

Seizing Social Media Accounts Based on Indonesia and the Netherlands Comparative Criminal Procedure Law

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Abstract: Investigators to prove the existence of a crime using social media as an intermediary, need to seize objects in the context of cybercrime, which are devices containing social media accounts. Seizure of objects related to criminal acts is regulated in the Code of Criminal Procedure. It becomes a problem whether social media can indeed be classified within the scope of the meaning of objects so that it can be seized. This research is conducted to determine whether social media accounts can be classified as objects under the Criminal Procedure Code regarding the seizure of objects that can be seized. The research methodology used to write this article employs a normative legal research methodology. The results of this study indicate that a person's social media account cannot be seized because a social media account is not considered an object and does not fall into the classification of objects that can be subject to ownership rights. Seizure of social media accounts cannot be carried out either because it doesn't meet the material requirements in the Criminal Procedure Code. Although social media accounts cannot be classified as objects, investigators can terminate access to the account belonging to the perpetrator with the owner.

1. Introduction

Social media is a very popular and rapidly growing networking tool. The function of social media to carry out social interaction is getting bigger and social media also has many benefits. Still, the negative side of its users cannot be ignored. The development of increasingly innovative social media has given rise to various types of criminal acts on the platform.¹ Not only related to material criminal law, criminal procedural law is also required to be able to follow the development of information technology with the existence of social media as a means or device to commit crimes.

Social media has become a part of life to obtain, share, and disseminate information.² Social media is one form of new media, a group of applications linked to the Internet. It emerged as a

¹ Beg, Rijvan, Vivek Bhardwaj, Mukesh Kumar, Prathamesh Muzumdar, Aman Rajput, and Kamal Borana. "Unmasking Social Media Crimes: Types, Trends, and Impact." *Online Social Networks in Business Frameworks* : 1-26. (2024). <https://doi.org/10.1002/9781394231126.ch1>.

² García-Méndez, Carmen, et al. "Social networks: A quality tool for health dissemination?." *Journal of Education and Health Promotion* 11(1): p 355, (2022). DOI: [10.4103/jehp.jehp_355_22](https://doi.org/10.4103/jehp.jehp_355_22).

technological innovation in the media field, where every social media user can share or exchange information and opinions through the application. Social media is part of the new media with highly interactive content.³ Instagram, Twitter, Facebook, and TikTok are some of the most widely used applications or platforms. These applications also contain many unlawful acts, such as insults, false information, fraud, and defamation.⁴

Several criminal cases related to social media often present social media components in court as evidence.⁵ For example, evidence will be used as comments and messages. These comments and messages tend to be screenshots. Because of its status as a screenshot, it is not used directly to commit a crime. The social media account itself can be used as a tool to commit a crime because the account is used directly to commit a crime.⁶ Even though someone is suspected of committing a crime, not everyone can be charged with a crime without any evidence. The rules regarding evidence based on Indonesian criminal procedure law are contained in the Criminal Procedure Code (ICPC). According to the ICPC, valid evidence is contained in Article 184: witness statements, expert statements, letters, instructions, and statements from the defendant.

Law Number 11 of 2008 concerning Information and Electronic Transactions, as amended by Law Number 19 of 2016 and last amended by Law No. 1 of 2024 (ITE Law), regulates electronic information and transactions, including prohibited acts. The ITE Law also gives rise to new evidence outside of that mentioned in the ICPC, namely in Article 5 of the ITE Law, which adds one new piece of evidence called electronic evidence.

Specifically related to criminal procedure law, recently, there has been a phenomenon of social media account seizure of people suspected of committing cybercrimes by investigators, namely: The phenomenon of social media account seizure once happened to an Indonesian musician, Ahmad Dhani. This phenomenon began with a reporter who was one of the members who demonstrated against the declaration with the offense of insult and defamation in a vlog upload belonging to Ahmad Dhani, which contained the words 'idiot' directed at the mass of demonstrators of the movement that occurred during the #2019gantipresiden period, in Surabaya. As a result of this phenomenon, Ahmad Dhani was sentenced to 1 year in prison for insult and defamation through the words 'idiot' on his Instagram social media account.⁷

