

## URGENCY OF LEGAL ARRANGEMENT PROCEDURE FOR OBJECTION APPLICATION OF THE THIRD-PARTY ASSETS CONFISCATED BY THE STATE IN THE CRIMINAL ACTS OF CORRUPTION

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### ABSTRACT

*The confiscation of assets resulting from criminal acts in the legal system in Indonesia is not a new thing. Several criminal provisions have regulated the possibility of carrying out the arrest, among them the provisions of Article 1 paragraph 16 of the Code of Criminal Procedure and the confiscation of the proceeds and instruments used in a criminal act, in particular in connection with the criminal offense of corruption, which must refer to the provision of Article 39 paragraph (1) of the Law. The provisions on the seizure of assets resulting from criminal acts are also regulated in each of the provisions of criminal law spread in the Law that specifically regulates it, among others, Article 18 of the Eradication of Corruption Crimes Law and Article 81 of the Money Laundering Law. Although in practice an asset that is a tool or the result of a corruption crime can be confiscated by the state as stipulated in Article 18 of the Eradication of Corruption Crimes Law, in some court rulings that dropped the amount of the judgment there are assets that were seized by the state, there is still the possibility of the occurrence of misconduct that began in the process of seizure of third-party assets that have nothing to do with corruption criminal cases, such as in the case of the corruption acquisition of a simulator in KorlantasPolri, the Jiwas Raya, and the Asabri case. Although in the provisions of Article 19 paragraph (1) jo Article 19 subsection (2) of the Eradication of Corruption Crimes Law, it has granted the right to third parties to object to the assets seized by the state in corruption cases, however, the law of the event in force has not provided specific regulations on the matter and more like in the laws of events on civil lawsuits as usual in the practice in force during this time. Therefore, the presence of legal arrangements related to events related to applications for objections to third-party assets seized by the state on the basis of court rulings becomes very urgent to provide legal certainty and legal justice as well as protection for third parties of good faith that have nothing to do with corruption or criminal events.*

*Keywords:* Procedural Law, Objection Petition, Third Party Assets, Confiscated by The State.

### INTRODUCTION

To realize a just, prosperous society and create a clean government, one attempt can be made through efforts to eradicate corruption by implementing specific law enforcement patterns and strategies. In this issue, corruption has disrupted the welfare of the people and resulted in the country's economic instability; thus, corruption requires special handling. The specific strategy that is necessary to take is to change the legal paradigm of the Police, the Prosecutor's Office, the KPK, and the Court to address laws progressively, which not only prioritize the imposition of imprisonment but also need to optimize the return of state losses through confiscation of assets and criminal compensation. For such an obvious reason, since the beginning of the investigation, law enforcement officials have prioritized the interests of recovering state losses (follow the money). However, it should be considered that the practice of following the money shall be addressed comprehensively by tracking all suspect assets, which are sometimes placed with third parties as nominees or invested in other business activities such as Jiwa Sraya corruption, Asabri corruption, and other corruption cases.

To anticipate criminal acts committed by utilizing the proceeds of corruption for business activities as well as other investments, as well as at the same time retrieving these assets from the control of corruptors, it is necessary to legally confiscate assets aimed at returning assets resulting from corruption to be used for realizing people's welfare. As a preventive measure, asset confiscation is also one of the sanctions used to achieve the purpose of punishment, especially for corruption crimes as part of economic crime. The problem of returning assets has recently become an interesting issue in the legal realm of corruption eradication, thus encouraging law enforcement agencies to issue regulations of a technical nature to regulate procedures for returning assets. In the judicial environment, the Supreme Court has issued Supreme Court Regulation No. 5 of 2014 concerning Additional Criminal Compensation Money. In relation to corruption crimes and the implementation of decisions, there has been Attorney General's Regulation No. 013/A/JA/06/2014 concerning Asset Recovery.

The seizure of assets resulting from criminal acts in the Indonesian legal system is not a current phenomenon. Several criminal provisions have regulated the possibility of confiscation, including the provisions of Article 1 point 16 of the Criminal Procedure Code and the confiscation of proceeds and tools used in a criminal act, especially related to corruption, which must refer to the provisions of Article 39 paragraph (1) of the Criminal Procedure Code. Provisions regarding the confiscation of assets resulting from criminal acts are also regulated in each of the provisions of the criminal law, which are spread out in laws that specifically regulate them, including Article 18 of the Anti-Corruption Law and Article 81 of the Money Laundering Law. Even though there are practically no assets that are tools or proceeds of criminal acts of corruption, they can be confiscated by the state as stipulated in Article 18 of the Anti-Corruption Law. However, in several court decisions that rendered the verdict, there were assets confiscated by the state. There is still the possibility of errors starting in the process of confiscation of third-party assets that have nothing to do with corruption cases, such as in the case of corruption in the procurement of simulators in KorlantasPolri, Jiwa Sraya Case, and Asabri Case. Although the provisions of Article 19 paragraph (1) in conjunction with Article 19 paragraph (2) of the Corruption Law have given rights to third parties to submit objections to assets seized by the state in corruption cases, the applicable procedural law has not provided specific arrangements regarding this and is more like procedural law in civil lawsuits

as usual in practice so far. Therefore, the presence of procedural law related to applications for objections to third-party assets confiscated by the state based on court decisions becomes highly urgent to provide legal certainty and legal justice, as well as protection for third parties with good intentions that have nothing to do with corruption.

