

Claims for the Rights of Third Parties in Good Faith Against Confiscation of Goods in Corruption Criminal Decisions

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Cite this article as

Ndaomanu, Melkianus. "Claims for the Rights of Third Parties in Good Faith Against Confiscation of Goods in Corruption Criminal Decisions. *Unnes Law Journal* 9, no. 2 (2023): 357-376. <https://doi.org/10.15294/ulj.v9i2.75565>

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Claims for the Rights of Third Parties in Good Faith Against Confiscation of Goods in Corruption Criminal Decisions

Melkianus Ndaomanu

ABSTRACT. The judge has the authority to impose additional criminal decisions in criminal acts of corruption in the form of confiscation of goods belonging to third parties in good faith. Article 19 Paragraph (2) of the Anti-Corruption Law states that third parties who have good intentions can claim their rights (object) to the confiscation of goods in a corruption crime decision no later than 2 (two) months after the court decision is pronounced in a hearing open to the public. However, the Corruption Law does not clearly regulate how to submit and examine objections so that in practice there are differences in interpretation by the applicant, respondent and judge in submissions and examinations at trial, so that there is no guarantee of unity and certainty in the legal application of rights claims (objections) to confiscation of goods in the decision of criminal acts of corruption. The legal problem that arises is what are the regulations regarding the submission and examination of claims (objections) of third parties who have good intentions regarding the confiscation of goods in the decision of a criminal act of corruption? Regulations regarding the submission and examination of claims for the rights of third parties in good faith regarding the confiscation of goods in decisions regarding criminal acts of corruption, including the legal position of the parties, method and time of submission, authority to adjudicate, evidence, and legal remedies and implementation of the decision.

KEYWORDS. Claims of Rights, Third Parties in Good Faith, Confiscation of Goods, Criminal Acts of Corruption

Claims for the Rights of Third Parties in Good Faith Against Confiscation of Goods in Corruption Criminal Decisions

Melkianus Ndaomanu*

Introduction

The Constitution of the Republic of Indonesia confirms that Indonesia is a legal state.² The doctrine emphasizes that the state is based on law (*de rechtsstaat* / the rule of law), meaning that the law is in the highest or most important position. As a consequence, the government and society are subject to the law because there is no power above the law. The confirmation of the constitution above is a norm which has the meaning that in the Republic of Indonesia, law is the lifeblood of all aspects of life.³ Therefore, the life order of society, nation and state must be guided by legal norms.⁴ Law must be placed as the highest reference in the entire process of state administration.⁵

In such conditions, the state places law as the basis of state power and the exercise of said power in all its forms is carried out under and based on

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² *Amandemen UUD 1945*, n.d.

³ Marwan Effendy, *Kejaksanaan RI: Posisi Dan Fungsinya Dari Perspektif Hukum* (Gramedia Pustaka Utama, 2005).

⁴ Bambang Sutiyoso and Sri Hastuti Puspitasari, "Aspek-Aspek Perkembangan Kekuasaan Kehakiman Di Indonesia," *UII Press, Yogyakarta* (2006).

⁵ Jimly Asshiddiqie, *Konstitusi Dan Konstitualisme Indonesia* (Sinar Grafika, 2010).

legal authority. The logical consequence⁶ is that the entire system of state administration must be based on the constitution. State administration delegated to state organs must proceed in accordance with the legal corridors determined by the constitution.⁷ The constitution was formed with the aim of providing state administrators with clear direction in exercising their powers.⁸

Likewise, in the eradication of criminal acts of corruption which are categorized as extraordinary crimes because they have occurred so widely, not only are they detrimental to state finances, but are also violations of the social and economic rights of society at large, so that these acts of corruption are classified as a crime whose eradication must be carried out in an extraordinary measure. The characteristics of Criminal Acts of Corruption are carried out systematically and have a broad impact, providing a place for corruption as an extraordinary crime.⁹

One extraordinary way to eradicate criminal acts of corruption is the establishment of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law no. 20 of 2021 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes; (Corruption Law) while formally law enforcement against criminal acts of corruption starts from the stages of inspection, investigation, prosecution, trial, decision and legal remedies, both ordinary legal remedies (appeal, cassation) and extraordinary legal remedies (review) have been strictly regulated in Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), as confirmed in Article 26 of the Corruption Law which states that investigations, prosecutions and examinations in court regarding criminal acts of corruption, are carried out based on the applicable Criminal Procedure Law, unless otherwise specified in the law legislate this.

Philosophically, the presence of the criminal act of corruption is aimed at returning state finances that have been harmed as a result of criminal acts

⁶ Moh. Mahfud, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (LP3ES, 2007).

⁷ Asshiddiqie, *Konstitusi Dan Konstitualisme Indonesia*.

