



Protection of Third Party Preferential Rights in the Confiscation of Corruption Crime Assets in Indonesia

Perlindungan Hak Preferensi Pihak Ketiga dalam Perampasan Aset Tindak Pidana Korupsi di Indonesia

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Abstract: Corruption in Indonesia is not only understood as a criminal act that harms state finances, but also as a violation of human rights, especially when assets resulting from corruption are confiscated but are found to be controlled by third parties acting in good faith. This study aims to analyze the meaning of legal regulations related to the protection of third-party preferential rights and to formulate an ideal regulatory concept for the future. Using a prescriptive-analytical normative juridical method, this study examines legislative approaches, case studies, and court decisions. The results show that the existing legal framework, including the PTPK Law and Supreme Court Regulation No. 2 of 2022, does not provide comprehensive guarantees for the rights of third parties. The case studies of Bank Jatim and PT Sritex reveal a legal vacuum in practice, where legitimate secured creditors remain vulnerable when assets are confiscated. This study concludes that without clear and synchronized regulations, asset seizure has the potential to create new injustices, undermine public trust, and disrupt legal certainty in economic activities. Therefore, the reconstruction of more adaptive and transparent regulations is an urgent need to balance the interests of the state in asset recovery and the protection of bona fide third parties.

Keywords: Asset Seizure; Third Parties; Preferential Rights; Corruption; Legal Certainty

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INTRODUCTION

Corruption in Indonesia is not only understood as a criminal act that harms state finances, but also as an act that has implications for human rights violations. When assets resulting from corruption are confiscated, new legal problems often arise if the assets are found to be controlled by third parties who are acting in good faith. This situation creates a dilemma between the state's interest in recovering financial losses and the protection of third-

party rights guaranteed in Article 28D of the 1945 Constitution (Andriawan, 2024, p. 13). This issue becomes even more complex considering that the subjects of law are not only humans, but also legal entities that are entitled to equal protection before the law, as per the principle of equality before the law (Lubis et al., 2025, p. 5390).

Previous academic studies have highlighted the problem of additional penalties in the form of asset confiscation in corruption cases. For example, research by Muammar and Meldandy (2022) emphasizes that compensation payments in corruption cases often cause conflicts with third parties who have legal rights to the confiscated assets (Muammar & Meldandy, 2022, p. 31). On the other hand, Rahmadhani Nurfitriana M. (2021), in a study titled "Asset Forfeiture of Corporations Committing Crimes in Relation to Money Laundering," analyzes the purpose of corporate asset forfeiture and its law enforcement. This study found that the enforcement of asset confiscation by judges is not appropriate if the assets are confiscated for the state, because these assets are essentially the rights of the victims who have suffered losses. This study concludes that additional penalties in the form of compensation payments are the ideal sanction for corporations that commit money laundering crimes, because the proceeds of crime should be used to compensate the victims (Nurfitriana M., 2021, p. 131).

Preferential rights are a principle that gives priority to secured creditors over other creditors. This is confirmed in Article 1 paragraph (2) and Article 27 of Law No. 42 of 1999 concerning Fiduciary Guarantees, which states that the fiduciary recipient has the right to be given priority in the repayment of debts from the proceeds of the execution of collateral (Ismayani et al., 2023, p. 17). In corruption cases, there is often a conflict between the state's right to seize assets derived from crime and the preferential rights of creditors. If the confiscated assets are collateral, the question arises: does the state have the right to take precedence over the secured creditors, or conversely, should the creditors be given priority? This theory of preferential rights is used to justify legal protection for third parties acting in good faith (Taufano & Silalahi, 2024, p. 11207).