Based on the description of the background above, several problems can be stated as follows:

1. What are the problems in law enforcement, especially those related to the confiscation and confiscation of third-party assets that are related to corruption, both as a tool and because of corruption?
2. How is the regulation and implementation of the procedural law for objections to third party assets confiscated by the state in a criminal act of corruption?

Based on the description of the background and research problems above, several objectives can be stated as follows:

1. To assess the problems in law enforcement, especially in field related to the confiscation and confiscation of a third-party assets related to corruption, both caused by corruption or as a tool for corruption.
2. To assess the regulations and implementations of the procedural law for objections with the third-party assets confiscated by the state in a criminal act of corruption.

## RESEARCH METHOD

The research methodology utilized to explore and analyze issues in this study is normative legal research or normative jurisprudence, i.e., by explaining numerous issues about the mechanism of electronic mediation in Indonesia in a comprehensive-integrative manner (Soekanto & Mamudji, 2003). As legal research is conducted by researching library materials, this study employs normative legal research methodologies, or library legal research. Secondary data, or library data, is the primary source of information used in normative legal research (Soekanto & Mamudji, 2003).

A qualitative analysis of the data was employed (Ali, 2011). The method of data analysis being used in this research is descriptive-analytical, meaning that secondary data from other sources is analyzed qualitatively. The researcher's activity in determining the content or meaning of the legal norms referred to in resolving the legal issues that are the subject of the study is known as the descriptive, which encompasses the content and positive legal structure (Ali, 2011).

## PROBLEMS IN LAW ENFORCEMENT, PARTICULARLY RELATED TO CONFISCATION AND CONFISCATION OF THIRD-PARTY ASSETS THAT ARE RELATED TO CORRUPTION CRIMES BOTH AS A TOOL AND AS A RESULT OF CORRUPTION CRIMES

The criminal act of corruption, hereinafter referred to as corruption, has received special attention in the eyes of the public. The multiplier effect caused by corruption won the title of an extraordinary crime. In addition, corruption is also seen as a white-collar crime because the corruption that occurs tends to be committed by intelligent people who, on average, have a tertiary education. There are various weaknesses and strengths in law enforcement regarding criminal acts of corruption. The existence of rules regarding law enforcement for criminal acts of corruption is considered incomplete and insufficient to deal with these criminal acts. One of the obvious factors is that corruption has been several steps ahead of the formation of regulations. Indirectly starting to demand discipline and work ethic be there first rather than procuring regulations (Miladhamesi, 2020).

Efforts have been made to tackle criminal acts of corruption and various other financial crimes. In recent years, there has been a paradigm shift in tackling financial crimes and their derivatives. The existence of this shift is felt by law enforcement and government officials because it is not enough to just focus on catching criminals. Returning assets through an asset recovery mechanism, either in the form of confiscating assets or confiscating assets that are related to corruption, has become a considerably urgent matter to be implemented immediately.

Various kinds of problems are encountered in law enforcement on corruption, one of which is asset tracking and recovery (ATR). Recovery of assets due to criminal acts of corruption is constrained by several things, for example, if the suspect or defendant disappears, dies, runs away, is acquitted by the courts, and so on, which can interfere with the performance of law enforcement in returning state assets that have been corrupted. Not to mention the problem of execution in the confiscation of assets that cannot be carried out (non-executable) (Miladhamesi, 2020).

Considering the development of corruption, which has been increasingly complex, requires a massive strategy related to the eradication of corruption, which is actually a recent study but is classical in nature. So it takes the concept of an integral crime prevention policy, which contains the consequence that all rational efforts to tackle crime must be an integrated unit. Therefore, the policy to tackle crime by using criminal sanctions must also be combined with other non-penal efforts. These non-penal efforts are to improve certain social conditions, which indirectly have a preventive effect on crime (Arief, 2010).

The problem of law enforcement in corruption cases is especially closely related to the problem of returning corruptors' assets, which have been integrated outside the competence of Indonesian law enforcement. Returns of assets within national jurisdiction from perpetrators often experience problems with the national system. Especially regarding the return of assets resulting from corruption that are transnational or cross-country. In addition to the above constraints, there are also several other constraints that are very innovative in theoretical terms but are extremely difficult or even nearly impossible to put into practice. In principle, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 30 of 2002 concerning the Corruption Eradication Commission (UU PTPK), with its relation to confiscation of assets due to criminal acts of corruption, has regulated both penal and non-criminal channels (Adji, 2009).

Provisions regarding the reversal of the burden of proof on the acquisition of assets have been regulated in the PTPK Law. If the defendant cannot prove the increase in his wealth, then this statement can be used to strengthen existing evidence that the defendant has committed a criminal act of corruption. The provisions for reversing the burden of proof in the PTPK Law are carried out in the criminal case process and are associated with the criminal process itself. So if the defendant is released or declared acquitted of all lawsuits in the main case, then the claim for confiscation of property must be rejected by the judge (Indonesia, 1999).