The following phenomenon is the seizure of the social media account of a celebrity, namely Revina VT, whose Instagram social media account was seized due to a case related to defamation of alleged sexual harassment reported by a motivator named Dedy Susanto. In this case, Revita suffered a loss for herself because there was no income, and her source of income was obtained from Instagram. However, this phenomenon did not continue to court, because both parties had

³ E. Watie. "Komunikasi dan Media Sosial (Communications and Social Media)." *Jurnal The Messenger*, 3(2), 69-74, P. 71, (2016). doi: <http://dx.doi.org/10.26623/themessenger.v3i2.270>.

⁴ A. Radei, A. D. Saputra, & Y. Widowaty, "Perlindungan Hukum Bagi Korban Penyitaan Akun Media Sosial dalam Perspektif Hukum Positif." *Media of Law and Sharia*, 5 (3). P. 222. (2024). <https://doi.org/10.18196/mls.v5i3.82>.

⁵ E. Kalemi, S. E. Yildirim-Yayilgan, & O. Elezaj, "SMONT: an ontology for crime solving through social media. *International Journal of Metadata, Semantics and Ontologies*, 12(2-3), 71-81. (2017). <https://doi.org/10.1504/IJMSO.2017.090756>.

⁶ M. F. Alfiandika, & G. A. Ahmad, "Analisis Yuridis Cross Posting pada Akun Media Sosial Meta Platforms, Inc. yang Disita." *Novum: Jurnal Hukum*, 51-65. P. 53. (2022). <https://doi.org/10.2674/novum.v0i0.48777>.

⁷ BBC News Indonesia, "Ahmad Dhani divonis satu tahun penjara dalam kasus ujaran idiot di Surabaya", Accessed 10 February 2024. <https://www.bbc.com/indonesia-48590782.amp>,

agreed to choose a peaceful path and signed a peace agreement.⁸ After that the seizure of social media accounts was also experienced by a beauty doctor named Richard Lee. The social media account was seized on July 8, 2021, due to the alleged defamation of a female artist, Kartika Putri. However, the beauty doctor Richard Lee has re-accessed his social media account, which investigators seized and will later be used as evidence. The action taken in re-accessing the social media account is an act that is considered illegal. So, in this case, the person concerned has deleted some of the evidence seized by investigators. Therefore, an arrest was made for the removal of evidence.⁹

Social media is essentially just an application or program containing electronic information. In the Netherlands, a case reached the Supreme Court; the essence of the decision was that a person's Instagram account is not an object and cannot be seized¹⁰. Indonesian and Dutch law enforcement officers seem to have different views on responding to seizing social media accounts as a means or device for committing a crime. Based on this, there is a formulation of the problem that arises: do social media accounts meet the qualifications of the scope of the meaning of objects in the Criminal Procedure Code so that they can be seized?

2. Method

This study used normative legal research methods. Normative legal research is legal research that places law as a building system of norms. The system of norms built is regarding principles, norms, rules of law, court decisions, and doctrines¹¹. The approach used in this study is a statutory approach, comparative approach, and case approach. Some of these approaches are used to build legal arguments to solve the problem being studied. This research includes normative legal research so it uses legal materials. Normative legal research relies on library research through studies of primary legal materials and secondary legal materials.¹² The technique of collecting legal material is carried out first of all by studying documents and analyzing legal materials related to this research. Analysis of legal materials was carried out using descriptive qualitative. That is, legal materials are presented descriptively and analyzed qualitatively, namely analyzing legal materials based on the quality and correctness of legal materials, and then conclusions are drawn which are the answers to the problems in this study.

3. Seizure under Indonesia Criminal Procedure Law and Seizure of Social Media Accounts in Indonesia

Seizure, according to Article 1 number 16 of the ICPC, is a series of actions taken by investigators to take over and store in their control movable or immovable, tangible and intangible objects for evidence in investigations, prosecutions, and trials. Evidence obtained from seizure is a source

⁸ Willem Jonata, "Dijerat Kasus Pencemaran Nama Baik, Selebgram Revina VT Akui Sampai Miskin untuk Tempuh Jalan Damai", *Tribunnews.com*, <https://www.msn.com/id-id/hiburan/celebrity/dijerat-kasus-pencemaran-nama-baik-selebgram-revina-vt-akui-sampai-miskin-untuk-tempuh-jalan-damai/ar-BB1gaCsJ>, Accessed 10 February 2024.