⁸ Yusril Ihza Mahendra, *Dinamika Tata Negara Indonesia: Kompilasi Aktual Masalah Konstitusi Dewan Perwakilan Dan Sistem Kepartaian* (Gema Insani Press, Jakarta, 1996).

⁹ Gunawan Gunawan, Kristiwanto Kristiwanto, and Mohamad Ismed, "Pengaturan Tata Cara Pemeriksaan Upaya Keberatan Oleh Pihak Ketiga Pada Tindak Pidana Korupsi Di Indonesia," *SALAM: Jurnal Sosial dan Budaya Syar-i* 8, no. 6 (2021): 2039–2050, <https://doi.org/10.15408/sjsbs.v8i6.23411> .

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of corruption, so that to ensure that state finances can be returned as a result of criminal acts of corruption, as an anticipatory step in law enforcement, confiscation actions are carried out at the investigation and prosecution stage and/or confiscation in court through a judge's decision.

The urgency of the confiscation action in a criminal act of corruption carried out by investigators is to confiscate the assets of the suspect/defendant which are suspected to be the result of the criminal act contained in the indictment. Apart from being an anticipatory action to recover state financial losses, it is also for evidentiary purposes in the investigation, prosecution and trial as stated in the provisions of Article 46 Paragraph (1) of the Criminal Procedure Code states that objects subject to confiscation are required for examination as evidence.

Article 1 number 16 of the Criminal Procedure Code states that confiscation is a series of actions by investigators to take over and/or keep under their control movable or immovable, tangible, or intangible objects for evidentiary purposes in investigations, prosecutions, and trials. According to Andy Hamzah, evidence or objects that can be confiscated are items belonging to the suspect that were obtained as a result of a crime and items that were intentionally used to commit a crime.¹⁰

Referring to the provisions referred to, it is clear that the act of confiscation is a coercive measure that can violate Human Rights, therefore in accordance with the provisions of Article 38 Paragraph (1) of the Criminal Procedure Code, it is stated that confiscation can only be carried out by investigators with permission from the chairman of the local district court, except confiscation carried out by Corruption Eradication Commission (KPK) investigators without permission from the chairman of the district court as stated in Article 47 Paragraph (1) of Law no. 31 of 2002 concerning the Corruption Eradication Commission states that based on a strong suspicion that there is sufficient preliminary evidence, investigators can carry out confiscations without the permission of the head of the district court in connection with their investigative duties.

Furthermore, items that can be confiscated as regulated in the provisions of Article 39 Paragraph (1) of the Criminal Procedure Code state that items belonging to convicts that were obtained from crimes or intentionally used to commit crimes can be confiscated. With confiscation carried out by investigators, it is possible that the goods of third parties in

¹⁰ Andy Hamzah, *Hukum Acara Pidana* (Arikha Media Cipta, Jakarta, 2014).

good faith will also be confiscated as evidence for examination at trial, and the court may even hand down a decision to confiscate the goods of the third parties in good faith.

If there is confiscation and seizing of the goods of a third parties in good faith in a decision regarding a criminal act of corruption, the Corruption Law gives the right to a third parties in good faith to submit an objection as regulated in Article 19 Paragraph (1) of the Anti-Corruption Law stating the court decision regarding confiscation of goods that do not belong to the defendant are not dropped, if the rights of third parties in good faith will be harmed; Paragraph (2), In the event that the court decision as intended in paragraph (1) includes goods of a third party who has good intentions, the third party can submit an objection letter to the relevant court no later than 2 (two) months after the court decision is pronounced in the trial is open to the public. Paragraph (3) Submission of an objection letter as intended in paragraph (2) does not suspend or stop the implementation of the court decision; Paragraph (4) In the circumstances referred to in paragraph (2) the judge asks for information from the public prosecutor and interested parties; Paragraph (5) The judge's decision regarding the objection letter as intended in paragraph (2) can be appealed to the Supreme Court by the applicant or public prosecutor.

Although the provisions of Article 19 Paragraph (2) of the Corruption Law have given third parties in good faith the right to submit rights claims (objections) to the relevant district court no later than 2 (two) months after the court's decision is pronounced in a hearing open to the public, however, it does not regulate in detail the procedures for submitting and examining objections, giving rise to differences in interpretation and application of procedures for handling objection requests.

Judicial practice has found various interpretations of the provisions of Article 19 of the Corruption Crime Law, the first interpretation is that the terminology for objections is meant to be the same and in the same spirit as lawsuit efforts in civil cases, the second interpretation is that the terminology for objections is the same as pre-trial efforts in the Criminal Procedure Code but the examination procedures are as in law civil procedure (quasi civil), so that objections here are subject to the realm of criminal procedural law.¹¹

¹¹ Tri Novianti and Ricky Fadila, "Perlindungan Hukum Pihak Ketiga Atas Keberatan Putusan Pengadilan Terhadap Putusan Perampasan Barang Bukan Kepunyaan Terdakwa Dalam Perkara Tindak Pidana Korupsi," *PETITA* 4, no. 2 (2022): 218–321, <https://doi.org/10.33373/pta.v4i2.4973>.