Then, Enoki Ramon (2021), who focuses on "The Application of Calculating State Financial Losses in Corruption Crimes," highlights that corruption crimes are extraordinary crimes that harm the state and the people as victims. This study identifies a problem, namely that fines are ineffective because corruptors prefer to serve prison sentences instead, which means that state losses cannot be recovered (Ramon, 2021, p. 130). Previous research has focused more on asset forfeiture from the perspective of the state and criminal punishment, but has not provided a comprehensive analysis of the protection of the preferential rights of

third parties as legal subjects who are also potentially harmed. This gap gives rise to the novelty of this research, which is to formulate the concept of protecting the preferential rights of third parties in the practice of asset forfeiture in corruption cases.

The urgency of this research lies in its massive social and juridical consequences. Without clear regulations, the practice of asset forfeiture can actually create new injustices for bona fide third parties, such as banking institutions or creditors holding collateral rights. This has the potential to undermine public trust in the legal system and disrupt legal certainty in economic activities. From the perspective of *ius constituendum*, a more adaptive regulatory reconstruction is needed to balance the state's interest in recovering losses due to corruption with legal protection for third parties.

Based on this background, this study focuses on the following legal issues: (1) What is the meaning of the regulation on the protection of third-party preferential rights? (2) What is the ideal regulation on the protection of third-party preferential rights in the future? These questions are relevant to ensure that the asset forfeiture mechanism does not conflict with the principles of justice and the protection of third-party rights.

Legal certainty is an essential element in a state governed by the rule of law. Gustav Radbruch asserted that the law must be clear, consistent, and positive in order to serve as a guide for behavior (Fadli & Hadi, 2023, p. 43). In the context of asset seizure, the absence of clear regulations often creates uncertainty, both for law enforcement officials and for third parties. For example, prior to the enactment of Supreme Court Regulation (Perma) No. 2 of 2022, there was no clear legal mechanism for third parties to file objections to asset seizures (Agung Satryo Wibowo et al., 2025, p. 13). The theory of legal certainty helps explain the importance of a transparent legal framework, so that the rights of third parties can be protected and the public does not lose trust in the judicial system.

Thus, the three theories used – the theory of justice, the theory of preferential rights, and the theory of legal certainty – complement each other in providing a conceptual basis for this study. The theory of justice emphasizes the importance of balancing the interests of the state and the rights of third parties, the theory of preferential rights strengthens the legal position of creditors as parties with priority rights, while the theory of legal certainty ensures that the asset seizure mechanism must be carried out in accordance with clear and consistent rules. The integration of these three theories is expected to provide a comprehensive analytical framework and serve as a foundation for formulating a concept of protecting the rights of

third-party preferential rights in a more fair and certain manner in the practice of asset forfeiture in corruption cases.

The concept of justice is the main foundation in legal studies. Aristotle viewed justice as a general and specific virtue: general because all people are equal before the law (numerical equality), and specific because justice must be given in accordance with the rights and contributions of each party (proportional equality) (Hyronimus Rhiti, 2015, p. 242). In the context of the seizure of assets resulting from criminal acts of corruption, the question that arises is how justice is upheld when third parties acting in good faith, such as banks holding collateral, also lose their rights to the collateral. This situation creates a conflict between the state's interest in recovering financial losses and the civil rights of third parties. Therefore, the theory of justice provides a normative basis for assessing whether the asset confiscation mechanism truly realizes substantive justice for all parties, not just formal justice for the state.

Preferential rights are a principle that gives priority to secured creditors over other creditors. This is confirmed in Article 1 paragraph (2) and Article 27 of Law No. 42 of 1999 concerning Fiduciary Guarantees, which states that the fiduciary recipient has the right to be given priority in the repayment of debts from the proceeds of the execution of collateral (Ismayani et al., 2023, p. 17). In corruption cases, there is often a conflict between the state's right to seize assets derived from crime and the preferential rights of creditors. If the confiscated assets are collateral, the question arises: does the state have the right to take precedence over the secured creditors, or conversely, should the creditors be given priority? This theory of preferential rights is used to justify legal protection for third parties acting in good faith (Taufano & Silalahi, 2024, p. 11207).