The system of reversing the burden of proof in the PTPK Law requires that the defendant be obliged to prove that the act committed is not an act against the law (corruption). By placing the burden of proof on the accused, the principle applied in this corruption crime shifts from "presumption of innocence" to "presumption of corruption" or "presumption of guilt". With this presumption of guilt, it is often said that the application of a system of reversing the burden of proof is a potential violation of basic human rights (Adji, 2010).

Then, for the mechanism to confiscate assets with non-criminal channels, such as filing a civil lawsuit if state financial losses are suspected to have been real and occurred, This is regulated in Article 32, Article 33, Article 34, and Article 38C of the UUPTPK. In these four articles, it is known that civil lawsuits against state financial losses can be made if:

- a. There is not enough evidence to prosecute suspects or defendants criminally, even though there have been real state financial losses.
- b. acquittal of the defendant.
- c. The suspect died and the civil suit was addressed to the heirs.
- d. The defendant dies and the civil suit is addressed to the heirs.

Civil lawsuits are also still possible if there has been a court decision that has permanent legal force in a criminal manner, and it is suspected or known that there are still assets that have not been subject to asset confiscation. The state through its law enforcement officials also has the right to file a civil lawsuit against the heirs if the defendant cannot prove the origin of the assets in the trial. Civil lawsuits are also still possible if there has been a court decision that has permanent legal force in a criminal manner and it is suspected or known that there are still assets that have not been subject to asset confiscation. The state, through its law enforcement officials, also has the right to file a civil lawsuit against the heirs if the defendant cannot prove the origin of the assets in court.

In the provisions of the PTPK Law, it has provided a basis for the Public Prosecutor (JPU) and the State Attorney (JPN) to file claims or lawsuits for confiscation of assets in corruption cases for defendants who, for certain reasons, cannot be tried and for the heirs of defendants. Then, at the pro-justicia stage, if sufficient evidence has not been obtained but it is known or suspected that a state financial loss has occurred, then the JPN can file a claim for the return of state financial losses based on the delegation of the pro-justicia file.

In its development, several regulations have emerged regarding the seizure of criminal assets, both those that are generally regulated in the Criminal Code and the Criminal Procedure Code as well as those that are specifically regulated, for example, in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (TPPU) and Regulations of the Supreme Court Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling Assets in the Crime of Money Laundering and Other Crimes. Related to the return of criminal assets abroad, several new laws have emerged regarding the confiscation of criminal assets in relation to mutual legal assistance through Law Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters and the ratification of the Anti-Corruption Convention through Law Number 7 of 2006 concerning UNCAC Ratification (Yusuf, 2013).

The Indonesian legal system currently does not have specific provisions regarding the confiscation of criminal assets. The concept of confiscation of assets that currently exists is the confiscation of assets based on the Indonesian criminal law system through court decisions that have permanent legal force (*inkracht*). These provisions are regulated in Article 39 paragraphs (1) and (2) of the Criminal Procedure Code and Article 18 paragraph (1) letter a of the PTPK Law. Apart from being based on a court decision that has permanent legal force (*inkracht*), confiscation of assets resulting from a crime can be carried out through a civil lawsuit as stipulated in Articles 32, 33, and 34 of the PTPK Law (Yusuf, 2013).

Up until now, there have been two mechanisms for addressing asset confiscation in Indonesia that are used in the proceedings to return assets resulting from corruption. First, by tracking, assets that have been successfully tracked and their well-known whereabouts are frozen. Second, assets that have been frozen are then forfeited and confiscated by the competent authorities of the country where they are located, and then returned to the country where they were taken through certain mechanisms (Yusuf, 2013).

Asset return is the most important part of anti-corruption law in a form rooted in the deepest essence of anti-corruption law, especially in its function of seeking to return assets resulting from corruption to the victim country, preventing perpetrators from committing other crimes using these assets. Recovery of assets in financial crimes, especially corruption, is one of the consequences of the rule of law principle. It can be said that the recovery of these assets is the responsibility of the state in realizing people's welfare. The difficulty of recovering assets in cases of corruption is not only experienced by Indonesia, but many other countries are also experiencing such issues; this is the formulated background to the existence of the UNCAC convention. With difficulties that tend to be the same between state parties, then in the UNCAC, to be precise, Article 54 paragraph (1) letter C states that (Rahma Yanti, 2018):

“.. Each State Party ... shall, in accordance with its domestic law: Consider taking such measures as may be necessary to allow confiscation on such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.”

Indonesia is one of the state parties bound to the UNCAC convention with ratification through Law Number 7 of 2006 concerning the Ratification of UNCAC, and it automatically addresses Indonesia as bound by all provisions of the convention. Even though it is bound by the provisions of the convention, Indonesia still considers its domestic law and national sovereignty. In 2012, the idea was initiated to form a special law to regulate asset confiscation in financial crimes through the Asset Confiscation Bill. On the contrary, up to now, the Asset Confiscation Bill has not yet been enacted. With the existence of the Asset Confiscation Law, it was carried out for Indonesia to be able to adapt to UNCAC because, as we know, the substance of NCB Asset Forfeiture in UNCAC was enacted with the aim of being able to overcome all kinds of obstacles in the legal traditions of each state party. Even so, enforcing NCB Asset Forfeiture is not as easy as one might imagine.