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The differences in interpretation referred to have resulted in a lack of legal protection and legal certainty regarding the procedures for claiming the rights of third parties in good faith against the confiscation of goods in decisions regarding criminal acts of corruption. Therefore, the legal issue that arises is what are the regulations regarding the submission and examination of claims for the rights of third parties in good faith in the confiscation of goods in the decision of a criminal act of corruption?

Method

Research regarding the claim of the rights of third parties in good faith regarding the confiscation of goods in decisions regarding criminal acts of corruption is descriptive research. It is descriptive research because from the results of this research a systematic and comprehensive picture was obtained regarding the regulations regarding the submission and examination of claims for the rights of third parties in good faith in the confiscation of goods in decisions regarding criminal acts of corruption.

When viewed in terms of approach, this research is normative research (library). Soerjono Soekanto and Sri Mamudji emphasized that: “normative legal research can be carried out primarily on primary and secondary legal materials as long as these legal materials contain legal principles¹². The data needed from normative research (library) is secondary data sourced from legal materials, namely in the form of primary, secondary and tertiary legal materials.¹³ Primary legal materials are legal materials that are binding and must be followed in the form of basic norms, statutory regulations and judge’s decisions and secondary legal materials are legal materials that provide explanations of primary legal materials in the form of doctrine, research results, seminar results and tertiary legal materials are materials law that provides explanations of tertiary legal materials in the form of dictionaries, encyclopedias.

¹² Soekanto Soerjono and Sri Mamudji, *Penelitian Hukum Normatif* (Radjawali Press, Jakarta, 1990).

¹³ Krisdianto Krisdianto, “Implikasi Hukum Penyitaan Aset Hasil Tindak Pidana Korupsi Yang Hak Kepemilikannya Telah Dialihkan Pada Pihak Ketiga,” *Katalogis* 3, no. 12 (2015).

Confiscation of goods from corruption convicts

The act of confiscation in the process of a criminal act of corruption of assets that are suspected to be the result of a criminal act of corruption is an urgent matter, considering that apart from being used as evidence in court, the confiscated evidence is also aimed at recovering state financial losses incurred as a result of corruption. Thus, confiscation becomes an important starting point in the stages of the corruption case process from the level of investigation, prosecution, and trial in court.¹⁴

In an effort to recover state financial losses resulting from criminal acts of corruption, the action taken by the judge is to impose additional punishment by confiscating the convict's property resulting from the criminal act of corruption and/or the goods being used as a means to commit the criminal act of corruption.

According to Bakhri¹⁵, additional penalties can only be imposed together with the main penalty. In contrast to the imposition of basic punishment, additional punishment is basically facultative in nature. So, this additional penalty can be imposed in cases determined by law but does not have to be. Hamzah further stated that looking at the name, it is clear that this additional punishment only adds to the main sentence imposed, so it does not stand alone except in certain cases in the confiscation of certain items.

Article 18 Paragraph (1) letter b of the Anti-Corruption Law states that apart from additional penalties as referred to in the Criminal Code as additional penalties are:

- a. Confiscation of tangible or intangible movable goods, immovable goods used for those obtained from criminal acts of corruption, including those belonging to the convict where the act of corruption was committed, as well as the price of the goods that replaced the goods;
- b. payment of replacement money which is as much as possible equal to the assets obtained from the criminal act of corruption;
- c. closure of the business or part of the company for a maximum of 1 (one) year

¹⁴ *Ibid.*

¹⁵ Nanda Sahputra Umara, "Pemisahan Pertanggungjawaban Perampasan Barang Dalam Penguasaan Pihak Ketiga Yang Beritikad Baik Dalam Putusan Tindak Pidana Korupsi," *Jurnal Hukum Novelty* 8, no. 2 (2018): 232–251, <http://dx.doi.org/10.26555/novelty.v8i2.a7027>.

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- d. revocation of all or part of certain rights or removal or part of certain benefits that have been or may be provided by the government to convicts;

Paragraph (2) If the convict does not pay the replacement money as intended in paragraph (1) letter b no later than 1 (one) month after the court decision which has obtained permanent legal force, his property can be confiscated by the prosecutor and auctioned to cover the replacement money;

Paragraph (3) In the event that the convict does not have sufficient assets to pay replacement money as intended in paragraph (1) letter b, he will be sentenced to imprisonment for a period not exceeding the maximum threat of the principal sentence in accordance with the provisions of this law and therefore the punishment has been determined in the court decision.

