying for goods that cannot lawfully be used or traded. At the same time, intellectual property rights owners or holders must be protected against the recirculation of counterfeit goods that may diminish the economic value of their rights and damage their reputation.

The principle of justice (al-'adl) requires a balance between the state's interests in managing state-confiscated goods, the interests of auction winners, and those of intellectual property rights holders. Justice under Islamic economic law encompasses a balance between rights and obligations, transparency of information, and the absence of harm resulting from inequalities within a transaction (Lestari & Saidatina, 2025).

Accordingly, although the state has the authority to manage state-confiscated goods, the exercise of that authority should not be separated from the obligation to ensure that the chosen form of management does not result in injustice to other parties.

Furthermore, the principle of maslahah requires the management of state-confiscated goods to generate benefits while preventing harm. Under Islamic economic law, maslahah (public interest and welfare) and mafsadah (harm or detriment) are important considerations in the formulation and application of

economic law. Consequently, an economic activity should not be assessed solely on the basis of its economic benefits, but also in light of the potential harm it may cause (Ali et al., 2023).

Auctions may indeed generate benefits by optimising the economic value of goods and increasing state revenue. However, where the goods concerned are counterfeit and legally ineligible for circulation, the economic gains derived from their auction must be weighed against the potential harm to auction winners, intellectual property rights holders, and the public.

Within the framework of maqashid al-shari'ah, the principles of al-'adl, maslahah, and the protection of property (hifz al-mal) are interconnected in establishing an economic governance framework that goes beyond formal legal certainty to prevent loss and injustice (Maulana et al., 2026). Accordingly, the management of state-confiscated goods through auctions must take into account the balance between the state's interest in generating revenue and the protection of the property and economic rights of other parties.

In light of these principles, the auction of state-confiscated goods proven to be counterfeit requires a mechanism that ensures not only formal legal certainty but also honesty, transparency, the protection of property, justice, and public welfare. Accordingly, the contribution of this study lies not only in identifying weaknesses in the verification mechanisms of the state auction system, but also in highlighting the need to establish a model for the management and verification of auction objects that prevents counterfeit goods from re-entering circulation through state-administered mechanisms.

Therefore, the reconstruction of the auction mechanism for state-confiscated goods should be directed towards strengthening substantive verification of objects that pose a risk of intellectual property rights infringement. Such verification should be incorporated as a preliminary stage before goods are declared eligible for auction, thereby ensuring that goods whose circulation is legally prohibited are excluded from the auction process. This approach would also provide protection for auction winners, intellectual property rights holders, the state, and the public, while remaining consistent with the principles of shidq, the prohibition of tadlis, hifz al-mal, al-'adl, and maslahah under Islamic economic law.

Conclusion

The auction of state-confiscated goods subsequently proven to be counterfeit raises legal issues concerning the validity of auction procedures, the material authenticity of the goods, and their legal eligibility as auction objects. The existing auction mechanism, which tends to prioritise formal and administrative verification, does not yet expressly regulate substantive verification of the authenticity of goods that may infringe Intellectual Property Rights (IPR). Accordingly, the status of goods as state-confiscated property does not automatically render them eligible for auction or reintroduction into circulation through state auction mechanisms.

Legal liability arising from the auction of counterfeit goods must be determined by reference to the parties' respective authority, conduct, knowledge, fault or negligence, and the causal relationship between their actions and the resulting loss or damage. The selling agency is responsible for the substantive accuracy of the objects submitted for auction, whereas KPKNL, through its Auction Officers, is responsible for conducting the auction and carrying out the examinations required within the scope of its authority. Civil liability, including under the doctrine of unlawful acts by public authorities (onrechtmatige overheidsdaad), may arise where the relevant legal elements are satisfied. Similarly, criminal liability requires proof of the elements of the relevant criminal offence and the fault of the party concerned, and therefore cannot be established solely on the basis that the auction objects are subsequently found to be counterfeit.

From the perspective of Islamic economic law, the auction of counterfeit goods may contravene the principle of shidq (truthfulness) and the prohibition of tadlis (deception or concealment of material information). The principles of hifz al-mal (protection of property), al-'adl (justice), and maslahah (public interest and welfare) require the protection of auction winners and IPR holders, as well as measures to prevent the circulation of goods that may cause harm to other parties. Accordingly, the regulatory framework needs to be strengthened by distinguishing between formal and substantive verification, clarifying the allocation of responsibilities among the parties involved, and establishing mechanisms for resolving cases in which the counterfeit nature of auction objects is discovered after the auction has been completed.

As an implementation measure, the government and relevant institutions should establish mandatory requirements for verifying the authenticity and legal eligibility of seized and state-confiscated goods before they are submitted for auction. The Indonesian National Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK) should strengthen examination procedures through cooperation with experts, IPR holders, and product authentication institutions. Transparency concerning the condition, legal status, and authenticity of auction objects should also be enhanced to protect good-faith bidders. In particular, a Pre-Auction IP Audit mechanism should be developed for goods involving trademarks or branded products. This mechanism may involve cross-checking information against the database of the Directorate General of Intellectual Property (DGIP) and, where necessary, obtaining confirmation from the relevant rights holders. The integration of data-sharing mechanisms among the Directorate General of Customs and Excise, the Prosecutor's Office, and the DGIP should also be encouraged to enable the verification of IPR status before an auction application is submitted to KPKNL. These measures are expected to strengthen legal certainty, prevent auctions from becoming a means of reintroducing counterfeit goods into circulation, and promote the equitable management of state-confiscated goods in accordance with the principles of Islamic economic law.

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