When using a human rights protection approach, the application of NCB Asset forfeiture can cause various conflicts and problems. For example, on the principle of the presumption of innocence, the right of the accused not to provide incriminating

information for himself (non-self-incrimination) as well as issues regarding the ownership of assets owned by the suspect and the defendant In the 1945 Constitution of the Republic of Indonesia, namely Article 28H paragraph (4), it states that:

“Everyone has the right to have private property rights and such property rights may not be taken over arbitrarily”.

Confiscation is permitted when the assets or properties in question were obtained from a crime and/or will be used to commit a crime. In principle, if a citizen has ownership of certain assets, then this becomes one of the obligations of the state to protect because property rights owned by citizens are rights that are quite fundamental in nature, and in fact, the state cannot confiscate these assets only based on assumptions or allegations that the properties in question are assets resulting from a crime or suspected of being related to a crime.

Regarding the seizure of its own assets, Indonesia also has provisions in Law Number 39 of 1999 concerning Human Rights, which are contained in Article 19 paragraph (1), which states that confiscation of all property belonging to the guilty. And thus, the confiscation of assets carried out by the NCB Asset forfeiture mechanism has the potential to "impoverish" the accused or suspects to the end, which is of course contrary to the above rules.

Furthermore, in NCB, Asset forfeiture can be an especially useful means to confiscate and expropriate assets from corruptors in Indonesia. At least there are several uses for NCB Asset forfeiture to assist law enforcement officers in the process of returning the assets of corruptors, including (Siregar, 2013):

First, NCB Asset forfeiture is not related to a criminal offense, so confiscation can be requested by the court faster than criminal forfeiture. Second, NCB Asset forfeiture uses civil evidentiary standards because civil evidentiary standards are relatively lighter than criminal evidentiary standards. In addition, NCB Asset Forfeiture also adopts a reverse proof system to ease the burden on the government to prove the lawsuit filed. Third, NCB Asset forfeiture only relates to assets that are suspected of originating, being used, or having a relationship with a crime. So, the perpetrator of the crime itself is irrelevant, so the escape, disappearance, death, or even existence of an acquittal for the corruptor is not a problem in NCB Asset forfeiture. Fourth, NCB Asset forfeiture is very useful for cases where criminal prosecution is hindered or impossible. In efforts to eradicate corruption, corruptors are often politically well-connected, so law enforcement officials face difficulties in bringing them to justice.

Based on the description as mentioned above, regarding problems in law enforcement, especially related to the confiscation and confiscation of third-party assets that are related to corruption both as a tool and because of corruption, the main obstacle factor is the absence of an Asset Confiscation Law that applies the principles of NCB Asset forfeiture as referred to by UNCAC.

## **REGULATION AND IMPLEMENTATION OF THE LAW ON APPLICATION FOR OBJECTION TO THIRD PARTY ASSETS CONFISCATED BY THE STATE IN CORRUPTION CRIMES**

### **A. Rules of Procedure for Requests for Objections to Third Party Assets Confiscated by the State in Corruption Crimes.**

Under Law No. 31 of 1999, in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption, there are very few legal provisions governing legal protection for third parties. Arrangements and discussions are limited to legal remedies in the form of an objection letter to the Court within 2 (two) months after the court decision regarding the confiscation is pronounced, then the Judge requests information from the Public Prosecutor and interested parties, as well as the product of the Judge for the objection in the form of a stipulation, and the stipulation can be appealed to the Supreme Court by the Petitioner or the Public Prosecutor, while the Law does not regulate the procedure or mechanism for examining objections. When laws or regulations at the technical level, especially in their implementation, have not been able to function as means for addressing political and legal transformations, we can still expect judges.

One of the causes of the need for the discovery of the law by the judge in the form of interpretation and construction is related to the existence of language and the subjectivity of understanding the words of that language, especially those used in legislation. Often, in the explanation of laws and regulations, the legislators state their points quite clearly. The "sufficiently clear" legal provisions referred to here are the provisions of Article 19 of Law No. 31 of 1999 on Corruption, as amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crimes.

Judicial practice found that there are various interpretations of the provisions of Article 19 of Law No. 31 of 1999 on Corruption as amended and added to Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. The first interpretation is that the terminology of objection is meant to be the same and in the same spirit as the lawsuit in a civil case. The second interpretation is that the objection terminology is the same as the Pretrial effort in the Criminal Procedure Code, but the procedure for examination is as in civil procedural law (quasi-civil), hence objections here are subject to the realm of criminal procedural law.

