



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

Editorial Office: Faculty of Law, Sriwijaya University
Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.
Phone: +62711-580063 Fax: +62711-581179
E-mail: sriwijalayawreview@unsri.ac.id| sriwijalayawreview@gmail.com
Website: <http://journal.fh.unsri.ac.id/index.php/sriwijalayawreview>

Criminal Legal Protection for *Bona Fide* Third Parties Over Assets in Corruption and Money Laundering Cases

Arief Patramijaya^{a*}

^{a*} Faculty of Law, Krisnadwipayana University, Indonesia. Corresponding author Arief Patramijaya, e-mail: patra.m.zen@gmail.com

Article	Abstract
<p>Keywords: Assets of <i>Bona Fide</i> Third Parties; Criminal Law in Indonesia; Corruption; Human Rights; Money Laundering.</p> <p>Article History Received: Sep 25, 2022; Reviewed: Jan 23, 2024; Accepted: Jan 30, 2024; Published: Jan 31, 2024.</p> <p>DOI: 10.28946/slrev.Vol8.Iss 1.2159.pp171-182</p>	<p>Criminal law in Indonesia has yet to guarantee justice and human rights of <i>bona fide</i> (good faith) third parties in protecting their confiscated assets in corruption and money laundering cases. Criminal procedural law is inadequate in providing assessments for <i>bona fide</i> third parties. Therefore, Economics and Anthropology are needed in the investigation stage up to the evidentiary stage during trials. In this research, the main problems are formulated as follows: (1) what is the concept, definition, and scope of the assets of third parties in good faith in the laws and regulations in Indonesia? (2) how is the application of legal provisions regarding the protection of third parties with good intentions in corruption and money laundering? (3) what is the ideal role of the Public Prosecutor and Judge in protecting the property of a third party with good intentions in the criminal justice system? Normative law research conducted in this article showed that (1) the concept and understanding of <i>bona fide</i> third parties in civil law can be adopted in criminal law; (2) the application of legal protection to <i>bona fide</i> third parties over their assets in corruption and money laundering cases still depends on the moral goodness of law enforcement officials; and (3) investigators, prosecutors, and judges play an important role in protecting the human rights of <i>bona fide</i> third parties in corruption and money laundering cases.</p>

©2024; This is an Open Access Research distributed under the term of the Creative Commons Attribution License (<https://creativecommons.org/licenses/by/4.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works are properly cited.

INTRODUCTION

The normative space for protecting third parties' assets in good faith in corruption cases is very limited; the verdict will be passed at that time. Article 19 paragraph (1) Law No. 20/2001 on Anti-Corruption Act stated, "A court decision regarding the confiscation of property not belonging to the defendant shall not be passed if the rights of a *bona fide* third parties will be harmed." However, in 12 criminal cases, the assets of third parties have been confiscated since the investigation stage.

Each person's right to property (wealth/assets) is classified as one of the fundamental rights in the tradition of Western Legal Thought.¹ The right to personal property is one of the basic freedoms of citizens.² In Indonesia, the recognition and guarantee of a person's right to property are stated in the highest law (the Constitution), regulated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, in cases of corruption and money laundering, police or prosecutor often confiscate assets belonging to third parties that harm their human rights, as happened in 13 criminal cases, which will be described later.

Unfortunately, studies that have been conducted have yet to pay attention to protecting third parties concerning their assets in the criminal due process. In the context of due process of law, Marjodono Reksodiputro expressed that the due process of law is mistakenly linked only to the application of criminal procedural law in proceedings against suspects and defendants.³ Third parties whose assets have been confiscated should have been able to prove their assets were obtained in good faith. Eradicating corruption and money laundering should and is expected to receive support from the public. However, the case's investigation process, prosecution, and examination should be conducted without violating human rights. Legal protection should apply to the suspects, defendants, or convicts and the related third parties and/or parties concerned. Research that has been written pays more attention to the roles and functions of law enforcement agencies,⁴ the authority of law enforcers,⁵ the evidentiary issue,⁶ the perpetrator's punishment,⁷ as well as research on the issue of returning assets in criminal cases.⁸

Therefore, this research aims to: 1. gain clarity on the concept, definition, and scope of third parties and assets in the laws and regulations in Indonesia; 2. know the application of legal protection for bona fide third parties in corruption and money laundering cases; and 3. formulate the ideal roles of Investigators, Prosecutors, and Judges in providing protection for bona fide third parties of their assets in corruption and money laundering cases.

The protection of third parties' human rights over their assets in the criminal justice system in Indonesia is not as comprehensive as the regulations imposed on criminals and victims.⁹ In the investigation stage, the Investigator's subjective assessment largely determines the confiscation of third-party parties' assets; likewise, in the prosecution stage, the status of

¹ Randy E. Barnett, *The Structure of Liberty. Justice and the Rule of Law* (United Kingdom: Oxford University of Press., 1998).

² John Rawls, *A Theory of Justice. Revised Edition* (Massachusetts (US): Belknap Press of Harvard University of Press., 1999).