⁹ Ady Anugrahadi, "Terungkap, Richard Lee Ditangkap karena Akses Akun Instagram yang Disita Polisi", *Liputan6.com*, Accessed 10 February 2024, <https://m.liputan6.com/news/read/4630111/terungkap-richard-lee-ditangkap-karena-akun-instagram-yang-disita-polisi>.

¹⁰ Anonim, "Conclusie: ECLI:NL:PHR:2022:687". Accessed 4 Oktober 2024, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2022:687>.

¹¹ Mukti Fajar dan Yulianto Achmad, "Dualisme Penelitian Hukum Normatif dan Empiris", Cetakan IV, Yogyakarta. Pustaka Pelajar, 2017, P. 33.

¹² Terry Hutchinson, "Researching and Writing in Law," Sidney, Lawbook CO, 2002, P. 9.

of evidence that is different from physical evidence, evidence is only used as one of the guidelines and is used to support the judge's conviction. This is done for evidence, so seizure is only carried out on objects of evidentiary importance.¹³

Article 39, paragraph (1) of the ICPC regulates the objects that can be seized: Objects or bills of the suspect or defendant that are all or part of the objects suspected of being obtained from a criminal act or part of the proceeds of a criminal act, Objects that have been used directly to commit a criminal act or for which they will be used, Objects that are used to obstruct the investigation of a criminal act, Objects that are made specifically or intended to commit a criminal act, Other objects that have a direct relationship to the crime committed.

The ICPC has limited the objects that can be seized to those related to the crime. This means that objects not connected with a crime cannot be seized.¹⁴ Seizure is carried out by taking over or storing, under his control, movable or immovable, tangible or intangible objects. The Seizure Act is a pro-justice act based on a court order or decision. Taking over and storing under his control of evidence is an attempt to seize someone's property rights.¹⁵ Investigators carry out the seizure process as stipulated in Article 1, number 16 of the ICPC, where seizure is carried out during and after the investigation.¹⁶

According to Andi Hamzah, in essence, Article 39 paragraph (1) of the Criminal Procedure Code divides evidence into two, namely: ¹⁷ Tangible objects, including: Objects used in committing a criminal act obtained or produced through a crime or violation, Objects that make it difficult to carry out investigative actions, Objects used to commit a criminal act, Other objects that are related to a criminal act. Intangible objects, namely in the form of bills are suspected of being obtained from the results of a criminal act.

Social media is a communication tool used in social processes. It can be operated by an electronic system. Electronic systems are also used to explain the existence of an information system, namely a technology application related to and based on telecommunications networks and electronic media, which has the function of designing, processing, analyzing, displaying, and sending or distributing information electronically.¹⁸

The ITE Law does not mention social media as an object that can be seized. The ITE Law only contains provisions regarding electronic data (electronic information and documents) that can be used as evidence in Article 5 paragraph (1), namely electronic evidence that can be used as valid evidence. Detailed procedures for the seizure of electronic systems are also not regulated in the Regulation of the Minister of Communication and Information Technology Number 7 of 2016 concerning the Administration of Investigation and Prosecution of Criminal Acts in the Field of Information Technology and Electronic Transactions (PERMEN). The Ministerial Regulation only states that Electronic Systems, Electronic Information, or Electronic Documents obtained through a forensic process on the searched Electronic Systems can be subject to seizure.

¹³ Yudi Kristiana, "Teknik Penyidikan dan Pemberkasan Tindak Pidana Korupsi," Yogyakarta, Thafa Media, 2018, P.188.

¹⁴ S. Sumaidi, "Kajian Terhadap Penyitaan Sebagai Pemaksaan Yang Dihalalkan Oleh Hukum." *Legalitas: Jurnal Hukum*, 8(1), 220-244. P. 223. (2017). <http://dx.doi.org/10.33087/legalitas.v8i1.93>.