According to Yunus Husein, asset forfeiture is the forced taking of assets or property by the government which is believed to have a close relationship with criminal acts. There are 3 (three) methods of asset confiscation, namely (1) criminal forfeiture is asset confiscation carried out through criminal justice so that asset confiscation is carried out simultaneously with proof of whether the defendant actually committed a criminal act, (2) administrative forfeiture is an asset confiscation mechanism that allows the state to confiscate assets without involving judicial institutions, (3) civil forfeiture is asset confiscation which places a lawsuit against the assets rather than against the perpetrator of a criminal act, so that assets can be confiscated even though the criminal justice process against the perpetrator has not been completed.¹⁶

The concept of confiscation of assets is in accordance with the perpetrator's fault or conviction-based assets forfeiture as regulated in Article 39 and Article 46 Paragraph (2) of the Criminal Procedure Code. Confiscation of assets through criminal prosecution is carried out from the trial stage where the judge, apart from giving the main sanction, can also give additional sanctions. Additional sanctions given by judges in their capacity must be interconnected with the recovery of state financial losses from asset confiscation.¹⁷

¹⁶ Liza Deshaini and Muhammad Nur Amin, "Perlawanan Terhadap Perampasan Aset Yang Disita Dalam Perkara Tindak Pidana Korupsi," *Lex Librum: Jurnal Ilmu Hukum* 9, no. 2 (2023): 117–128, <http://dx.doi.org/10.46839/ljih.v9i2.767>.

¹⁷ Rosa Linda Jati, "Perampasan Aset Sebagai Pidana Tambahan Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia," *Humani (Hukum dan Masyarakat Madani)* 11, no. 1 (2021): 133–150, <http://dx.doi.org/10.26623/humani.v11i1.2920>.

Referring to the provisions in question, it becomes clear that the additional punishment imposed by the judge in the form of confiscation of the convict's property obtained from and/or proceeds from criminal acts of corruption is to recover state financial losses resulting from criminal acts of corruption.

The formulation of the provisions of Article 18 Paragraph (1) letter (b) states that the payment of replacement money in the maximum amount equal to the property obtained from criminal acts of corruption and the explanation of Article 32 Paragraph (1) of the Corruption Law states that what is meant by actual loss to the state is a loss whose amount can be calculated based on the findings of the authorized agency or the appointed public accountant, tends to have multiple interpretations and does not at all refer to the amount state losses that must be returned by the perpetrators of corruption through the assets they own.¹⁸

According to Komariah Emong Supardjaja¹⁹, replacement money is money that the defendant really enjoys as a result of the corruption he committed, and the amount must be clear. Likewise, Article 1 point 22 of Law No. 1 of 2004 concerning the state treasury states that state/regional losses are a shortage of money, securities, and goods in real and definite amounts as a result of unlawful acts, whether intentional or negligent. Furthermore, the Elucidation of Article 32 Paragraph (1) of the Corruption Crime Law states that what is meant by actual loss to the state is a loss whose amount can be calculated based on the findings of the authorized agency or appointed public accountant. Referring to the provisions referred to as state financial loss, it means loss to the state/region which is a definite amount as a result of unlawful acts whether intentional or negligent.

Third Parties in Good Faith

The study of criminal law is related to 3 (three) aspects, namely criminal acts related to the actions of perpetrators who have violated applicable legal

¹⁸ Agus Pranoto, Abadi B. Darmo, and Iman Hidayat, "Kajian Yuridis Mengenai Perampasan Aset Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Menurut Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 10, no. 1 (2019): 91–121, <http://dx.doi.org/10.33087/legalitas.v10i1.158>.

¹⁹ Kristwan Genova Damanik, "Antara Uang Pengganti Dan Kerugian Negara Dalam Tindak Pidana Korupsi," *Masalah-Masalah Hukum* 45, no. 1 (2016): 1–10, <https://doi.org/10.14710/mmh.45.1.2016.1-10>.

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provisions; responsibility is related to error (*mens rea*), namely the hidden motive or intention of the perpetrator to violate legal provisions and punishment is the provision of punishment for perpetrators who violate legal provisions.

According to Roeslan Saleh²⁰, Criminal liability is something that is criminally responsible for someone who commits a criminal act or criminal act. Referring to the description above, it is clear that the law provides legal protection to anyone, including third parties whose intentions are not related to a criminal act, so they cannot be held criminally liable, including their property.

The law provides legal certainty and protection for anyone, including third parties in good faith, to maintain their property rights as regulated in Article 28H paragraph (4) of the 1945 Constitution²¹ states that “Everyone has the right to have private property rights and these property rights must not be taken over arbitrarily by anyone.” Precautionary point (b) of Law No. 39 of 1999 concerning Human Rights emphasizes that the right to property is part of universal human rights which must be protected, respected, maintained, and must not be ignored, reduced, or confiscated by anyone.²²

The provisions of Article 36 of the Human Rights Law state: (1) Every person has the right to own property, either alone or together with others for the development of himself, his family and society in a way that does not violate the law. (2) No one may have his property confiscated arbitrarily and unlawfully.