The provisions in the Criminal Procedure Code regarding objections from third parties regarding confiscated goods in corruption cases are very relevant in relation to the provisions of Article 194 of the Criminal Procedure Code, which contain norms regarding confiscated evidence. Based on the provisions of 194 KUHP associated with the provisions of Article 19 Paragraph 1 of Law No. 31 of 1999 and Law No. 20 of 2001 concerning the status of evidence, the following will be presented:

**First, return to the most entitled.** A court decision in a corruption case against evidence that does not belong to the accused cannot be dropped if the rights of a third party in good faith will be harmed. The provisions of Article 19, paragraph 1, of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 do not provide a definition or understanding from a third party and are not in good faith. The Criminal Procedure Code intrudes the term third party in article 80 of the Criminal Procedure Code regarding examination to check whether a termination of an investigation or prosecution can be submitted by an investigator or public prosecutor, a third party with an interest, to the Head of the District Court by stating the reasons. The definition of interested third parties is not explicitly explained by the legislators, giving rise to various interpretations. The definition of a third party according to articles 19 and 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 is the owner or the right to an item

that is legally confiscated according to law, where the party has no legal connection in the process of realizing an offense. Likewise with the general understanding of being reproached by society, reproach comes from the inner attitude of the maker who does not have good intentions; the inner attitude here leads to intentionality as a mistake maker who is psychologically aware of his actions and the consequences that are inherent or may arise from these actions.

Furthermore, given the notion of good faith contained in the provisions of 1963, 1977, 531, and 548 of the Civil Code and associated with the provisions of articles 19 and 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, it can be concluded that the existence of good faith in every relationship with the community has an important meaning. For public order, good faith as an inner attitude not to injure the rights of others is a guarantee for more orderly public relations. The absence of good faith in public relations leads to actions that are generally reproached by the community; the reproach comes from the inner attitude of the maker who does not have good faith. The mental attitude here leads to intentional error as the maker is psychologically aware of his actions and the consequences that are inherent or may arise from the act.

Based on the description of the third party and the good faith mentioned above, related to the return of evidence to those who are entitled as third parties who are considered to have good faith, what must be proven otherwise by a third party is (Ibrahim, 2016):

1. A person with good intentions puts full trust in the opposing party, who is considered honest and does not hide anything bad that will cause problems in the future.
2. The honesty of a person in addressing a legal act, namely, what lies in the person's inner attitude when a legal act is held.
3. Shall heed the norms of propriety and decency.

**Second, confiscated for the benefit of the state or destroyed.** A court decision can also read that evidence is confiscated for the benefit of the state or destroyed or damaged so that it can no longer be used (Article 194 paragraph 1 of the Criminal Procedure Code). However, what is meant by evidence that is confiscated for the benefit of the state or confiscated to be destroyed is not explained further regarding good faith, where the legislators do not explain the definition or meaning of good faith.

Confiscation of certain goods is one of the additional penalties as stated in Article 10 letter b, number 2, of the Criminal Code. In Article 39 of the Criminal Code, it is stated:

1. Goods belonging to the convict obtained from a crime or which are intentionally used to commit a crime may be confiscated.
2. In the case of a conviction for a crime that was not committed intentionally or because of a violation, a decision on confiscation may also be imposed based on matters specified in the law.
3. Confiscation can be carried out against guilty persons who are handed over to the Government, but only on goods that have been confiscated.

Court decisions regarding confiscation of evidence for the benefit of the state as referred to in paragraph (1), the provisions of Article 194 of the Criminal Procedure Code are linked to the provisions of Article 19 of Law No. 31 of 1999, Article 10 letter b of the Criminal Code, Article 39 of the Criminal Code, according to the author, if the court's decision determines that the confiscated evidence is confiscated for the state, then from the perspective of evidence in a criminal case as stipulated in Article 184 KUHAP, The judge considered that the Public Prosecutor could prove his indictment that the confiscated evidence was obtained from the proceeds of a criminal act of corruption, supported by evidence that is valid according to law and has a strong and decisive evidentiary value. If the court determines that the confiscated evidence is confiscated for the state, then, based on the provisions of Article 19 paragraph 2 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, a third party can submit an objection letter to the court within 2 months after the court decision is pronounced in a hearing that is open to the public. The objection here is a new facility in the Indonesian Criminal Procedure Code, which is specifically regulated in Articles 19 and 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.

**Third, it remains in the power of the prosecutor's office because the evidence is still necessary for other cases.** If evidence is still needed in other cases, then the court's decision regarding the evidence states that the evidence is still in the possession of the prosecutor's office, because it is still necessary for other cases to return to the Public Prosecutor used in the framework of proving other matters.

The provisions of Article 19 paragraph 2 of Law No. 31 of 1999 concerning the eradication of criminal acts of corruption as amended and added to Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the eradication of criminal acts of corruption state: "In the event that the court decision as referred to in paragraph 1 includes the goods of a third party who has good faith, then said third party can submit an objection letter to the court concerned, no later than 2 (two) months after the court decision is pronounced in an open hearing for general."

Regarding the decision of the judiciary in a criminal case, if the parties, namely the Public Prosecutor and the Defendant are not satisfied and want to fight against the decision, the Indonesian criminal procedural law system accommodates it through two types of legal remedies, namely ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies include filing an appeal to the High Court (Article 67 and Article 233 KUHAP) and cassation to the Supreme Court (Article 244 KUHAP), while those included in extraordinary legal remedies are Cassation for legal purposes (Article 259 KUHAP) and Judicial Review of Decisions by courts that already have permanent legal force (Article 263 of the Criminal Procedure Code).