¹⁵ Muhammad Ibnu Fajar Rahim, et al. "Penyitaan Barang Bukti Tindak Pidana pada Tingkat Pemeriksaan Persidangan." *Pleno Jure* 9.1 (2020): 47-57. <https://doi.org/10.37541/plenojure.v9i1.389>.

¹⁶ D. R. Prasetyo, "Penyitaan dan Perampasan Aset Hasil Korupsi Sebagai Upaya Pemiskinan Koruptor." *DiH: Jurnal Ilmu Hukum*, 12(24), 149-163. P. 151. (2016).

¹⁷ Andi Hamzah, "Hukum Acara Pidana Indonesia Edisi Kedua," Jakarta, Sinar Grafika, 2012, P. 149.

¹⁸ Siswanto Sunarso, "Hukum Informasi dan Transaksi Elektronik," Jakarta, Rineka Cipta, 2009, P. 42.

There is an example of a cybercrime case in Indonesia that involved the seizure of the defendant's Facebook social media account. Chronologically as described in the indictment and quoted again in the verdict, the crime was committed by the defendant on Friday, June 12, 2020, at around 15.00 WITA at Jalan Buakana No.49 RT/RW 004/004, Buakana Village, Rappocini District, Makassar City. This case is related to the crime of intentionally and without the right to distribute and, transmit and make accessible Electronic Information and Electronic Documents that contain insults and defamation as regulated in Article 45 paragraph (3) in conjunction with Article 27 paragraph (3) of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). At the first level, the defendant was acquitted by the Makassar District Court because Facebook Messenger is not an application that the public can access; the full considerations are as follows:

Considering that Defendant sent a message in the form of a screenshot to witness IMRAN AGUS alias ATENG and to witness RESKY AUDINA QUR'ANI via Facebook Messenger where it is generally known that Facebook Messenger is a messaging application used for instant messaging that makes it easier for application users to communicate with each other or fellow users of the same application via text messages, voice, and video calls, is not a messaging application or upload to a social media account that can be accessed by the public or a group conversation application with an open group nature;

Considering that the messages sent by the Defendant to witness IMRAN AGUS alias ATENG and to witness RESKY AUDINA QUR'ANI used an instant messaging application, which is not a messaging application that can be accessed by the public or is not an open group chat application, then the Defendant's actions do not constitute an act of distributing electronic data as referred to in the explanation of Article 27 paragraph (1) of Law Number 19 of 2016 so that the intention for it to be known to the public in Article 310 of the Criminal Code is not fulfilled.¹⁹

The Supreme Court overturned the decision of the Makassar District Court and tried it himself by declaring that the defendant was legally and convincingly proven guilty of committing a criminal act by intentionally committing a crime without the right to distribute, transmit, and access electronic information and electronic documents which had insulting and offensive content/ or defamation as intended in Article 45 paragraph (3) jo. Article 27 paragraph (3) of the ITE Law.²⁰ In the context of evidence that has been seized and used in the trial, namely: one bundle of captures of the victim's infidelity conversations; 1 (one) bundle of captures of the defendant's conversations on the Instagram account @ratuu.2; 8 (eight) screenshots of direct messenger conversations; 1 (one) bundle of screen capture Facebook Messenger PR conversations. Pika with Muh S.; 1 (one) Oppo A3s brand cellphone.²¹

According to Rionov Oktana, Syukri Akub, and Maskun, the seizure of the Facebook social media account in case 255/Pid.Sus/2021/PN.Mks was following the seizure procedures regulated in the ICPC.²² The ICPC deemed the seizure procedure because investigators seized the defendant's

¹⁹ Makassar District Court Decision No. 255/Pid.Sus/2021/PN.Mks, P. 23-24.

²⁰ Supreme Court Decision No. 3093 K/PID.SUS/2022.

²¹ Supreme Court Decision No. 3093 K/PID.SUS/2022. n.d.