³ Mardjono Reksodiputro, "Human Rights in the Criminal Justice System," in *Compilation of Essays, Third Book*, (Jakarta: Center for Justice and Legal Services, University of Indonesia, 2007).

⁴ Eddy Rifai, "Analysis of the Role of the Attorney General's Office in Eradicating Corruption. Studies on the Integral Approach of Criminal Policies to Eradicate Corruption in the Legal Territory of the Lampung High Court," (Faculty of Law, University of Indonesia, 2002).

⁵ Indah Harlina, "Position and Authority of the Corruption Eradication Commission in Law Enforcement.," 2008.

⁶ Akil Mochtar, "Application of Reversal of the Load of Proof in Eradicating Corruption in Indonesia," *Faculty of Law. Padjajaran University*, 2012.

⁷ Hendar Soetarna, "Application of Conditional Crime in Corruption Crime," *Faculty of Law, Airlangga University*, 2004.

⁸ Hotma P.D Sitoempoel, "Implementation of Assets Recovery in Corruption Crime Cases According to Indonesian Criminal and Civil Law," *Faculty of Law, Gadjah Mada University*, 2016.

⁹ Andi Hamzah, *Legal Dictionary* (Jakarta: Ghalia, 1986).

evidence belonging to third parties in court decisions is determined. Investigators, prosecutors, and judges have full authority to assess whether the parties' assets are related and directly connected with corruption and money laundering as regulated in Article 29 of the Indonesian Criminal Procedural Law.

The recognition of private ownership, including wealth (property), is one of the central themes of justice¹⁰ (Rawls, 1999). Justice is one of the main values that underlie human rights, apart from equality and human dignity.¹¹ In essence, human rights are a defence for one's freedom from cruelty and the use of oppressive power.¹² Due process of law does not allow violating a legal provision under the pretext of enforcing other parts of the law.¹³ The eradication of corruption and money laundering is not allowed to inflict injustice and human rights violations.

According to Gustav Radbruch, anyone may be tempted to presume justice only as of the form in which moral goodness arises.¹⁴ Therefore, legal regulations are needed so that any bona fide third party is able to enjoy justice and human rights, including the right to private property. The state must respect, protect, and fulfil the human rights of its citizens,¹⁵ as a form of rule of law.¹⁶ Law enforcement officials must have a valid assessment basis before confiscating and determining that third-party assets are confiscated for the state. An economic approach can be used in criminal law,¹⁷ to assess the good faith of third parties. Likewise, knowledge about physiognomy and gesture analysis in the evidentiary process¹⁸ can be used by judges to prove the good faith of third parties in trials of corruption and money laundering cases.

RESEARCH METHODS

The form of normative legal research chosen in this study is an effort to offer an alternative juridical solution to the protection of any third parties with good faith in criminal cases. This research has the character of discovery (reform-oriented research): research that intensively evaluates the adequacy of existing rules and recommends reforms to the desired rules.¹⁹ The form of this research is interdisciplinary research: Law and Economics. The types of data used in this research are library data, data in documents, and literature material.²⁰ The data collection tool used in this research is a literature study, where data is collected by searching and reviewing secondary data. The data was collected through the bibliography study method,²¹ which is a review of written information from legislation and 12 judges' verdicts. In terms of

¹⁰ Rawls, *A Theory of Justice. Revised Edition*.

¹¹ Eva Brems, *Human Rights: Universality and Diversity* (Oxford (UK): Oxford University Press, 2001).

¹² P.H.P.H.M.C. van Kempen, *Criminal Law and Human Rights* (Surrey & Burlington (UK): Ashgate Publishing Limited, 2014).

¹³ Yahya Harahap (2003), p. 95.

¹⁴ Gustav Radbruch in Kurt Wilk (Translated) (1950), p. 73.

¹⁵ Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers, 2005).

¹⁶ Schmitt Carl, Hans Kelsen, and Hermann Heller, *Legality & Legitimacy* (Paper-Work Collection. Without publisher., 1974).

¹⁷ Richard A. Posner, *The Cost of Accidents: A Legal and Economic Analysis* (University of Chicago Law Review, 1970).

¹⁸ Ika Ariyati and Suwarjo, *Advances in Social Science, Education and Humanities Research, 3rd International Conference on Learning Innovation and Quality Education*, 2019.

¹⁹ Peter Mahmud Marzuki, *Legal Research, 2nd Edition* (Jakarta: Kencana Prenada Media Group, 2008).

²⁰ Rianto Adi, *Social and Legal Research Methodology* (Jakarta: Granit, 2010).

²¹ Abdulkadir Muhammad, *Law and Legal Research. 1st Printing* (Bandung: Citra Aditya Abadi Bakti, 2011).

form, this study is prescriptive, using research to obtain suggestions and solutions to the study's problem.

