PESHUM : Jurnal Pendidikan, Sosial dan Humaniora
Vol.5, No.5, Agustus 2026

Legal Protection for Third Parties in Good Faith in Asset Confiscation in Tax Corruption Cases (Analysis of Decision No. 95/Pid.Sus-TPK/2021/PN.Smg and Decision No. 265 K/Pid.Sus/2023)

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Article History:
Received: 05 Agustus 2026
Revised: 20 Agustus 2026
Accepted: 26 Agustus 2026

Keywords: *Asset Confiscation, Tax Corruption, Legal Certainty*

Abstract: *Asset confiscation in corruption cases is an essential instrument for recovering state financial losses. Nevertheless, its implementation may raise legal problems when the confiscated object is controlled by, or claimed as the legal property of, a bona fide third party. This article examines the legal protection of third parties in the imposition of additional criminal sanctions in the form of asset confidentiality in a tax-related corruption case, based on Decision No. 95/Pid.Sus-TPK/2021/PN.Smg and Supreme Court Decision No. 265 K/Pid.Sus/2023. This research applies normative legal research using statutory, conceptual, and case approaches. The primary legal materials include the Anti-Corruption Law, the Anti-Money Laundering Law, the 1945 Constitution of the Republic of Indonesia, and Supreme Court Regulation No. 2 of 2022. The findings indicate that asset confusion is justified when a strong causal link and sufficient evidence connect the asset to criminal proceeds. However, when an asset is legally acquired by a third party, the state must provide an effective, simple, and due-process-oriented objection mechanism. A judgment confiscating third-party assets without adequate evidentiary assessment may conflict with legality, legal certainty, proportional justice, and property rights protection. This article recommends strengthening the evidentiary standard concerning asset origin and optimizing third-party objection procedures under Supreme Court Regulation No. 2 of 2022.*

INTRODUCTION

Corruption is an economic crime that has a broad impact on state finances, the quality of public services, and public trust in legal institutions (Suraya & Afrija, 2026; Hidayat et al., 2025). Syed Hussein Alatas (1983) explains that corruption generally involves more than one person, contains elements of secrecy, mutual obligations and benefits, deception, and betrayal of public trust. This view shows that corruption is not only an individual deviation, but also related to power relations, networks of interests, and abuse of authority. In the Indonesian context, Setiadi (2018) emphasizes that corruption negatively impacts the sense of social justice and equality because it creates inequality in income, power, prestige, and access to resources. Therefore, corruption can be understood as a crime that not only harms the state financially but also damages the social and moral order of society (Valentine et al., 2023). In the Indonesian legal system, corruption is not only seen as a criminal act that requires punishment for the perpetrator, but also as a crime that requires recovery of state losses. Arief (2011) states that combating corruption requires attention to restitution for the consequences of the crime, including the restitution of state losses as an essential component of criminal policy. Accordingly, a modern approach to eradicating corruption should not simply prioritize imprisonment as the primary instrument, but should also focus on asset recovery (Siregar, 2023). Thus, asset confiscation becomes an important instrument in handling corruption cases, especially when the perpetrator uses various methods to hide the proceeds of crime through accounts, vehicles, business entities, or the names of other parties (Reza, 2024). This is the basis of the article, where the method of hiding assets through accounts and using family or relative names is also mentioned as a relevant pattern in the PPh 21 corruption case in Salatiga.

Legal problems arise when the recovery of state assets is carried out through the confiscation of goods held by third parties. In practice, these third parties can be family members, heirs, private parties, or other individuals whose names are used to disguise the proceeds of crime. Dalimunthe (2020) explains that perpetrators of corruption often employ asset concealment strategies, including using third parties as nominal owners, concealing documents, or transferring property to specific families or businesses. However, not all third parties know, approve of, or benefit from the proceeds of crime. In certain circumstances, third parties may actually have legitimate ownership and act in good faith. It is at this point that the state's need to recover losses must be balanced with the protection of citizens' property rights. Protection of good-faith third parties is crucial because criminal law should not be applied arbitrarily against those proven innocent. According to Gustav Radbruch, as developed in the theory of legal certainty, the law must fulfill the values of justice, utility, and certainty. Julyano & Sulistyawan (2019) emphasizes that legal certainty requires clear, written, and predictable rules to protect the public from arbitrary action. In the context of asset confiscation, legal certainty requires the state to prove a link between the seized assets and the criminal act of corruption. If this link is not convincingly proven, then confiscation of third-party assets may violate the principle of legal protection (Lie, 2025).