²² R. Oktana, S. Akub, & M. Maskun, "Social Media in the Process of Evidence of Electronic Information and Transaction Crimes. *SIGn Jurnal Hukum*, 4(2), P. 320-331. (2023). <https://doi.org/10.37276/sjh.v4i2.252>.

email account and Facebook password based on the Makassar District Court's decision Number 1723/Pen.Pid/2020/PN.Mks as mandated by Article 38 paragraph (1) of the Criminal Procedure Code.²³ Apart from that, the seizure is supported by a Seizure Order Number SP. Sita/142/VIII/2020/Ditrekrimsus is accompanied by a seizure report based on Article 75 paragraph (1) letter f of the ICPC. Investigators also seized the suspect's email account for investigative purposes and changed the account password.²⁴

Based on the explanation above, the Makassar District Court and the police implicitly interpret that Facebook social media accounts fall within the qualifications for the scope of the meaning of objects in Article 39 paragraph (1) of the ICPC, which can be seized so that the seizure of social media accounts has the consequence of being a legal seizure of objects. A criminal act as long as it complies with the procedures stated in Article 38, paragraph (1) of the ICPC.

The Indonesian criminal procedural law that is currently in force does not accommodate the seizure of social media accounts used to commit criminal acts, so the seizure of social media accounts presently occurring does not take into account the complexity of social media itself; in other words, law enforcement officials' interpretation plays a significant role in qualifying the scope of meaning of objects on social media.

4. Seizure under the Netherlands Criminal Procedure Law and Seizure of Social Media Accounts in the Netherlands

The Netherlands criminal procedural law provisions are regulated in the *Wetboek van Strafvordering* (Sv.) or the Netherlands Criminal Procedure Code (NCPC). Seizure is placing under one's authority or taking possession of an object for legal proceedings.²⁵ Not all differences can be subject to seizure; only items that can be seized can be used to reveal the truth or to uncover unlawfully obtained profits.²⁶ In addition to being subject to seizure all items that can be ordered for seizure or withdrawal from circulation.²⁷ *Wetboek van Strafrecht* (Sr.) or the NCPC details the items that can be seized. The provision in full is as follows: *Vatbaar voor verbeurdverklaring zijn: voorwerpen die aan de veroordeelde toebehoren of die hij geheel of ten dele ten eigen bate kan aanwenden en die geheel of grotendeels door middel van of uit de baten van het strafbare feit zijn verkregen; voorwerpen met betrekking tot welke het feit is begaan; voorwerpen met behulp van welke het feit is begaan of voorbereid; voorwerpen met behulp van welke de opsporing van het misdrijf is belemmerd; voorwerpen die tot het begaan van het misdrijf zijn vervaardigd of bestemd; zakelijke rechten op of persoonlijke rechten ten aanzien van de onder a tot en met e bedoelde voorwerpen.*²⁸

The translation is as follows, "Seizure may be imposed on: items owned by the convicted person or items that they can use in whole or in part, or that were obtained in whole or in part as a result of a crime; a. items used to commit a crime; b. items with which a crime was committed or prepared; c. items that obstruct the investigation of a crime; d. objects prepared or made to commit

²³ R. Oktana, S. Akub, & M. Maskun, "Social Media in the Process of Evidence of Electronic Information and Transaction Crimes." n.d.

²⁴ R. Oktana, S. Akub, & M. Maskun, "Social Media in the Process of Evidence of Electronic Information and Transaction Crimes." n.d.

²⁵ Article 134 paragraph (1) Sv.

²⁶ Article 94 paragraph (1) Sv.

²⁷ Article 94 paragraph (2) Sv.

²⁸ Article 33^a paragraph (1) Sr.

a crime or intended to commit a crime; e. property rights or related personal rights as referred to in letters a to e”.