This study uses a normative juridical approach, which is research that focuses on written legal norms and legal principles as objects of study. Normative research includes the study of legal principles, legal systematics, the level of legal synchronization, and legal comparisons (Bahder Johan Nasution, 2018, p. 86). The relevance of using this method is based on research issues that focus on protecting the preferential rights of third parties in the seizure of assets from corruption crimes. Because this issue stems from differences in the interpretation of legal norms, normative research is appropriate to be used to explore the meaning, consistency, and fairness of existing regulations.

In addition to being normative, this research also has a prescriptive analytical nature. This means that the research not only describes positive legal rules but also offers solutions to the legal problems found. Normative research aims to examine legal norms that exist in legislation, court decisions, and expert doctrines (Ali, 2021, p. 105). Thus, this research does

not stop at descriptive analysis but is directed at formulating the ideal concept of third-party preference rights protection in the future.

The objectives of this study are to analyze the meaning of the regulation of preferential rights for third parties and to formulate the ideal concept of the regulation of preferential rights protection in the confiscation of assets from corruption crimes in the future. Thus, this study is expected to contribute theoretically to the development of criminal and civil law, as well as practically to policymakers and law enforcement officials in formulating more equitable regulations.

RESULTS AND DISCUSSION

The enforcement of corruption asset forfeiture laws in Indonesia becomes increasingly complex when the assets to be seized are in the hands of third parties acting in good faith. As a recent example, the study "Objections of Third Parties Acting in Good Faith to Asset Forfeiture in Corruption Crimes" published in *Jurist-Diction* (2024) shows that although the Corruption Eradication Law (PTPK Law) has regulated the objection mechanism for third parties through Article 19 paragraph (2), there are limitations in the procedural norms and time frame for filing objections that are considered inconsistent with appeal or cassation decisions (Evander, 2024, p. 21). The addition of norms through PERMA No. 2 of 2022 aims to fill this void, but new issues have arisen regarding synchronization and legal certainty between the PTPK Law, PERMA, and court decisions in actual practice (Evander, 2024, p. 37).

Given the conflict between the state's interest in recovering losses and the legitimate rights of third parties, this study will further explore the normative foundations and applicable legal practices: first, the meaning and scope of third-party preference rights in the legal system and jurisprudence; second, how the procedures for objections by third parties acting in good faith are regulated (including the time frame and levels of submission) in legislation and court practice; third, where the regulatory shortcomings or uncertainties that need to be addressed lie. Thus, the discussion in the following subheadings will move from a general overview of preferential rights to specific procedural aspects and practical challenges.

Preferential Rights in the Indonesian Legal System: Foundations and General Concepts

Preferential rights are special legal positions granted to certain creditors so that they have priority in the repayment of their debts over other creditors. In the Indonesian legal system, this principle is reflected in the Civil Code through Articles 1131 and 1132 of the Civil Code, which stipulate that all of the debtor's assets are collateral for all creditors, but the proceeds from the auction of these assets can be divided proportionally unless there are valid

reasons to prioritize one creditor over another (Ali Murtadho, 2024, p. 207). In addition, guarantee institutions such as fiduciary provide additional protection for creditors who hold fiduciary collateral, because the fulfillment of debts on fiduciary objects will be prioritized in the event of default (Mega & Badriyah, 2024, p. 1232).

The concept of preferential rights is legally supported by the Fiduciary Law, namely Law No. 42 of 1999, which stipulates that fiduciary objects must be registered and that fiduciary holders have preferential rights over the proceeds from the execution of the collateralized property (Setiawan & Ismono, 2023, p. 321). However, in practice, there are serious challenges, such as unregistered fiduciary objects or the transfer of collateral objects prior to registration, which render such preferential rights legally ineffective (Carakata, 2018, p. 299).