ANALYSIS AND DISCUSSION

In Indonesian laws and regulations, "third parties" are referred to in various terms: a third party with interest, another party, a party with family or other relationship, the aggrieved party, the informed party, the most entitled party, and other related parties. These terms are used to refer to a part of a person other than the suspect or defendant. In the realm of criminal law, the Anti-Corruption Act in Indonesia has introduced the term "bona fide third parties", similar to the provisions in Article 31 of the United Nations Anti-Corruption Convention, 2003.

The concept of "bona fide third parties" is better known in civil law. The definition of good faith in civil law. In civil law systems, "bona fide third parties" is a well-established principle closely associated with acting in good faith. This concept is crucial in various legal contexts, such as property transactions and contract law. Good faith, or "bona fide," in civil law, signifies honesty, fairness, and a sincere intention to execute an action or transaction devoid of intent to defraud. It refers to individuals who acquire rights or enter into contractual relationships without awareness of existing disputes or claims that could adversely affect their interests. A bona fide third party is characterized by their honest belief in the legitimacy of their actions, supported by reasonable grounds for such a belief. They are typically unaware of any wrongful elements in the transaction they are involved in. This principle also underscores the importance of fair dealing and reasonable commercial standards in business transactions. The significance of protecting bona fide third parties in civil law cannot be overstated, as it underpins confidence and stability in commercial dealings and property rights. It ensures that individuals who unknowingly and without malintent engage in transactions are safeguarded from future claims or disputes arising from factors beyond their control or knowledge. This legal concept is pivotal in maintaining trust and dependability in legal and commercial spheres. The term "bona fide third parties" contains two dimensions: 1. Subjective dimension, namely good faith that leads to the meaning of honesty, this aspect of good faith focuses on the individual's internal state of mind and intentions. It relates to the concept of honesty, referring to the genuine belief or conviction held by a person regarding the legitimacy and lawfulness of their actions or involvement in a transaction. This dimension assesses whether the individual believed they acted correctly without intent to deceive or defraud. It is about the sincerity of the individual's beliefs and intentions during the action or transaction, and; 2. The objective dimension, in which good faith is given the meaning of rationality and appropriateness or justice.²² the objective dimension of good faith adds a layer of external evaluation to the concept. It is not solely about what the individual believed or intended but also about whether their belief or intention was reasonable and justifiable under the given circumstances. This dimension involves a standard of rationality and appropriateness, where the individual's actions are assessed against what a reasonable person would have believed or done in the same situation. It is about the fairness and justness of the actions when viewed from an external, more neutral standpoint. In legal practice, both these dimensions are crucial for determining the

²² Ridwan Khairandy, *Good Faith in Freedom of Contract* (Jakarta: Program Pasca Sarjana Fakultas Hukum Universitas Indonesia, 2014).

status of an individual as a bona fide third party. The subjective dimension ensures that the individual's integrity and honesty are considered. In contrast, the objective dimension ensures that these personal beliefs and intentions are aligned with societal standards of reasonableness and justice. This dual approach helps create a balanced and fair assessment of an individual's actions, particularly when legal rights and obligations are determined based on the status of being a bona fide third party.

The principles of good faith are essentially used to avoid acts of bad faith and dishonesty.²³ The opposite of a bona fide third party is a third party who is indeed involved and/or participating in a crime, including corruption. Meanwhile, in the criminal act of money laundering, third parties are involved in the layering process, namely the process of money launderers reducing the traces of the origin of the money or assets obtained from crimes.²⁴ The opposite of bona fide third parties are those individuals or entities knowingly involved or participating in criminal activities, such as corruption. These parties act with full awareness and often with the intent to facilitate or benefit from illicit acts. Their involvement is characterized by a deliberate disregard for legal and ethical standards, starkly contrasting to bona fide third parties who act in good faith without knowledge of underlying illegalities.

In money laundering, third parties can play a critical role in layering. Layering is a key stage in money laundering where the origin of illegally obtained money or assets is obscured. During this process, money launderers engage in complex financial transactions designed to hide the illicit origin of funds. This can involve moving money through various accounts, investing in different assets, or conducting financial transactions across multiple jurisdictions. The involvement of third parties in this process can be either as unknowing participants, who are bona fide and unaware of the criminal nature of the money, or as complicit parties, who knowingly assist in the laundering process. The distinction between these two types of third parties is critical in legal assessments and in applying anti-money laundering regulations and enforcement actions. While bona fide third parties are protected by their good faith status, those knowingly involved in money laundering activities face legal repercussions for their complicity in the crime.

About forced enforcement in corruption and money laundering cases, third parties can carry out several legal measures. R. Wiyono thinks that in corruption cases, parties in good faith are third parties who do not realize that receiving goods from the defendant means causing harm to others.²⁵ The legal protection for bona fide third parties in Indonesia, particularly in the context of corruption and money laundering, is complex. These third parties are defined as entities (individuals or institutions) separate from the suspects or defendants and the investigators or prosecutors. Legal protection encompasses the rights to property and assets, including tangible and intangible objects. The procedural law specifies different burdens of proof for third parties in civil, criminal, corruption, and money laundering cases. In corruption and money laundering cases, investigators, prosecutors, and judges are not mandated to base their judgments on forensic financial examinations or to provide detailed legal reasons in indictments or verdicts for confiscating assets. Returning assets to bona fide third parties can be

²³ Charles Fried, *Contract as Promise* (Cambridge (US): Harvard University Press, 1981).