Seizure also includes items understood as property rights and rights related to wealth (*onder voorwerpen worden verstaan alle zaken en alle vermogensrechten*).²⁹ Seizure in the Netherlands criminal procedural law falls within the jurisdiction of the examining magistrate (*rechter commissaris*) or public prosecutor (*officier van justitie*), and the investigator must still prepare a seizure report after issuing a receipt to the interested party. The investigator must promptly submit the minutes to the assistant officer at the prosecutor’s office to obtain an assessment of whether the seizure process can be maintained or not.³⁰

The seizure of an object ends due to several conditions, namely the seized object is returned or the value of the objects is paid, the public prosecutor determines that the object has been seized, there is a power of attorney and the object in question is outside the motive of seeking profit, and the seizure period has expired and the object is outside the motive of seeking profit.³¹

The Netherlands criminal law itself has not yet developed a specific qualification regarding the meaning of objects. Over time, regarding the qualification of the meaning of objects in cases of crimes using technology or cybercrime, the Netherlands Supreme Court has provided varying qualifications of the scope of the meaning of objects in different law cases, which differ from one another because they depend on case-by-case circumstances that reach the cassation level.³²

The most influential law case regarding the qualification of the meaning of objects pertains to computer programs and features of an online game. The criteria for the expanded qualification of the meaning of objects, as found in the law case of electricity theft (valuable, transferable, and requiring effort to obtain), cannot be fully upheld in every case faced by the Netherlands Supreme Court.³³

There is a law case regarding the seizure of an Instagram social media account³⁴. The case essentially contains an appeal by the public prosecutor against the district court’s consideration regarding the seizure as stated in the NCPC, with the argument that an Instagram account falls within the definition of an object as stipulated in Article 94 of the NCPC. Thus, the seizure of the Instagram account is legally valid. In summary, the basis for the appeal is as follows: 2. *Beoordeling van het cassatiemiddel*, 2.1 *Het cassatiemiddel klaagt dat het oordeel van de rechtbank dat de onder de klager inbeslaggenomen Instagram-accounts niet kunnen worden aangemerkt als - voor verbeurdverklaring vatbare - voorwerpen in de zin van artikel 94 lid 2 van het Wetboek van Strafoordering (hierna: Sv) van een onjuiste rechtsopvatting getuigt.* 2.2 *De rechtbank heeft het klaagschrift, voor zover dat strekt tot teruggave van de onder de klager inbeslaggenomen Instagram-accounts @[account 1] en @[account 2], gegrond verklaard. De beschikking van de rechtbank houdt onder meer het volgende in: “2. Feiten en omstandigheden Tijdens een doorzoeking op het woonadres van klager (...) is onder klager het voornoemde inbeslaggenomen. Uit de kennisgevingen van inbeslagneming (kvi) (...) blijkt ten aanzien van de grondslag van het beslag het navolgende:*

²⁹ Article 33^a paragraph (4) Sr.

³⁰ Article 94 paragraph (3) Sv.

³¹ Article 134 paragraph (2) Sv.

³² See Aris Hardinanto, Barda Nawawi Arief, Joko Setiyono, “Kajian Perluasan Kualifikasi Makna Barang Dalam Yurisprudensi Hukum Pidana Belanda dan Indonesia di Era Siber,” *JURNAL LITIGASI*, Vol. 25 (1) April, 2024, P.171-191. DOI:<http://dx.doi.org/10.23969/litigasi.v25i1.13149>.

³³ See Aris Hardinanto, Barda Nawawi Arief, Joko Setiyono, “Kajian Perluasan Kualifikasi Makna Barang Dalam Yurisprudensi Hukum Pidana Belanda dan Indonesia di Era Siber”. n.d.

³⁴ Anonim, “Conclusie: ECLI:NL:PHR:2022:687”. n.d.

(...) Instagram accounts “@[account 1]” en “@[account 2]”. Als grondslag wordt vermeld de artikelen 94 lid 1 Sv (waarheid aan de dag brengen), 94 lid 2 Sv (verbeurdverklaring); (...).³⁵

The translation as follows: 2. Assessment of the cassation appeal, 2.1 This cassation appeal concerns objections to the district court’s consideration, which stated that Instagram accounts cannot be regarded as objects subject to seizure in the sense of Article 94 paragraph 2 of the *Wetboek van Strafvordering* (from now on referred to as Sv.). This consideration indicates a legal misinterpretation. 2.2 The district court has stated based on the objection letter regarding the return of the seized Instagram accounts of the complainant, namely @[account1] and @[account2]. The district court’s decision essentially states: “2. Facts and Situational Conditions When a search was conducted at the complainant’s residence (...) among other things, items belonging to the complainant were seized as mentioned in the seizure report (kvi) (...) it was found that the following items were essentially seized: (...) Instagram accounts “@[account 1]” and “@[account 2]”. As the legal basis for the seizure, Article 94 paragraph 1 of the Sv. (to uncover the truth), 94 paragraph 2 of the Sv. (seizure decision) (...).