The case study in this article begins with the corruption case of Article 21 Income Tax (PPh 21) for civil servants within the Salatiga City Government, as examined in Decision No. 95/Pid.Sus-TPK/2021/PN.Smg and Decision No. 265 K/Pid.Sus/2023. This case presents a legal issue regarding the discrepancy between the PPh 21 amount stated in the disbursement document and the amount deposited into the state treasury. The discrepancy is linked to the Welfare Fund account and the alleged use of proceeds of crime for vehicle purchases and the management of a car rental business. As the case progressed, several assets linked to the crime were found within the family or third parties. Based on data in the thesis proposal, the third parties in question include the defendant's family, including the defendant's children, who are claimed to have acquired assets not from the proceeds of corruption. The primary issue that needs to be examined is not simply whether the state has the authority to confiscate assets resulting from criminal activity, but rather the limits of that authority when the object of confiscation is claimed to be the legitimate property of a third party. According to John Rawls (1971), justice requires the protection of equal basic liberties for everyone, including the protection of property rights and the guarantee of fair treatment. Rawls's principle of justice is relevant to assessing whether third parties receive a reasonable opportunity to defend their rights in legal proceedings. Meanwhile, Aristotle views justice as granting rights to individuals according to their worth and proportion. (Salman & Budhiartie, 2024) explains that Aristotelian justice emphasizes proportionality and balance, both in the distribution of rights and in correcting injustice. Therefore, asset confiscation should not be solely oriented toward recovering state losses, but must also consider the proportionality between legal objectives and the protection of third-party rights.

Overly broad asset confiscation may shift the purpose of asset recovery into punishment against parties who have not been proven guilty, raising constitutional concerns because property rights are legally protected and criminal liability must remain consistent with the principle of *geen straf zonder schuld*. Accordingly, when third-party assets are confiscated, judges must carefully determine whether the third party merely serves as a nominee to conceal criminal proceeds or is a legitimate owner acting in good faith. Supreme Court Regulation No. 2 of 2022 provides an objection mechanism for good-faith third parties to challenge confiscation decisions, although the effectiveness of this protection depends on evidentiary standards, access to ownership documents, and the judiciary's ability to distinguish criminally derived assets from lawfully acquired property (Abdullah et al., 2025). Against this background, this article examines the imposition of additional penalties in the form of third-party asset confiscation in Decision No. 95/Pid.Sus-TPK/2021/PN.Smg and Decision No. 265 K/Pid.Sus/2023, and assesses whether such confiscation is consistent with the principles of justice, legality, legal certainty, and human rights protection. Its novelty lies in shifting attention from the effectiveness of asset recovery to the legal protection of good-faith third parties whose legitimate ownership may be affected by confiscation.

METHODS

This study uses a normative legal research method. Normative legal research was chosen because the main objects of study are legal norms, legal principles, court decisions, and doctrines related to asset confiscation in corruption cases. This study is not directed at measuring social behavior quantitatively, but rather to assess the consistency of the application of norms in court decisions and legal protection for third parties. The approaches used are the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine the 1945 Constitution of the Republic of Indonesia, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law No. 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering, Law No. 28 of 2007 concerning General Provisions and Procedures for Taxation, and PERMA No. 2 of 2022. The conceptual approach is used to examine the concepts of justice, legal certainty, asset confiscation, and third parties acting in good faith. The case approach is used to analyze the ratio of legal considerations in Decision No. 95/Pid.Sus-TPK/2021/PN.Smg and Decision No. 265 K/Pid.Sus/2023.

The primary legal materials in this study consist of laws and court decisions. Secondary legal materials include books, scientific journals, legal articles, and expert opinions discussing the crimes of corruption, money laundering, asset forfeiture, and third-party protection. Tertiary legal materials are used to assist in exploring legal concepts and terms. All legal materials are analyzed qualitatively using a prescriptive-analytical method, namely outlining applicable legal norms, assessing their application in decisions, and then formulating arguments regarding the legal protection that should be provided to third parties acting in good faith.

RESULT AND DISCUSSION

The Characteristics of Asset Confiscation in Corruption and Money Laundering Cases

Asset confiscation in corruption cases has two dimensions. First, it serves as an additional penalty attached to the defendant's criminal conviction. Second, it serves as an asset recovery instrument to recoup state losses. In this context, asset confiscation cannot be understood solely as retribution, but also as a means to prevent the perpetrator from enjoying the proceeds of crime. Because corruption is often committed through the concealment of assets, law enforcement requires instruments capable of reaching assets transferred to others. However, the nature of asset recovery does not eliminate the state's obligation to prove the connection between the assets and the crime. Confiscation should not be carried out simply because the assets are within the defendant's family circle. While family or third parties can be used as a means of disguising the proceeds of crime, familial status does not automatically prove that the assets are derived from criminal activity. Therefore, the evidence must focus on the source of funds, the chronology of acquisition, transaction documents, actual possession, and the knowledge or involvement of third parties.