²⁴ Yunus Husein, *The Land of Money Launderers* (Jakarta: Pustaka Juanda Tigelima, 2008).

²⁵ R. Wiyono (2005), p. 137.

lengthy and usually done through court decisions. There is a call for a more human rights-centered approach in handling the rights of bona fide third parties, ensuring fair treatment during legal proceedings.

The bona fide third parties in this research are given the meaning and scope of all parties (persons and institutions) apart from the suspect (defendant) and investigators (prosecutors). Meanwhile, according to statutory regulations, assets include all movable or immovable objects, both tangible and intangible, obtained directly or indirectly. The property of a bona fide third party is distinguished from the meaning of tainted or dirty property because it is related to a criminal act and is not improper ownership of assets due to a crime.²⁶

The right to assets is regulated in international and regional instruments, as shown in Table 1. In Indonesia, the right to wealth is included in the Indonesian Constitution and Article 29 paragraph (1) of Law No. 39/1999 on Human Rights, which includes the right to hold property.

Table 1: Right to Property in International and Regional Instruments of Human Rights

International and Regional Instruments	Article
<i>Universal Declaration of Human Rights</i>	Article 17
<i>African Charter on Human and People's Rights</i>	Article 14
<i>American Declaration of the Rights and Duties of Man</i>	Article 23
<i>American Convention on Human Rights</i>	Article 21
<i>European Convention on Human Rights</i>	Protocol 1
<i>ASEAN Human Rights Declaration</i>	Article 17

There is yet a uniformity in assessing the good faith of third parties in criminal law. The applicable procedural law only regulates the evidentiary system, as shown in Table 2 below. The evidentiary system is an entirety of the legal elements of evidentiary that are related and connected and influence each other in a whole or unanimity.²⁷

Table 2 : Good Faith Evidentiary System of a Third-parties

Civil Case	The third parties are obliged to prove special events that generate rights (Article 163 <i>Herziene Indonesisch Reglement</i> and Article 1865 of the Civil Code).
Criminal Case	The third parties are not burdened with proof (Article 66 of Criminal Procedural Law).
Corruption Case	The prosecutor must prove that the evidence belonging to the third parties is not related to the criminal act committed by the Defendant (Article 39 paragraph (1) of the Criminal Procedural Law concerning items subject to confiscation). On the other hand, the third parties must prove that the assets confiscated during the investigation are not dirty or tainted.
Money Laundering Case	The third party is obliged to prove that the confiscated assets are unrelated to the crime committed by the defendant. A pure, reversed burden of proof applies. (Article 77 and Article 78 of Law No. 8/2020 on Money Laundering Act).

Criminal law in Indonesia distinguishes the confiscation of goods (assets) into two types: 1) Confiscation of goods as (with the status of) evidence in a verdict which is declared confiscated for the state, to be destroyed or to be damaged until it can no longer be used, as regulated in Article 46 paragraph (2) of the Criminal Procedural Law; and 2) Confiscation of goods (assets) as an additional form of punishment, as regulated in Article 10 of the Criminal Procedural Law. The provisions for confiscation of certain goods are basic provisions that aim to return the assets of the crime.

²⁶ Husein, *The Land of Money Launderers*.

²⁷ Martiman Prodjohamidjojo, *Application of Reversed Evidence in Corruption Offenses* (Bandung: Mandar Maju, 2001).

The enforcement of legal protection for bona fide third parties' faith over their assets in corruption and money laundering cases. Investigators, prosecutors, and judges are not obliged to base their judgements on the results of forensic financial examinations. Legal considerations and reasonings why assets are confiscated are not obliged to be described in the indictment. Furthermore, no provision obliges the prosecutor to describe the reasons and the basis for claiming the assets of third parties to be confiscated by the state in a warrant. In the verdict, the judge is also not obliged to elaborate on the legal considerations as to why the assets of a third party are confiscated for the state or otherwise returned to the entitled party. During a trial examination, third parties whose assets have been confiscated are not obliged to be summoned to provide a statement. Giving testimony under oath before the court is very important to evaluate the good faith of the third parties. In this context, public prosecutors, lawyers, and judges can use physiognomy knowledge and gesture analysis to assess the statements of the third parties who testify in trials.²⁸

During a trial, particularly in cases where assets have been confiscated from third parties, the legal procedures surrounding the involvement of these third parties can vary based on jurisdiction and the case's specific circumstances. In some legal systems, third parties whose assets have been seized may not be required to be summoned to provide a statement in court. However, their testimony can be crucial in determining whether they acted in good faith, especially if there is a dispute over the legality of the asset seizure. The testimony of third parties under oath is critical to evaluating their good faith. When an individual testifies under oath, they are legally and morally obligated to tell the truth. The credibility of their testimony can significantly influence the court's decision, particularly regarding the legitimacy of their ownership of the assets in question and their potential involvement or non-involvement in the underlying criminal activities.