Advocate General³⁶ in its conclusion to the court, it again mentioned the absence of a qualification of the meaning of objects in Article 94 of the Sv. Therefore, the scope of objects needs to be interpreted first. (Art. 94 Sv specificeert niet nader wat in de context van dit artikel onder ‘voorwerpen’ moet worden begrepen).³⁷ The Supreme Court, in its decision-making considerations, uses a study of relevant norms regarding objects in the Netherlands criminal law. In addition, it also uses a historical legal approach by referring to the minutes of the meetings on the drafting of Article 94 Sv. (kamerstukken). In its considerations, the Netherlands Supreme Court concluded as follows: 2.5 Op grond van artikel 94 lid 2 Sv zijn vatbaar voor inbeslagneming onder meer alle voorwerpen waarvan de verbeurdverklaring kan worden bevolen. Uit de bewoordingen van artikel 33a lid 4 Sr en de hiervoor onder 2.4 weergegeven wetsgeschiedenis volgt dat slechts zaken en vermogensrechten in de zin van artikel 1 van Boek 3 BW als voor verbeurdverklaring vatbare “voorwerpen” kunnen worden aangemerkt. Voor het aannemen van de mogelijkheid van verbeurdverklaring - die ertoe leidt dat de Staat rechthebbende wordt op het betreffende voorwerp - is dus vereist dat het object van inbeslagneming is aan te merken als een zaak of als een vermogensrecht. Zaken zijn volgens artikel 2 van Boek 3 BW voor menselijke beheersing vatbare stoffelijke objecten. Volgens de - niet uitputtende - omschrijving van artikel 6 van Boek 3 BW zijn vermogensrechten rechten die, hetzij afzonderlijk hetzij tezamen met een ander recht, overdraagbaar zijn, of ertoe strekken de rechthebbende stoffelijk voordeel te verschaffen, ofwel verkregen zijn in ruil voor verstrekt of in het vooruitzicht gesteld stoffelijk voordeel (vgl. HR 6 december 2019, ECLI:NL:HR:2019:1909).

2.6 De rechtbank heeft geoordeeld dat een Instagram-account noch als een zaak noch als een vermogensrecht - en dus ook niet als een voorwerp in de hier bedoelde zin - kan worden aangemerkt. Dat oordeel getuigt niet van een onjuiste rechtsopvatting. Dat virtuele objecten die - kort gezegd - waarde vertegenwoordigen en overdraagbaar zijn onder omstandigheden wel als zo’n voorwerp zouden kunnen worden aangemerkt, maakt

³⁵ Anonim, “Conclusie: ECLI:NL:PHR:2022:220”. Accessed 4 Oktober 2024, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2022:220>.

³⁶ Advocate General is the translation of the term *Advocaat Generaal* (AG) in the Netherlands criminal justice system. Advocate General has no equivalent in Indonesian criminal procedural law and is not a prosecutor with the authority to conduct prosecutions. The task of the Advocate General in the context of this ruling is to create a Conclusion (*conclutie*) containing legal opinions and recommendations for deciding a case that will later be adjudicated by the Dutch Supreme Court (*Hoge Raad*).

³⁷ Anonim, “Conclusie: ECLI:NL:PHR:2022:220”. n.d.