In the case under review, the modus operandi in question relates to the misappropriation of Article 21 Civil Servant Income Tax (PPh 21), the use of a Welfare Fund account, and the alleged use of proceeds of crime to purchase vehicles and operate a car rental business. If the vehicle or business capital is proven to have been purchased with proceeds of crime, then confiscation can be justified as a legal consequence. Conversely, if a third party can demonstrate that the assets were obtained from a legitimate source, are unaware of the origin of the funds, and are not involved in the cover-up, then the confiscation of the assets must be reviewed. This legal construction aligns with the principle that asset recovery must remain within the due process of law. The state is not only required to be effective in recovering losses but also to be fair in placing the burden of proof. Justice in asset recovery cannot be achieved at the expense of innocent third parties. Therefore, judges need to construct legal considerations that rely not only on the alleged connection of the assets to the defendant, but also on objective evidence regarding the origin and control of the assets. Protection of good-faith third parties is crucial to prevent the asset confiscation process from degenerating into a form of indirect punishment. Therefore, the success of corruption eradication is measured not only by the amount of assets confiscated, but also by the judicial system's ability to maintain a balance between state interests and the protection of citizens' rights.

Analysis of the Asset Confiscation Order in Decision No. 95/Pid.Sus-TPK/2021/PN.Smg and Decision No. 265 K/Pid.Sus/2023

The first-instance decision in case No. 95/Pid.Sus-TPK/2021/PN.Smg held the defendant responsible for the misappropriation of PPh 21 funds for ASN. Research data shows that the case began with the defendant's duties as assistant treasurer, withholding and remitting PPh 21 between 2007 and 2018. After retiring, a discrepancy was discovered between the PPh 21 stated in the SP2D and the amount remitted to the state treasury. This discrepancy was attributed to a Welfare Fund account, which is not an official regional government account, and was then linked to the defendant's control. In cassation decision No. 265 K/Pid.Sus/2023, the defendant's sentence was reduced, but the confiscation of certain assets remains a key issue. The judge's considerations point to allegations that the proceeds of crime were used to purchase vehicles and open a family-run car rental business. Furthermore, there are allegations of using the identities of relatives as capital owners to disguise asset ownership. This ratio indicates that the judge sees a link between corruption, money laundering, and the transfer of assets to other parties.

Legally, this consideration is understandable as long as it is supported by evidence showing the flow of funds from the criminal act to the seized assets. In corruption and money laundering cases, proving the flow of funds is crucial because assets that appear to be held by a third party may actually be the proceeds of crime. However, the burden of proof should not rest on the assumption that because an asset is managed by a family, it must have originated from crime. Judges need to assess evidence of ownership, proof of payment, the third party's source of income, and whether or not the third party actively concealed the assets. Weaknesses in proving the origin of assets pose a risk of injustice. If third parties are not given adequate space to raise objections or provide proof of ownership, confiscation decisions have the potential to violate property rights. Therefore, Supreme Court Regulation No. 2 of 2022 should be positioned as a corrective measure against confiscation decisions that disadvantage well-intentioned third parties. This objection mechanism does not hinder the eradication of corruption but rather ensures that it does not degenerate into arbitrary action.

Protection of Good Faith Third Parties according to PERMA No. 2 of 2022

PERMA No. 2 of 2022 regulates the procedures for resolving objections from third parties acting in good faith regarding decisions to confiscate goods not belonging to the defendant in corruption cases (Chan & Maswita, 2025). This regulation acknowledges that criminal decisions can have legal consequences for parties who are not defendants. With the objection mechanism, third parties have the opportunity to prove that they are the rightful owners and have no connection to the crime. The crucial substance of this PERMA lies in the deadline for filing objections. Objections must be filed no later than two months after the court's decision in the main case is pronounced in open court. If the decision in the main case is an appeal or cassation decision, objections must be filed no later than two months after an excerpt or copy of the decision is notified to the public prosecutor, the defendant, or is announced. This provision demonstrates that third-party protection is not unlimited, but is framed within procedural certainty.