In this context, the roles of public prosecutors, defence lawyers, and judges become essential in assessing the veracity and relevance of the statements made by these third parties. While legal professionals are not typically trained in physiognomy (the assessment of a person's character or personality from their outer appearance, particularly the face) or gesture analysis in a formal sense, they do rely on their experience, intuition, and observational skills to gauge the credibility of witnesses. This includes paying attention to the testimony's consistency, the witness's demeanour, non-verbal cues, and the overall plausibility of their statements. It is important to note that while non-verbal cues and behaviour can provide insights during a trial, they are subjective and can be open to interpretation. Therefore, these observations are usually considered alongside the factual evidence and the broader context of the case. The legal system strongly emphasises objective evidence, and while the personal assessments of prosecutors, lawyers, and judges can inform their understanding of a case, their decisions must ultimately be grounded in the law and the evidence presented. The testimony of third parties in trials, especially in cases involving asset confiscation, is vital in establishing good faith. While legal professionals may use their skills in observing behaviour and non-verbal cues to assess testimonies, their judgments are primarily based on the case's legal merits, the evidence presented, and the overall adherence to legal principles and procedures. This is

²⁸ Husein, *The Land of Money Launderers*.

due to, in essence, criminal justice is to examine and decide whether the defendant is guilty or not guilty of committing a crime,²⁹ as regulated in Article 183 of the Criminal Procedural Law.

Table 3: *Third parties whose Assets are Returned in Corruption and Money Laundering Cases based on Court Decisions*

Court Decisions	Third-parties and Confiscated Assets	Duration until Cassation
Decision of the Corruption Court at Central Jakarta District Court Number 55 / PID.SUS / TPK / 2014 / PN.JKT.PST dated 24 September 2013 jo. DKI Jakarta High Court Decision No. 74 / PID / TPK / 2015 / PT. DKI dated February 4, 2015 jo. Decision of the Supreme Court of the Republic of Indonesia No. 1261 K / Pid.Sus / 2015 dated 8 June 2015, the name of the Defendant Anas Urbaningrum.	1 one car belonged to Martinus; savings belonged to Nurachmad Rusdam; and land belonging to Dina Zad	24 September 2013 until 8 June 2015
Decision of the Corruption Court at Bandung District Court No. 126 / Pid.Sus / TPK / 2014 / PN.Bdg dated 15 April 2015 jo. Bandung High Court Decision Number 17 / TIPIKOR / 2015 / PT.BDG dated 9 July 2015 jo. Decision of the Supreme Court of the Republic of Indonesia Number 2864 K / Pid.Sus / 2015 dated January 13, 2016 on behalf of the Defendants Ade Swara and Nur Latifah.	Among other things: Ali Hamidi's original check; as well as a number of documents belonging to Ida Farida Sulistianti's business license and land ownership	15 April 2015 until 13 January 2016
Decision of the Corruption Court at Central Jakarta District Court No. 12 / PID.SUS / TPK / 2015 / PN.JKT.PST dated 20 April 2015 jo. Decision Number 26 / PID / TPK / 2015 / PT.DKI dated 25 August 2015 jo. Decision of the Supreme Court of the Republic of Indonesia Number 2707 K / PID.SUS / 2015 dated February 2, 2016, on behalf of the Defendant Antonius Bambang Djatmiko.	Cash amounting to Rp. 200,000,000, Rp. 100,000, Rp. 60,000,000 and Rp 50,000,000 and Rp. 350,000,000 and Rp. 525,000,000 confiscated from H. Ahmad Zaini; and cash Rp. 100,000,000 confiscated from I Nyoman Ngurah Widiyatna.	20 April 2015 until 2 February 2016
Decision of the Corruption Court at Pekanbaru District Court Number: 09 / Pid.Sus-TPK / 2015 / PN.Pbr dated 18 June 2015 jo. Decision of the Supreme Court of the Republic of Indonesia Number 2169 K / PID.SUS / 2015, dated February 17, 2016, on behalf of the Defendant Niwen Khairiah binti Imam Muhtadin.	4 plots of land and shop buildings returned to Unang Prasetyo Hudianto	18 Juni 2015 s/d 17 Februari 2016
Decision of the Corruption Court at Makassar Court Number 22 / Pid.B / 2009 / PN.MKS dated October 6, 2011 jo. Makassar High Court Decision Number 06 / PID.SUS / KOR / 2013 / PT.MKS dated February 21, 2013 jo. Supreme Court of the Republic of Indonesia Number 932 K / Pid.Sus / 2014 dated April 13, 2015 on behalf of 1. Defendants H. Tajang HS and 2. Basri Adbah alias Basri AD.	1 (one) Suzuki Baleno car was returned to Usman Dg. Ngalle	18 June 2015 until 17 February 2016
Decision of the Corruption Court at Semarang District Court No. 75 / Pid.Sus / 2012 / PN.TIP.SMG dated 03 January 2013 jo. Semarang High Court Decision No. 43 / PID / SUS / 2013 / PT.TPK.SMG dated 4 July 2013 jo. Decision of the Supreme Court of the Republic of Indonesia No 1957 K / Pid.Sus / 2014 dated 9 October 2015 on behalf of the Defendant H.M. Syafrudin Huna M.Si bin H. Umar Naim.	Each cash: Rp. 115,630,000; in the amount of Rp 111,894,500; amounting to Rp. 15,000,000, and in the amount of Rp. 5,000,000 - returned to the CQ state treasury of the Pekalongan Regency Government	06 Oktober 2011 s/d 13 April 2015
Decision of the Corruption Court at Tais District Court No.	1 (one) Landrover / Hartop car	6 October 2011 until 13 April 2015
		03 Januari 2013 s/d tanggal 9 Oktober 2015
		3 January 2013 until 9 October 2015
		25 Oktober