In relation to the legal remedies referred to in Article 19 paragraph 2 and Article 38 paragraph 7 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 with the terminology "objection" to the decision and objection. KUHAP did introduce the term "objection", but not in the context of legal remedies as referred to above. There are several alternative solutions for the third parties who object to the criminal law enforcement proceedings related to evidence, stated as follows: First, Pretrial for confiscation of evidence as stipulated in Article 1, point 10, in conjunction with Article 77 of the Criminal Procedure Code Second, objections to the court decision regarding confiscation of evidence as stipulated in Articles 19 and 38 of Law No. 31 of 1999 and Law No. 20 of 2001.

Considering the description above, there are also possible alternative solutions from the application of legal remedies for objections as referred to in Article 19 and Article 38 of Law No. 31 of 1999, although each still opens opportunities for new problems or does not comprehensively and completely resolve the problem, namely (Ibrahim, 2013):

- a. The first alternative is to attach the objection law to the legal remedies that are currently known, not in the context of criminal procedural law but in the construction of civil procedural law, namely by choosing between a lawsuit or a request, because in the field of criminal procedural law (which is regulated in the Criminal Procedure Code), as outlined previously, nothing is set explicitly or,
- b. The second alternative is to make a legal breakthrough before the revision of Law No. 31 of 1999, the revision of the Criminal Procedure Code, or the Asset Confiscation Law, which is a *lex specialis* of material and formal law, through the creation of separate procedures or mechanisms (*sui generis*) that have not been recognized in procedural law so far. criminal as well as civil procedural law by continuing to use the term objection law against third parties but still within the framework of criminal procedural law.

## **B. Implementation Of The Law On Application For Objection To Third Party Assets Confiscated By The State In Corruption Crimes**

In enforcing the law on corruption, the court has the authority to impose additional penalties in the form of confiscation of goods or companies belonging to the state or destruction of them. In practice, it could be that the confiscated goods belong to a third party, so that he is harmed by the confiscation. The Corruption Crime Eradication Law has accommodated a legal protection mechanism for good-faith third parties whose rights have been harmed by the decision to confiscate these assets. Pursuant to Article 19 paragraph (2) of the Corruption Eradication Law, the third party may submit an objection to the corruption court no later than 2 (two) months after the court's decision is pronounced in a hearing open to the public.

However, the Law on the Eradication of Corruption does not stipulate in detail the procedural law for filing and examining objections. Therefore, to ensure the unity and accuracy of the application of the law, Supreme Court Regulation Number 2 of 2022 was issued concerning the Supreme Court Regulation concerning Procedures for Settlement of Third Party Objections in Good Faith Against Decisions on Confiscation of Goods Not Belonging to the Defendant in Corruption Crime Cases. As of May 30, 2022, Supreme Court Regulation Number 2 of 2022 has been stipulated concerning Procedures for Settlement of Objections by Good Faith Third Parties Against Decisions on Confiscation of Goods Not Belonging to Defendants in Corruption Crime Cases. There are several reasons for the issuance of Perma Number 2 of 2022 as stated in the considering preamble cited as follows:

"First, in the framework of law enforcement for eradicating criminal acts of corruption, the court has the authority to impose additional penalties in the form of confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption.

Second, a third party with good faith whose rights are harmed by the decision to confiscate goods as referred to in letter a, based on Article 19 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 1999 and 2001, may submit an objection to the corruption court no later than 2 (two) months after the court's decision is pronounced in a trial open to the public.

Third, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, does not stipulate in detail the legal procedures for filing and examining objections as referred to in letter b, giving rise to differences in interpretation and application of the procedure for handling requests for objections.

Fourth, to ensure the unity and accuracy of the application of the law for resolving objections to the decision to confiscate goods not belonging to the accused in corruption cases in the context of providing legal protection and for legal certainty, it is necessary to stipulate procedures for resolving objections from third parties who have good faith in decisions for confiscation of goods that do not belong to the defendant in a corruption case."

According to the provisions of Article 1 number 1 Perma Number 2 of 2022, it is stated that:

"Objection is an application submitted by a third party in good faith to the court against a court decision that imposes confiscation of goods not belonging to the defendant in a corruption case."

Furthermore, what is meant by a third party in good faith according to the provisions of Article 1 point 3, It is stated that "a third party with good intentions is a party who can prove as the legal owner, guardian, guardian of the owner of the goods, or curator in bankruptcy cases of goods that there is no legal connection in the process of the occurrence of criminal acts of corruption."

The authority of the court to examine objection cases is entirely the authority of the corruption court at the district court or military court or high military court, which examines, tries, and decides on the principal case at the first level and has the authority to hear objection requests (Article 2 of Perma No. 2 of 2022). Objections to additional penalties in the form of confiscation of goods or companies belonging to the state or destruction must be submitted in writing through electronic or conventional means to an authorized court by a third party in good faith.