However, this time limit must be interpreted proportionately. In practice, third parties often do not understand the consequences of a criminal decision on their assets or do not promptly obtain a copy of the decision. Therefore, the court must ensure that notification is provided properly and can be substantiated. Without effective notification, the two-month time limit can become a formal obstacle that disadvantages good-faith third parties. PERMA No. 2 of 2022 must also be applied with a balanced standard of proof. While third parties must prove legal ownership, the public prosecutor must also demonstrate reasons why the assets deserve to be confiscated as proceeds or means of a crime. The court must assess both sides of the evidence equally. Thus, the objection mechanism becomes not a formality, but a concrete instrument for protecting rights.

Compliance with the Principles of Justice, Legality, Legal Certainty, and Human Rights

From the perspective of justice theory, asset confiscation must adhere to the principle of proportionality. Aristotle emphasized justice as giving each person their due and equal rights. In this context, the state has the right to confiscate assets obtained through corruption because they originate from legal violations and harm society. However, third parties who legally acquire assets are entitled to protection. Justice is not achieved if the state seizes third-party assets without a clear connection to the crime. From John Rawls' perspective, the protection of fundamental rights, including the right to property, is part of fundamental freedoms that must be guaranteed equally. Eradicating corruption is indeed a crucial public interest, but its implementation must not eliminate minimal protection for innocent citizens. If third parties are sacrificed for the sake of asset recovery, the legal system loses its dimension of justice. From a legality perspective, asset confiscation must have a clear legal basis. The Corruption Law and the Money Laundering Law provide the basis for confiscation of assets resulting from criminal activity, while Supreme Court Regulation No. 2 of 2022 provides a mechanism for objections by third parties. Legality not only means the existence of written regulations but also the application of regulations according to their purpose and limits of authority. Confiscating assets that are not proven to be the proceeds of crime would deviate from the legal basis of confiscation itself.

From a legal certainty perspective, court decisions must provide clarity regarding what assets were confiscated, why they were confiscated, who owned or controlled them, and how the assets relate to the crime. Decisions that fail to adequately explain the origins of assets will make it difficult for third parties to file objections. Legal certainty also requires that objection procedures be accessible, understandable, and consistently implemented. From a human rights perspective, property rights are not absolute; restrictions must be based on law, for legitimate purposes, and proportionately. Confiscation of assets obtained from corruption is a legitimate restriction as long as it aims to recoup state losses and prevent the perpetrator from benefiting from the proceeds of crime. However, such restrictions become disproportionate if they target third parties who are not involved and can prove legal ownership.

The Ideal Legal Protection Model for Third Parties

Based on the analysis above, legal protection for third parties acting in good faith needs to be built through four instruments (Fadhila, 2025). First, the standard for proving the origin of assets must be clarified. Judges need to examine the relationship between assets and criminal acts through evidence of cash flow, transaction documents, and acquisition chronology. Second, confiscation decisions must include a clear description of the reasons for the asset seizure. Third, notification to third parties must be effective to ensure that the right to object is not lost due to information barriers. Fourth, the objection mechanism must be processed quickly and openly, providing adequate space for third parties to present evidence. This strengthening does not mean weakening the anti-corruption agenda. On the contrary, protection for well-intentioned third parties will increase the legitimacy of law enforcement. Effective corruption eradication must go hand in hand with the protection of rights, as criminal law that ignores citizens' rights has the potential to lose its moral and constitutional legitimacy. In the tax corruption cases reviewed, the courts should consider asset confiscation as a selective measure. For assets clearly proven to originate from misappropriated income tax (PPh 21) funds or disguised money laundering (TPPU), confiscation is an appropriate consequence. However, for assets claimed by the defendant's children or family as legitimately acquired, the courts need to provide adequate evidence. This approach allows for a balance between the goals of asset recovery and third-party protection.

CONCLUSION

The imposition of additional penalties in the form of asset confiscation in tax corruption cases in Decisions No. 95/Pid.Sus-TPK/2021/PN.Smg and No. 265 K/Pid.Sus/2023 is essentially justifiable as long as the seized assets are proven to originate from corruption or were used to disguise the proceeds of crime. In the case under review, the judge linked certain assets to the use of funds from misappropriated Income Tax Article 21 and alleged money laundering. However, when the assets are claimed to belong to a third party, the court must carefully assess the origin of the assets, the third party's relationship to the crime, and evidence of legal ownership. Confiscation of assets belonging to a legitimate third party is inconsistent with the principles of justice, legality, legal certainty, and human rights protection if carried out without adequate evidence and without effective access to objections. PERMA No. 2 of 2022 is an important instrument to ensure that third parties acting in good faith can defend their rights. Therefore, the objection mechanism must be viewed as part of the due process of law, not as an obstacle to the eradication of corruption.

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