²⁹ Ariyati and Suwarjo, *Advances in Social Science, Education and Humanities Research, 3rd International Conference on Learning Innovation and Quality Education*.

<p>29 / Pid.B / 2011 / PN. This dated 25 October 2011 jo. Bengkulu High Court Decision Number 01 / PID.TIPIKOR / 2012 / PT.Bkl. dated February 21, 2012 jo. Decision of the Supreme Court of the Republic of Indonesia Number 2237 K / PID.SUS / 2013, dated April 28, 2014 on behalf of the defendant Lisdiarto bin Sasmito. Decision of the Corruption Court at Central Jakarta District Court Number 35 / PID.B / TPK / 2012 / PN.JKT.PST dated 09 November 2012 jo. Jakarta High Court Decision Number: 02 / PUD / TPK / 2013 / PT.DKI, dated 28 March 2013 jo. Decision of the Supreme Court of the Republic of Indonesia No. 1540 K / Pid.Sus / 2013, dated 09 October 2013 jo. Decision of the Supreme Court of the Republic of Indonesia Number 14 PK / PID.SUS / 2016 dated December 15, 2016 on behalf of the Defendant Dhana Widyaatmika.</p>	<p>and Rp. 13,600,000 at the first level were decided to be returned to the Mulya Jaya Association of Farmers Groups (Gapoktan). The land and building properties were returned to Dian Anggraeni</p>	<p>2011 jo. 28 April 2014 25 October 2011 until 28 April 2014 09 Nopember 2012 s/d 15 Desember 2016 9 November until 15 December 2016</p>
<p>Pasir Pangaraian District Court Number: 100 / Pid.B / 2011 / PN.PSP dated February 9, 2012 jo. Pekanbaru High Court Decision Number: 50 / PID.SUS / 2012 / PTR, dated 25 June 2012 jo. Decision of the Supreme Court of the Republic of Indonesia No. 2244 K / PID.SUS / 2013, dated April 7, 2014 on behalf of the Defendant Suhartono Als. Oto Bin Rifa'i Musa.</p>	<p>Cash amounting to Rp. 200,000,000, - (two hundred million rupiah); Returned to the Mesjid Syukur Muara Rumbai Market</p>	<p>09 Februari 2012 s/d 07 April 2014 9 February 2012 until 7 April 2014</p>
<p>South Jakarta District Court Decision No. 912 / Pid.Sus / 2015 / PN.Jkt.Sel dated 23 December 2015 jo. Jakarta High Court Decision Number: 17 / PID / 2016 / PT.DKI, dated February 16, 2016 jo. Decision of the Supreme Court of the Republic of Indonesia Number 1037 K / PID.SUS / 2016, dated 27 June 2016 on behalf of the Defendant Christopher Andreas Lie.</p>	<p>1 (one) unit of Nissan car returned to Ellya; cash amounting to Rp. 6,350,211,788, -; Rp. 7,085,100, -; Rp. 1,216,675,130.78 were handed over to the victims through Drs. Gunawan Prantoto.</p>	<p>23 December 2015 until 27 June 2016</p>
<p>The decision of the Corruption Court at Central Jakarta District Court Number: 38 / PID.SUS / TPK / 2013 / PN.JKT.PST dated December 5, 2013 jo. Jakarta High Court Decision Number: 14 / PID / TPK / PT.DKI., Dated April 16, 2014 jo. Decision of the Supreme Court of the Republic of Indonesia, dated 15 September 2014 on behalf of the Defendant Luthfi Hasan Ishaq.</p>	<p>A house under the name of the defendant, which has been pledged as collateral at Bank Muamalat, Kalimas Bekasi Branch and Bank BCA Subang Branch, West Java.</p>	<p>5 December 2013 until 15 September 2014</p>
<p>Decision of the Corruption Court at Central Jakarta District Court Number: 39 / Pid.Sus / TPK / 2013 / PN.JKT.PST, dated November 4, 2013 jo. Jakarta High Court No. 10 / PID / TPK / 2014.PT.DKI dated 19 March 2014 jo. Supreme Court of the Republic of Indonesia No. 1148 K / Pid.Sus / 2014, dated 17 September 2014, on behalf of Ahmad Fathanah.</p>	<p>1 (one) unit of Mercedes-Benz C200 car purchased in installments to PT Mitsui Leasing; and 1 (one) unit of a Toyota Avanza car and 1 (one) wedding ring valued at gold with 7 diamond eyes belonging to Sefti Sanustika.</p>	<p>4 November 2013 until 17 September 2014</p>