Furthermore, it is emphasized that it is permissible to confiscate the property rights of guilty people which are not the result of violations or crimes, as regulated in the provisions of Article 19 Paragraph (1) of the Human Rights Law which states: “There is no violation or any crime that is punishable by confiscation of all the assets belonging to the guilty person.” Furthermore, in the explanation of the article in question, it is emphasized that what is meant by all assets belonging to the guilty party are assets that do not originate from violations or crimes.²³

²⁰ Widyanti Wibowo, “Perlindungan Hukum Pihak Ketiga Yang Beritikad Baik Dalam Tidak Pidana Pencucian Uang,” *Doctoral dissertation, Universitas Airlangga* (n.d.).

²¹ *Amandemen II UUD 1945*, n.d.

²² *Konsiderans Butir (b) UU HAM*, n.d.

²³ *Penjelasan Pasal 19 UU No.39 Tahun 1999 Tentang Hak Asasi Manusia (UU HAM)*, n.d.

Referring to the provisions mentioned above, as a concrete manifestation of legal protection for the property rights of third parties in good faith against the confiscation of goods in a criminal act of corruption as outlined in the provisions of Article 19 of the Anti-Corruption Law, it basically states that third parties in good faith will be harmed but they are able to apply a letter of objection to the relevant court no later than 2 (two) months after the court decision is pronounced in a session open to the public, the objection in question does not suspend or stop the implementation of the court decision; and The judge's decision on the objection letter can be appealed to the Supreme Court by the applicant or public prosecutor;

The provisions of Article 19 (1) of the Corruption Law indicate that the principle of criminal responsibility is based on an *in personam* mechanism (only against the person accused), so that it would be wrong if the judge in deciding a criminal act of corruption also imposes a crime against a third party, especially against the assets (in rem) third parties in good faith; the provisions of the article in question are also a form of protection for goods belonging to third parties in good faith so that they do not become direct victims in the eradication of criminal acts of corruption. Especially when the goods confiscated are the main goods and support one's life, so that the welfare and survival of third parties is greatly affected.

According to Yusuf Nurholish²⁴, a third parties in good faith is a party who is clean and whose capabilities are not related to the perpetrator of the criminal act, meaning that in this case the third party does not know whether the assets come from a criminal act or are the means of a criminal act, even though the third party has carried out an inspection of the assets to be controlled but the truth is covered up or fabricated by the perpetrator of the crime.

In relation to buying and selling, according to Ridwan Khairandy,²⁵ to find out whether the buyer has good intentions or not, there must be a way to measure it, namely by finding out the buyer's activity, where the buyer is obliged to examine the material facts and juridical facts of the object of the

²⁴ Tedhy Wibowo, "Gugatan Pihak Ketiga Terhadap Eksekusi Barang Sitaan Dalam Perkara Tindak Pidana Korupsi," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 2 (2018): 238–249, <https://doi.org/10.24843/JMHU.2018.v07.i02.p08>.

²⁵ Salim Saputra and Rineke Sara, "Perlindungan Hukum Terhadap Pembeli Beritikad Baik Dalam Transaksi Jual Beli Yang Dibatalkan Karena Adanya Gugatan Pihak Ketiga (Studi Kasus Putusan Nomor 800/PDT.G/2013/PN.DPS)," *Jurnal Ilmiah Huku*, 1, no. 1 (2022), <https://doi.org/10.37721/constitutum.v1i1.1135>.

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transaction. If the buyer has actively researched the material facts of the object of the transaction, then he can be considered a buyer in good faith who receives legal protection.

According to Agus Yudha Harnoko, honesty or good intention in a cooperation agreement is an important factor so that parties in good faith will receive reasonable protection, while those who do not have good intentions do not need to receive legal protection or should suffer the legal consequences of their dishonesty.²⁶

However, the provisions of Article 19 of the Corruption Law do not provide an explanation regarding which third parties in good faith are given the right to claim rights in the form of objections to their property confiscated in a corruption crime decision. The definition of a third party in good faith can be referred to in a sale and purchase transaction with the term buyer in good faith as formulated in the Supreme Court Circular No. 6 of 2004, civil chamber dated 9 October 2014 which sets out the criteria for buyers in good faith who need to be protected based on Article 1338 Paragraph (3) of the Civil Code as follows:

- a. Carry out buying and selling of land objects using valid manner/procedures and documents as determined by statutory regulations, namely:
 - 1) Purchasing land through public auction or: Purchasing land before a Land Title Registrar in accordance with the provisions of Government Regulation Number 24 of 1997 or
 - 2) Purchase of customary/unregistered land which is carried out according to customary law provisions, namely:
 - (a) carried out in cash and in plain sight (in the presence/knowing of the local Village Head/*Lurah*),
 - (b) preceded by research regarding the status of the land of the sale and purchase object and based on this research it shows that the land of the sale and purchase object belongs to the seller.
 - (c) The purchase was made at a decent price.
- b. Exercise caution by examining matters relating to the land object under contract, including:
 - 1) The seller is the person who is entitled/has rights to the land which is the object of sale and purchase, according to proof of ownership,

²⁶ Agus Yudha Harnoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Kencana, Jakarta, 2012).

- or;
- 2) The land/object being traded is not in confiscated status, or;
 - 3) The land object being traded is not under collateral/mortgage status, or;
 - 4) For certified land, information has been obtained from BPN and a history of the legal relationship between the land and the certificate holder.

Furthermore, Article 1 number 3 Supreme Court Regulations No. 2 of 2022 concerning procedures for resolving objections from third parties in good faith regarding decisions to confiscate goods that do not belong to the defendant in cases of criminal acts of corruption (Supreme Court Circular 2 of 2022) states that A Third Party in Good Faith is a party who can prove to be the legal owner, custodian, guardian of the owner of the goods, or curator in bankruptcy cases for goods that have no legal connection to the process of a criminal act of corruption.

Referring to the description above, it can be said that a third party in good faith is the owner or has the right to an item whose acquisition is in accordance with valid procedures and documents in accordance with applicable laws and regulations and which is legally confiscated according to law, with which the party has nothing to do with it legally in the process of carrying out criminal acts of corruption.

Submission of objections by third parties in good faith

The provisions of Article 19 Paragraph (1) and Paragraph (2) of the Corruption Law on a third party in good faith will be harmed, the third party can submit an objection letter to the relevant court no later than 2 (two) months after the court's decision is pronounced in open court for public.

The regulation of objection efforts in Article 19 paragraph (1) and paragraph (2) of the Anti-Corruption Law is a manifestation of the state's presence in its duties and obligations in order to protect the rights of citizens in the field of law enforcement. The objection to the court's decision regarding the confiscation of evidence from third parties in good faith is that it is a new means for third parties in good faith to obtain justice.

A third party in good faith can submit a letter of objection to the district court which decides the main case of a criminal act of corruption which

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claims to have confiscated goods from a third party in good faith. The problem is that the objection letter means filing a lawsuit or request or objection? This is because the provisions of Article 19 Paragraph (2) do not explain in detail the form of the objection letter, so that in practice there are differences in interpretation from the applicant and also the judge. For example, determination No.83/Pdt.P/2021/PN Kupang (decision No.83) in its legal consideration states that the objection letter with the title of the lawsuit and/or application and/or objection submitted by the applicant in this case is considered unclear and vague (obscure libel) and therefore the claim and/or application and/or objection submitted by the party in this case deserves to be declared unacceptable.

This shows that article 19 Paragraph (2) of the Corruption Crime Law provides legal standing of rights to third parties in good faith as applicants and at the same time gives the right to submit rights claims (objections) but it is not clear that the rights claims (objections) are in the form of lawsuits or application.

Regarding the matter referred to above, the provisions of article 1 number (1) of Supreme Court Circular No.2 of 2022 state that an objection is an application submitted by a third party in good faith to the court against a court decision that confiscates goods that do not belong to the defendant in a criminal act of corruption.

Referring to the provisions referred to above, it becomes clear that the form of objection is a petition, so according to the principles of civil procedural law, a rights claim containing a dispute is called a lawsuit that ends with a judge's decision and a rights claim that does not contain a dispute is called a request that ends with a judge's decision.

Theoretically, a voluntary request has the formal characteristics that: (a) The problem being raised is of one-sided interest only (for the benefit of one party only); (b) The problem requested for resolution to the district court is in principle without dispute or differences with another party; (c) no other person or third party is drawn as an opponent, but is absolutely one party (*ex-parte*).

Although in principle a rights claim (objection) is in the form of a request from a third party in good faith which is categorized as a voluntary rights claim, according to the provisions of Supreme Court Circular 2 of 2022 there are subjects (1) the applicant (third party in good faith), (2) the respondent (public prosecutor in the main case), (3) Interested parties (parties

deemed necessary by the judge to be heard at trial), (4) Co-respondent (minister of finance).

Referring to the interests of a third party with good intentions whose goods are confiscated in a criminal act of corruption, in submitting written claims (objections) via electronic or conventional means to the court that decides the subject matter, time limit for filing a rights claim is no later than 2 (two) months after the court decision is pronounced in a trial that is open to the public (60 calendar days) and/or after an extract/copy of the decision is notified to the public prosecutor, defendant and/or announced on the notice board court and/or electronically.