Furthermore, regarding the procedure for filing an objection, attention must be paid to the following matters, as stipulated in the provisions of Article 3 Perma No. 2 of 2022, which include, as stated as follows:

- a. Goods or companies that are declared confiscated become the property of the state or to be destroyed can be objected in writing by a Good Faithful Third Party.
- b. Third parties who can submit objections as referred to in paragraph (1) are the owner, trustee, guardian of the owner of the Goods, or curator in a bankruptcy case of a Goods, either wholly or partly being subject to confiscation.
- c. An objection request can be filed by the curator if the decision to declare bankruptcy is pronounced before the start of the investigation.
- d. Objections can be filed before or after the object being requested is executed.

- e. Objections filed before the execution did not prevent the prosecutor at the Attorney General's Office, the military auditor at the military authority/high military authority, or the Corruption Eradication Commission from addressing the execution.
- f. If the Objection is filed after the object being applied for has been executed, the Objection also lists the Minister of Finance as Co-Respondent.

Regarding the period for filing an objection application, it is regulated in the provisions of Article 4 Perma 2 of 2022 which contains the following points:

- 1) Objections shall be submitted within 2 (two) months after the court's decision on the Main Case is pronounced in a trial open to the public.
- 2) If the decision on the Principal Case is an appeal or cassation decision, the objection is filed no later than 2 (two) months after the excerpt/copy of the decision is notified to the public prosecutor, the defendant and/or announced on the court notice board and/or electronically.
- 3) Objections can only be submitted 1 (one) time by the same party.
- 4) The clerk of the court at the place where the determination of the objection is filed, within a period of 3 (three) days after the application for objection is registered, notifies the application for objection to the panel of judges who is trying the main case at the appeal and/or cassation level.
- 5) The court announces every content of the decision on corruption cases through the Court Information System.
- 6) Objections are submitted in writing via electronic or conventional means to the corruption court at the district court or military court/high military court which decides the Main Case.

Considering the provisions of Article 4 of Perma No. 2 of 2022, as mentioned above, the submission of such objections can be made before or after the object being requested is executed. If an objection is raised prior to execution, then it does not preclude execution. Meanwhile, if an objection is filed after the execution, the Minister of Finance must be made a Co-Respondent. If there are more than 1 (one) objection filed by different parties separately on the same object of Goods in the same corruption crime decision, according to Article 7 of Perma No. 2 of 2022, where the chairman or head of the court stipulates the examination of the objection application, they will be combined into 1 (one) case number. Meanwhile, if there is an objection from another party regarding the same object and decision after the appointment of a panel of judges, the chairman or head of the court shall appoint the same panel of judges to examine the objection request.

Furthermore, regarding the legal procedure for objection requests, it is regulated in the provisions of Article 9 and Article 10 of Perma No. 2 of 2022; the full provisions are declared as follows:

Article 9 stated:

- 1) "Examination of Objections is carried out in a trial open to the public with the following stages of the program:
  - a. opening trial;
  - b. checking the identity of the Petitioner and the Respondent;
  - c. objection reading;
  - d. reading of responses to Objections;
  - e. evidence of the Petitioner, Respondent, and Co-op;
  - f. respondent; and
  - g. determination pronouncement.
- 2) If necessary, the panel of judges may order the substitute clerk to summon the interested party to hear his statement.
- 3) In the objection examination proceedings, replicas, duplications, and conclusions cannot be submitted."

Moreover, further provisions regarding the procedure for requesting an objection can be explained in the provisions of Article 10 as follows:

- 1) If the Petitioner, Respondent and/or Co-Respondent are not present at the first session, the Chairperson of the Assembly shall order to summon the Petitioner, Respondent and/or Co-Respondent 1 (one) more time legally and appropriately.
- 2) If the Petitioner is not present at the next session, the petition for Objection shall be declared null and void and cannot be resubmitted.
- 3) If the Respondent and/or Co-Respondent are not present at the next session as referred to in paragraph (1), the examination of the application for Objection shall continue until the decision is issued.

Regarding the content of the stipulation on the objection from a third party in good faith as referred to in Article 10 paragraph (3) Perma No 2 of 2022, the panel of judges determines the stipulation as referred to in Article 11 Perma No 2 of 2022 with the following provisions:

- 1) The panel of judges decides on objections in the form of a stipulation.
- 2) The panel of judges decides on the objection request within a maximum period of 60 (sixty) days from the first session.
- 3) The reading of the stipulation as referred to in paragraph (1) shall be pronounced in a session open to the public.
- 4) The stipulation as referred to in paragraph (1) contains:
  - a. the head of the stipulation is accompanied by irah-irah for the sake of justice based on belief in one and only God;
  - b. identity of the Petitioner, Respondent and/or Co-Respondent;
  - c. reasons for the application which contains the requested Goods;
  - d. respondent's reply and/or co-respondent;
  - e. proof;
  - f. legal considerations; and
  - g. determination order.
- 4) Notification of determination to parties who are not present is carried out by registered letter accompanied by a copy of the determination.
- 5) A copy of the determination as referred to in paragraph (3) shall be given to the parties no later than 5 (five) Days since the stipulation is pronounced.