Source: *Processed from 13 court decisions in corruption and money laundering cases from 2011 to 2016.*

Those two types of plunder were legally different and brought different consequences towards the third parties. If a third party's confiscated goods were declared as an additional punishment (*verbeudverklaring can Bepaalde Voorwerpen*) against the defendant, that means the goods belong to the defendant, wholly or partly obtained from the crime.

The interest and protection of third parties has yet to be regulated comprehensively in the Criminal Law, both formal and material, that is, a form of special law. Generally, law is intended to protect people against any violation of their rights, while criminal law was

established to "rob" those rights "in certain circumstances."³⁰ Bona fide third parties have to undergo due process of law for a long period until their goods are returned to them through a court decision.

Through the utilization of the human rights approach,³¹ it can be stated that the ideal role of Investigators, Prosecutors, and Judges is to provide honour, protection, and fulfilment of the right to bona fide third parties. This can be done if the existing authority of law enforcers is utilized by conducting examinations against third parties fairly during due process against the suspect or defendant of corruption and money laundering.

In the verdict of corruption and money laundering cases under the name of Anas Urbaningrum, it can be stated that the Panel of Cassation Judges has realized substantive justice and human rights of third parties in good faith. In popular language, substantive justice means that persons have received what they are "due", meaning that the "truth" has been discovered and the "correct" result has occurred.³² In this verdict, the Panel of Judges at the cassation level decided that the land area of + 7.670 m² located at Jl. Panjaitan Mantijeron Yogyakarta confiscated by the Investigator was declared confiscated for the state, but allowing for Yayasan Al Maksum Pondok Pesantren Krapyak Yogyakarta (as a third-party in good faith) to continue managing and utilizing the large plot of land in order to maintain social, educational, religious functions and public interests.

The role of investigators, prosecutors and judges is to realize what is called "substantive justice", which includes "the correct application of the law and conformity with the relevant facts."³³ In the realm of criminal law, the roles of investigators, prosecutors, and judges are intricately linked to the pursuit of what is known as "substantive justice." This form of justice is centred around the correct application of the law, aligned with the relevant facts of each case. Investigators are tasked with the initial and crucial role of gathering facts and evidence, ensuring that their investigation is thorough, unbiased, and adheres to legal standards. The integrity of their work is fundamental, as it forms the foundation upon which the legal process is built. Prosecutors then take the baton, assessing the evidence gathered to determine its sufficiency for legal proceedings. Their responsibility transcends merely securing convictions; they are the torchbearers of justice, tasked with weighing evidence impartially and upholding the principles of fairness.

Finally, judges occupy a pivotal position in this triad, interpreting and applying the law to the cases before them. Their judgments are not merely legal decisions but are reflections of a balanced consideration of evidence, legal principles, and the broader context of the case. Substantive justice, therefore, is not about rigidly applying legal rules; it's about ensuring that these rules lead to morally and ethically equitable outcomes. The synergy of investigators, prosecutors, and judges in this process is vital, as they collectively ensure that the legal system functions efficiently and upholds the principles of justice and fairness, which are the bedrock of the rule of law.

³⁰ Hamzah, *Legal Dictionary*.

³¹ UN Doc, "General Comment No. 31 (80)," Human Rights Committee, n.d.

³² Michel Asimow and Shannon Mader, *Law and Popular Culture. A Course Book* (New York: Peter Lang, 2004).

³³ Kempen, *Criminal Law and Human Rights*.

CONCLUSION

In criminal law, the assets of third parties in good faith can be defined as the assets of persons other than the suspects, defendants, and convicted obtained with honour and honesty as well as are not related to criminal acts and/or the case being investigated, prosecuted and tried. The protection for third parties in good faith in corruption and money laundering cases is still based on the "mercy" of the law enforcers. Investigators, prosecutors, and judges play an important role in achieving legal objectives to realize justice and provide legal protection for third parties, including protection over their assets obtained in good faith in criminal and money laundering cases in Indonesia.