The systematic contents of third party rights claims (Objections) in good faith are as follows:²⁷

- a. Identity of the applicant and respondent along with complete address and/or electronic domicile
- b. Number and date of the decision to which objection is submitted;
- c. Items declared confiscated
- d. Reason for objection;
- e. Application petition

Evidence submitted in the trial of third party rights claims (objections) in good faith is in the form of copies/photocopies that are properly stamped and have been matched to the original and electronic evidence in accordance with the provisions of statutory regulations.

Examination of rights claims (objections)

The competence of the court which has the authority to adjudicate the rights claims (objections) of third parties who are in good faith is the court which examines and decides the subject of the case at the first level (district court, military court/high military court) and the supreme court if there is a legal remedy from the Petitioner and/or Respondent (public prosecutor) regarding the decision at the first instance court which decides the subject matter of the case.

Even though rights claims are of a volunteer nature, to ensure objectivity the examination of rights claims (objections) of third parties in good faith are heard by a panel of judges, appointed by the head of the court,

²⁷ *Pasal 5 Ayat (1) Sema No.2 Tahun 2022, 2022.*

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which is different from the example of the case mentioned previously which was heard by a single judge.

The process of examining third party rights claims (objections) in good faith is carried out at the trial stage²⁸ are as follows:

- a. Opening the trial
- b. Checking the identity of the Petitioner and Respondent (power of attorney and assignment letter);
- c. Reading objections;
- d. Reading responses to objections
- e. Evidence of the applicant, respondent and co-respondent
- f. Determination pronouncement

In contrast to other lawsuits and/or requests, the trial proceedings claiming the rights of third parties who are in good faith regarding confiscation of goods in criminal acts of corruption, cannot be submitted for replicas, duplicates or conclusions. After the stages of the evidentiary process from the applicant, respondent and co-respondents, the next stage is that the panel of judges decides on the claim of rights (objection) in the form of a decision pronounced in a hearing that is open to the public within a period of no later than 60 (sixty) days from the first hearing.

The decision to determine rights claims (objections) from third parties in good faith includes (a) rights claims (objections) granted and (b) rights claims rejected by the panel of judges. Reasons for claiming rights (objections) from third parties in good faith are granted if the applicant can prove that:

- a. The applicant obtains rights to the object of the application before an investigation and/or confiscation is carried out
- b. The applicant obtains the rights to the Goods object of the application based on good faith;
- c. the object of objection is goods confiscated or destroyed in a corruption crime case; And
- d. The applicant is not related to the criminal act of corruption committed by the defendant.

In the event that the objection is granted and the decision has permanent legal force and if the decision is in conflict with the decision of the main case regarding the confiscated goods, then the decision applies. On the other hand,

²⁸ *Pasal 9 Sema No.2 Tahun 2022, 2022.*

if the applicant of good faith cannot prove the arguments for his objection, the panel of judges will reject the objection request.

Regarding the decision of the panel of judges at the court of first instance, the applicant and the respondent as well as the co-respondents may submit an appeal against the decision in question to the supreme court no later than 14 (fourteen) days after the decision is pronounced in a hearing that is open to the public or after the content of the decision notified to parties who are not present.

The cassation application in question must be accompanied by a cassation memorandum and a cassation statement, whereas if a cassation application is not accompanied by a cassation memorandum, the application is declared inadmissible. The cassation respondent or co-respondent to the cassation is given the opportunity to submit a counter cassation memorandum no later than 14 (fourteen) days after the cassation memorandum is received. An application for cassation can only be made 1 (one) time.

The panel of cassation judges decides on the cassation application within a period of 30 (thirty) days from the appointment of the panel of judges and the cassation and/or determination of objections that have legal force cannot still be submitted for judicial review. The implementation of a court decision granting the claim (objection) of a third party in good faith which has permanent legal force is carried out by the respondent (prosecutor/military prosecutor/high military prosecutor) within 30 (thirty) days of the decision having permanent legal force.

Conclusion

Based on all the descriptions above, it can be concluded that with the existence of the Supreme Court Regulation No. 2 of 2022, there is unity and legal certainty regarding the method of submitting applications and hearing claims for the rights of third parties who are in good faith regarding the confiscation of goods in decisions regarding criminal acts of corruption covering the legal position of the parties, procedures and time for submission, authority to adjudicate, evidence, determination, legal action and implementation of decisions that have permanent legal force.