*dat niet anders. De met het aanmaken van een persoonsgebonden Instagram-account geopende mogelijkheid voor de gebruiker om via een site of app beelden of andere gegevens uit te wisselen, is niet met dergelijke objecten gelijk te stellen.*³⁸

The translation as follows: 2.5 Based on the provisions of Article 94 paragraph 2 Sv., all property that can be seized is subject to seizure. From the formulation of the provisions of Article 33a paragraph 4 Sr. and the legislative history outlined in section 2.4. it can be concluded that only property rights and wealth (*zaken en vermogensrechten*) can be included within Article 1 of Book III of the BW, namely as property that can be subject to seizure. To be eligible for seizure – which means that the state will become the rightful owner of the object – it is required that the object subject to seizure must be property rights or wealth. Property according to the definition in Article 2 of Book III of the Civil Code is a material object that humans can control. According to the formulation in Article 6 of Book III of the Civil Code – which is not exhaustive – wealth rights are rights that, either individually or together with other rights, can be transferred to another person or intended to provide material benefits to the holder of the right or that can be obtained in exchange for material benefits that will or can be obtained in the future. (vgl. HR 6 December 2019, ECLI:NL:HR:2019:1909). 2.6 The district court has ruled that an Instagram account is neither a tangible asset nor a property right – meaning it is also not included in the definition of tangible assets as intended. Considering the district court's decision is not a mistaken legal view. The fact that a virtual object – in short – has value and can have its rights transferred to another person under certain conditions, can be considered as property does not change the above view. The possibility for users to exchange images or other data through a website or application opened by creating a personal Instagram account cannot be equated with that object.

The Netherlands Supreme Court agrees with the considerations of the district court and the Advocate General, which state that an Instagram account is not considered a tangible object and, therefore, cannot be seized as stipulated in Article 94 Sv. Consequently, the seizure of the account is invalid, and the cassation effort must be rejected. Based on this, the Instagram social media account does not fall within the qualification of an object under the provisions of Article 94 Sv. because the Instagram account, due to its specific nature/condition, is not an object but merely a medium on a web page, even though it is a virtual object that has value and can be transferred in ownership. Thus, seizing a social media account based on criminal procedural law is legally invalid.

5. The Problem of Social Media Account Seizures

Access to media accounts requires a password that restricts the owner from others. Investigators can request authorization from the device and social media account owners to search for evidence in the form of electronic information or documents related to the cybercrime committed by the perpetrator. A password owned by someone essentially exists within that person's mind and cannot be taken. Even if the password has been disclosed to others, it doesn't transfer from the account owner. Therefore, seizing the password attached to a social media account is also impossible as regulated in the seizure procedure under the CPC.

³⁸ Anonim, "Conclusie: ECLI:NL:HR:2022:687". n.d.

Social media accounts such as Instagram, Facebook, and Twitter are essentially just networking communication tools in the form of computer programs/applications on websites or electronic devices, and, therefore, cannot be seized and cannot be interpreted as objects if adhering to the seizure provisions in Article 39 paragraph (1) of the CPC. Although the provisions mention intangible objects, they do not provide criteria or limitations regarding intangible objects, similar to the problems in the Netherlands.

The criteria for intangible objects in Indonesian criminal law, both doctrinally and jurisprudentially, still seem to follow the criteria in the electricity theft case that once occurred in the Netherlands and was adopted in the Dutch East Indies. However, the criteria in the electricity theft ruling have, in the development of the Netherlands itself, not been automatically applicable to intangible entities that have value, can be transferred, and require effort to obtain. This means that intangible entities cannot always be classified within the scope of the meaning of objects. The jurisprudence of computer programs, phone credits, and online game features in the Netherlands proves it.

Based on this, the seizure of social media accounts based on the provisions of the Criminal Procedure Code encounters problems because, in essence, social media is not the same and does not fall within the qualification of the definition of an object. Although, in principle, seizure cannot be carried out, investigators can first cut off the suspect's access to their social media accounts to prevent the loss of electronic information and/or electronic documents, which, according to Article 5 of the ITE Law are valid evidence if they can be displayed as the original. Additionally, investigators can still seize devices from the suspect that contain social media accounts to prove that the social media was used to commit cybercrime.

6. Conclusion

Seizure of social media accounts in cybercrime in Indonesia and the Netherlands has the same problem, neither provides a definition or criteria for the intangible entity that can be classified as an object so that it can be seized. Moreover, social media is not an object because it is merely an application that can be operated on websites or electronic devices. However, to address cybercrime that uses social media as a tool, investigators can first cut off the perpetrator's access to the social media account device to conduct further investigations to gather electronic evidence.

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