The principle of *paritas creditorium* and the principle of *pari passu prorata parte* from the Civil Code are the general conceptual foundations for ensuring balance between creditors. "*Paritas creditorium*" means that parties who provide credit have the same rights to all of the debtor's assets as collateral, while "*pari passu prorata parte*" means that the distribution of the debtor's assets is carried out proportionally according to the amount of each creditor's debt, unless otherwise stipulated by law (Disemadi & Gomes, 2021, p. 129). These two principles are important for understanding the position of preferred creditors compared to concurrent creditors or separate creditors in conflicts of preference rights.

Although the legal basis for preferential rights is quite strong, the specificity of the seizure of assets related to criminal acts of corruption raises new issues that have not been widely analyzed: if the seized assets are subject to fiduciary guarantees, or if a third party in good faith has legal rights, how are the mechanisms for protecting and accommodating their objections accommodated in regulations and court decisions? This issue is a crossover between criminal law, civil law, and the protection of third-party rights, which shows that existing legal regulations need to be reviewed in greater depth so that the principles of substantive justice and legal certainty can be realized simultaneously.

The Politics of Asset Seizure and Third Party Protection

The legal politics of asset seizure in Indonesia is currently undergoing a significant transformation, especially after the strengthening of regulations such as the Corruption Eradication Law (PTPK) and additional implementing regulations such as PERMA No. 2 of 2022. Research on Objections by Third Parties in Good Faith to Asset Seizure in Corruption Crimes (Evander, 2024) states that PERMA 2/2022 intends to expand the right of objection for third parties, including in appeal and cassation decisions, in line with Article 19 paragraph (2)

of the PTPK Law (Evander, 2024, p. 37). However, there is a discrepancy between the norms of the law and its implementing regulations, which sometimes causes third parties to face legal obstacles in exercising their right to object.

In addition to formal regulations, legal politics also appear to involve public policy considerations in the Asset Seizure Bill. According to his opinion on antikorupsi.org, this bill is expected to be a powerful instrument for asset recovery, whereby misused assets must be returned to the state. However, the article also highlights that the mechanism for proving the status of assets and who holds them (including third parties) in the bill is still vague, leaving open the possibility of abuse or legal uncertainty (Zilmi Haridhi, 2023).

In judicial practice, studies on the seizure of assets from third parties acting in good faith show that objections from third parties are often submitted too late, or that the norms regarding the time frame and stages of submitting objections are not clearly understood by the parties concerned. Although the seizure of assets from third parties is sometimes carried out in accordance with regulations, the lack of regulations that detail the procedures for protection and compensation for third parties acting in good faith is a clear shortcoming (Putri, 2023, p. 102).

Legal policy in the context of asset confiscation and third-party protection must be able to bridge two major objectives: recovery of state losses and justice for third parties acting in good faith. Within the framework of justice, preferential rights, and legal certainty that has been discussed, ideal regulations must include a clear definition of third parties, easily accessible objection procedures, reasonable deadlines, and compensation mechanisms if third-party losses are proven. Without these elements, even if regulations exist, their implementation may still cause injustice, which would weaken public trust in the legal system.

Case Study of Bank Jatim and PT Sritex: Legal Vacuum in Practice

The Bank Jatim case shows that asset seizure in corruption cases not only targets the assets of the suspect, but also affects third parties or assets that may be used as collateral. For example, the Jakarta High Court has seized a plot of land worth more than Rp 50 billion in connection with the Bank Jatim fictitious credit case, which involved parties such as the owner of PT Indi Daya Group and the holder of collateral in the form of work orders and fictitious invoices (Nanda Perdana Putra, 2025). However, it is unclear how the rights of third parties who may have legitimate claims to the assets are accommodated in the seizure procedure.

In the case of PT Sritex, there is a clear manifestation of legal uncertainty in the protection of third parties. The Attorney General's Office confiscated 72 cars from Sritex's assets during the investigation of alleged corruption in credit (Triawati Prihatsari, 2025), while the bankruptcy curator stated that these assets had been included in the bankruptcy estate and were intended for the payment of creditors' obligations, including the rights of former employees (Immanuel Citra Senjaya & Edhy Susilo, 2025). Former employees feel aggrieved because the seizure has hampered the auction of assets that had been scheduled to fulfill post-layoff obligations.