Upon an objection submitted by a third party in good faith, the decision of the Panel of Judges may either be granted or rejected. As for the case that the application for objection is granted as stipulated in Article 12 paragraph (1) if the applicant can prove the following:

- a. The applicant obtains the rights to the object of the application prior to the investigation and/or confiscation.
- b. The applicant obtains the rights to the object of the application based on good faith.
- c. the object of objection is goods seized or destroyed in a corruption case.

“The Petitioner is not related to the criminal act of corruption committed by the defendant.”

Furthermore, according to the provisions of Article 12 paragraph (2) of Perma No. 2 of 2022, if the Panel of Judges grants the objection to the seized goods that have not been executed, then the stipulation states:

- a. grant the objection request from the Petitioner in whole or in part;
- b. determine in detail the object of the application which is excluded/cancelled from the confiscation of goods in a court decision on a criminal act of corruption; and
- c. ordered the Respondent to surrender all or part of the object of the application to the Petitioner;

Most importantly, in Article 12 paragraph (3) of Perma No. 2 of 2022, it is stated that "In the event that the panel of judges grants the objection to the seized goods that have been executed or to the goods that have been decided to be confiscated for destruction, the stipulation states:

- a. grant the petition for Objection from the Petitioner in whole or in part;
- b. determine in detail the object of the application that is excluded/cancelled from the seizure of Goods in a court decision on a corruption crime;
- c. order the State c.q. Minister of Finance for:
  - 1) hand over the confiscated Goods to the Applicant or the Petitioners; or
  - 2) pay the loss to the Applicant or Petitioners in the amount of the auction value of the said Goods if the object of the confiscated Goods has been auctioned off; or
  - 3) The cost of filing an objection if it cannot be submitted in the form of goods or the goods have been destroyed, then it is replaced with a payment of a sum of money for the goods that have been confiscated or destroyed based on the calculations of the Public Appraisal Service Office (KJPP).
- d. Such determination is addressed without going through a civil lawsuit again.

Whereas the provisions of Article 12 paragraph (4) of Perpu No. 2 of 2022 stated, "In the event that objections are granted and have permanent legal force, if the stipulation is contrary to the decision of the main case regarding the confiscated goods, the stipulation applies. As for the provisions of Article 13 Perma No. 2 of 2022, it states, "In the event that the Petitioner cannot prove the arguments for his application, the panel of judges rejects the application for Objection."

## CONCLUSION

Based on results obtained in this line of research, it can be concluded that related to problems in law enforcement, especially concerning the foreclosure and confiscation of third-party assets that have something to do with corruption both as a means and as a result of corruption, the main obstacle factor is the absence of the Law on Confiscation Assets that applies the principles of NCB Asset forfeiture as referred to by UNCAC.

Furthermore, related to the applicable procedural law in the event of a third-party objection in good faith, there are fundamental differences before and after the enactment of Perma No. 2 of 2022 on Procedures for Settlement of Objections from Third Parties in Good Faith Against Confiscation of Goods Not Belonging to the Defendant in Corruption Crime Cases.

In enforcing the law on corruption, the court has the authority to impose additional penalties in the form of confiscation of goods or companies belonging to the state or destruction of them. In practice, it presented the findings that the confiscated goods belong to a third party, and thus the person is harmed by the confiscation. The Corruption Crime Eradication Law has accommodated a legal protection mechanism for good-faith third parties whose rights have been harmed by the decision to confiscate these assets. Pursuant to Article 19 paragraph (2) of the Corruption Eradication Law, the third party may submit an objection to the corruption court no later than 2 (two) months after the court's decision is pronounced in a hearing open to the public.

However, Supreme Court Regulation Number 2 of 2022 was enacted on May 30, 2022. Afterwards, several premises have been determined, such as respects regarding what is qualified as a third party in good faith, how to apply for an objection, and also, most importantly, the procedures and conditions under which an objection can be filed. Finally, the results of the objection request in the form of a stipulation, whether the application is granted or the objection is rejected, have been clearly regulated so as to provide legal certainty.

## RECOMMENDATION

The problem in law enforcement related to the seizure and confiscation of third-party assets that are related to corruption crimes both as a tool and as a result of corruption crimes lies in the absence of the Asset Deprivation Law, which applies the principles of NCB Asset forfeiture as meant by UNCAC. This becomes the main obstacle because, without the law, the process of confiscation of assets becomes less effective and efficient. Therefore, the advice that can be given is the need to issue the Asset Depreciation Law, which applies the principles of NCB Asset Forfeiture to strengthen law enforcement against corruption and criminal acts.

The regulation and enforcement of the law on the application for objections to third-party assets seized by the state in criminal offenses of corruption have been regulated in the Law on the Elimination of Corruption Criminal Procedures and the Regulation of the Supreme Court No. 2 of 2022. A third party in good faith may submit an objection to a court for corruption or criminal acts no later than 2 months after the court's decision has been pronounced. However, with the existence of the Supreme Court Rules, the procedures and conditions for submitting objections have been clarified, providing legal certainty for third parties

in good faith. The advice that can be given is the need for wider socialization related to this Supreme Court Rule so that the public, especially third parties of good faith, better understands their rights and obligations in this context.

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