Protecting the assets of third parties in good faith is an important legal principle. These third parties are individuals distinct from the suspects, defendants, or those convicted, who have acquired their assets honourably and honestly, without any connection to criminal acts or the case being investigated, prosecuted, or tried. This principle recognizes that not every individual associated with a person involved in a crime, especially in complex cases like corruption and money laundering, is necessarily complicit or aware of the criminal activities. However, the protection afforded to such bona fide third parties can often hinge on the discretion and judgment of law enforcement officials, including investigators, prosecutors, and judges. These legal actors play a pivotal role in pursuing justice and legal accountability for those involved in criminal activities and safeguarding the rights and assets of innocent third parties. Their decisions and actions determine whether the assets of these third parties are protected or, conversely, erroneously entangled in the legal proceedings related to the crimes.

In the context of corruption and money laundering cases in Indonesia, this legal protection is of utmost importance due to the complex nature of these crimes. These cases often involve intricate financial transactions and networks, making distinguishing between the assets derived from criminal activities and those acquired legitimately challenging. Therefore, the role of law enforcers extends beyond the mere application of the law to also interpreting and applying it in a manner that balances the need for effective legal action against those responsible for the crimes with the need to protect the rights of innocent third parties. The emphasis on protecting third parties in good faith underscores the legal system's broader principles of justice and fairness. It acknowledges that while it is essential to combat corruption and money laundering vigorously, ensuring that this fight does not unjustly harm those not involved in these criminal activities is equally important. By providing legal protection for the assets of third parties obtained in good faith, the law aims to uphold the principles of equity and justice for all individuals impacted by these investigations and trials.

REFERENCES

- Adi, Rianto. *Social and Legal Research Methodology*. Jakarta: Granit, 2010.
- Ariyati, Ika, and Suwarjo. *Advances in Social Science, Education and Humanities Research, 3rd International Conference on Learning Innovation and Quality Education*, 2019.
- Asimow, Michel, and Shannon Mader. *Law and Popular Culture. A Course Book*. New York: Peter Lang, 2004.
- Barnett, Randy E. *The Structure of Liberty. Justice and the Rule of Law*. United Kingdom: Oxford University of Press., 1998.

- Brems, Eva. *Human Rights: Universality and Diversity*. Oxford (UK: Oxford University Press, 2001).
- Carl, Schmitt, Hans Kelsen, and Hermann Heller. *Legality & Legitimacy*. Paper-Work Collection. Without publisher., 1974.
- Doc, UN. “General Comment No. 31 (80).” Human Rights Committee, n.d.
- Fried, Charles. *Contract as Promise*. Cambridge (US): Harvard University Press, 1981.
- Hamzah, Andi. *Legal Dictionary*. Jakarta: Ghalia, 1986.
- Harlina, Indah. “Position and Authority of the Corruption Eradication Commission in Law Enforcement,,” 2008.
- Husein, Yunus. *The Land of Money Launderers*. Jakarta: Pustaka Juanda Tigelima, 2008.
- Kempen, P.H.P.H.M.C. van. *Criminal Law and Human Rights*. Surrey & Burlington (UK): Ashgate Publishing Limited, 2014.
- Khairandy, Ridwan. *Good Faith in Freedom of Contract*. Jakarta: Program Pasca Sarjana Fakultas Hukum Universitas Indonesia, 2014.
- Marzuki, Peter Mahmud. *Legal research, 2nd Edition*. Jakarta: Kencana Prenada Media Group, 2008.
- Mochtar, Akil. “Application of Reversal of the Load of Proof in Eradicating Corruption in Indonesia.” *Faculty of Law. Padjajaran University*, 2012.
- Muhammad, Abdulkadir. *Law and Legal Research. 1st Printing*. Bandung: Citra Aditya Abadi Bakti, 2011.
- Nowak, Manfred. *Introduction to the International Human Rights Regime*. Martinus Nijhoff Publishers, 2005.
- Posner, Richard A. *The Cost of Accidents: A Legal and Economic Analysis*. University of Chicago Law Review, 1970.
- Prodjohamidjojo, Martiman. *Application of Reversed Evidence in Corruption Offenses*. Bandung: Mandar Maju, 2001.
- Rawls, John. *A Theory of Justice. Revised Edition*. Massachusetts (US): Belknap Press of Harvard University of Press., 1999.
- Reksodiputro, Mardjono. “Human Rights in the Criminal Justice System.” In *Compilation of Essays, Third Book*, Jakarta: Center for Justice and Legal Services, University of Indonesia, 2007.
- Rifai, Eddy. “Analysis of the Role of the Attorney General’s Office in Eradicating Corruption. Studies on the Integral Approach of Criminal Policies to Eradicate Corruption in the Legal Territory of the Lampung High Court,” Faculty of Law, University of Indonesia, 2002.
- Sitoempoel, Hotma P.D. “Implementation of Assets Recovery in Corruption Crime Cases According to Indonesian Criminal and Civil Law.” *Faculty of Law, Gadjah Mada University*, 2016.
- Soetarna, Hendar. “Application of Conditional Crime in Corruption Crime.” *Faculty of Law, Airlangga University*, 2004.