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References

- Asshiddiqie, Jimly. *Konstitusi Dan Konstitualisme Indonesia*. Sinar Grafika, 2010.
- Damanik, Kristwan Genova. “Antara Uang Pengganti Dan Kerugian Negara Dalam Tindak Pidana Korupsi.” *Masalah-Masalah Hukum* 45, no. 1 (2016): 1–10. <https://doi.org/10.14710/mmh.45.1.2016.1-10>.
- Deshaini, Liza, and Muhammad Nur Amin. “Perlawanan Terhadap Perampasan Aset Yang Disita Dalam Perkara Tindak Pidana Korupsi.” *Lex Librum: Jurnal Ilmu Hukum* 9, no. 2 (2023): 117–128. <http://dx.doi.org/10.46839/ljih.v9i2.767>.
- Effendy, Marwan. *Kejaksaan RI: Posisi Dan Fungsinya Dari Perspektif Hukum*. Gramedia Pustaka Utama, 2005.
- Gunawan, Gunawan, Kristiwanto Kristiwanto, and Mohamad Ismed. “Pengaturan Tata Cara Pemeriksaan Upaya Keberatan Oleh Pihak Ketiga Pada Tindak Pidana Korupsi Di Indonesia.” *SALAM: Jurnal Sosial dan Budaya Syar-i* 8, no. 6 (2021): 2039–2050. <https://doi.org/10.15408/sjsbs.v8i6.23411>.
- Hamzah, Andy. *Hukum Acara Pidana*. Arikha Media Cipta, Jakarta, 2014.
- Hernoko, Agus Yudha. *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial*. Kencana, Jakarta, 2012.
- Jati, Rosa Linda. “Perampasan Aset Sebagai Pidana Tambahan Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia.” *Humani (Hukum dan Masyarakat Madani)* 11, no. 1 (2021): 133–150. <http://dx.doi.org/10.26623/humani.v11i1.2920>.
- Krisdianto, Krisdianto. “Implikasi Hukum Penyitaan Aset Hasil Tindak Pidana Korupsi Yang Hak Kepemilikannya Telah Dialihkan Pada Pihak Ketiga.” *Katalogis* 3, no. 12 (2015).
- Mahendra, Yusril Ihza. *Dinamika Tata Negara Indonesia: Kompilasi Aktual Masalah Konstitusi Dewan Perwakilan Dan Sistem Kepartaian*. Gema Insani Press, Jakarta, 1996.
- Mahfud, Moh. *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*. LP3ES, 2007.
- Novianti, Tri, and Ricky Fadila. “Perlindungan Hukum Pihak Ketiga Atas Keberatan Putusan Pengadilan Terhadap Putusan Perampasan Barang Bukan Kepunyaan Terdakwa Dalam Perkara Tindak Pidana Korupsi.” *PETITA* 4, no. 2 (2022): 218–321. <https://doi.org/10.33373/pta.v4i2.4973>.
- Pranoto, Agus, Abadi B. Darmo, and Iman Hidayat. “Kajian Yuridis Mengenai Perampasan Aset Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Menurut Hukum Pidana Indonesia.” *Legalitas: Jurnal Hukum* 10, no. 1 (2019): 91–121. <http://dx.doi.org/10.33087/legalitas.v10i1.158>.

- Saputra, Salim, and Rineke Sara. "Perlindungan Hukum Terhadap Pembeli Beritikad Baik Dalam Transaksi Jual Beli Yang Dibatalkan Karena Adanya Gugatan Pihak Ketiga (Studi Kasus Putusan Nomor 800/PDT.G/2013/PN.DPS)." *Jurnal Ilmiah Huku*, 1, no. 1 (2022). <https://doi.org/10.37721/constitutum.v1i1.1135>.
- Sorejono, Soekanto, and Sri Mamudji. *Penelitian Hukum Normatif*. Radjawali Press, Jakarta, 1990.
- Sutiyoso, Bambang, and Sri Hastuti Puspitasari. "Aspek-Aspek Perkembangan Kekuasaan Kehakiman Di Indonesia." *UII Press, Yogyakarta* (2006).
- Umara, Nanda Sahputra. "Pemisahan Pertanggungjawaban Perampasan Barang Dalam Penguasaan Pihak Ketiga Yang Beritikad Baik Dalam Putusan Tindak Pidana Korupsi." *Jurnal Hukum Novelty* 8, no. 2 (2018): 232–251. <http://dx.doi.org/10.26555/novelty.v8i2.a7027>.
- Wibowo, Tedhy. "Gugatan Pihak Ketiga Terhadap Eksekusi Barang Sitaan Dalam Perkara Tindak Pidana Korupsi." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 2 (2018): 238–249. <https://doi.org/10.24843/JMHU.2018.v07.i02.p08>.
- Wibowo, Widyanti. "Perlindungan Hukum Pihak Ketiga Yang Beritikad Baik Dalam Tidak Pidana Pencucian Uang." *Doctoral dissertation, Universitas Airlangga* (n.d.).