A legal vacuum has arisen, mainly due to weak procedural regulations regarding third-party claims: for example, when third parties can file objections, what standards of proof are used, and how payments are prioritized if assets have been auctioned or are in the process of being auctioned. In the Bank Jatim case, there is no adequate public information on whether the collateral used as grounds for fictitious credit has been taken into account, so that third parties providing collateral do not immediately lose their rights without a clear submission or objection process.

Both cases illustrate that current regulations are still inadequate in fully protecting the rights of third parties when assets are seized in corruption cases. Although seizure efforts and legal proceedings are underway, substantive justice for third parties, including their right to object, restore their rights, and receive compensation if their rights are violated, is still not being given sufficient attention. This shows that, in addition to legal norms, implementation practices and transparency are urgently needed to ensure that the protection of third-party preferential rights is not merely theoretical but a reality on the ground.

Towards Ideal Protection of Preferential Rights

Related research shows that current regulations, such as the PTPK Law and PERMA No. 2 of 2022 have provided greater scope for third parties acting in good faith to file objections to decisions to seize property that does not belong to the defendant. For example, Evander's (2024) research argues that PERMA 2/2022 clarifies the objection mechanism and expands its scope, so that objections can be filed not only at the first level, but also at the appeal and cassation levels. However, there is still a discrepancy between Article 19 paragraph (2) of the PTPK Law and its implementing regulations, for example, in the procedural scope and definition of third parties and good faith, which in practice causes legal uncertainty (Evander, 2024, p. 37).

From the perspective of substantive justice and legal certainty, ideally, the protection of third-party preferential rights should not only be related to norms or regulations but also to

the certainty of implementation in court. Research shows that asset seizure without sufficiently detailed regulations triggers the potential for violations of property rights protected by human rights (Herman & Rusman, 2025, p. 63). Therefore, procedural aspects such as the deadline for filing objections, standards of proof, and compensation mechanisms if the rights of third parties are proven to have been harmed must be clearly regulated so that the law does not only become a repressive instrument for the state, but also an instrument of protection for individuals acting in good faith.

Taking into account the gap between regulation and practice found in previous studies, this research needs to recommend several key elements for ideal regulation: a complete and clear definition of third parties; transparent procedural provisions; integration between the PTPK Law and implementing regulations (PERMA) to avoid conflicts of norms; and restitution or compensation mechanisms for third parties if their rights are proven to have been harmed. Thus, ideal regulations will be able to guarantee legal certainty and substantive justice simultaneously, so that asset forfeiture truly becomes an effective tool for eradicating corruption without harming innocent third parties.

CONCLUSION

This study confirms that the practice of asset forfeiture for corruption crimes in Indonesia still faces serious dilemmas when it comes to the rights of third parties acting in good faith. The analysis shows that there is a discrepancy between the s of the applicable regulations, namely the PTPK Law and PERMA No. 2 of 2022, and judicial practice, which creates legal uncertainty and has the potential to violate the constitutional rights of third parties. The protection of the preferential rights of third parties as legitimate legal subjects is an aspect that has been largely overlooked by previous studies, which have placed greater emphasis on the state's interest in recovering losses. This study finds that without clear regulations and effective objection mechanisms, the preferential rights of secured creditors may be neglected, giving rise to new injustices in the legal system. The massive social and juridical consequences: on the one hand, the state needs to optimize asset recovery as an instrument for eradicating corruption, but on the other hand, the law must guarantee the protection of the rights of third parties acting in good faith so that public trust in the judicial system is maintained. Therefore, the results of this study emphasize the importance of reconstructing regulations that are more adaptive, transparent, and consistent to ensure that asset seizure mechanisms are truly in line with the principles of substantive justice and legal certainty.

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