



Volume 33 No 3, September 2018

DOI:10.20473/ydk.v33i3.8427

Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252

Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

by <http://e-journal.unair.ac.id/index.php/YDK/index> under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

FAKULTAS HUKUM UNIVERSITAS AIRLANGGA

Article history: Submitted 5 February 2018; Accepted 25 May 2018; Available Online 1 September 2018

Third Party's Asset Confiscation in Corruption Crime

Supardi

kangsupardi@yahoo.com

Attorney General's Office of the Republic of Indonesia

Abstract

The article is intended to analyze and find the idea of legal philosophy foundation and develop the concept of proceeds confiscation of corruption crime are enjoyed by a third party, and find the ratio decidendi some of the verdicts related to asset confiscation to a third party without prior seizure, compared with asset confiscation that preceded seizure at the level of investigation. The article found three findings. *First*, the philosophy foundation of asset confiscation against third parties is in order to maximize the return of state losses due to corruption. *Second*, the ratio decidendi verdicts related to assets confiscation to a third party without prior seizure, such that verdicts were not contrary to th laws, human rights and justice. The interpretation of the provisions of Article 19 in conjunction with Article 18 of Law Number 31 Year 1999 on the Eradication of Corruption Criminal as amended by Law Number 20 Year 2001 provides an opportunity asset confiscation to a third party as long as the third party is not good manner. *Third*, to find advice for legal reform of the provisions regarding on confiscation to third party in corruption crime in order that is not touch with the third party's rights as a subjek of asset confiscation.

Keywords: Asset Confiscation; The Third Party; Seizure; Bad Faith.

Introduction

Corruption is a crime that in quality and quantity continues to increase.¹ Until now corruption has occurred in various sectors, including the powers of the executive, legislative and judiciary.² The high level of corruption and the bad effects of corruption in the transition era from the old order to the new order encouraged the formulation and enactment of the law to eradicate corruption so that it was born Law No. 3 of 1971 (Corruption on eradication). President Suharto in a speech dated January 30, 1970 in the assembly cabinet meeting Law No. 3 of 1971, states:

“Acts of corruption and misconduct in the economic field generally not only violate law and order but are clearly contrary to morals, piercing the sense of justice. Corruption impedes the implementation of state programs, destroys the joints and degenerates the authority of the government apparatus, if not curbed, reduced and suppressed to the bare minimum and so on. The act of corruption itself is part of the form of misappropriation in the field of finance and the economy in general. And we must dare to admit that this has its roots and is rooted in all the disorder that has been going on for years.”

The confiscation of property derived from corruption offenses set forth in the old anti-corruption law (Law Number 24/Prp/1960), was then revised to Article 34 and Article 35 of Law Number 3 Year 1971 which reads as follows:

In addition to the Criminal provisions referred to in the Criminal Code then as an additional penalty is:

- a. Confiscation of goods and intangible goods and intangible goods, wherever or wherever the offense is committed or wholly or partly obtained by such corruption, as well as the price of the counterpart of goods replacing the goods, whether the goods or the price of the opponent belongs to the legal system or not;
- b. The seizure of the fixed and intangible goods which are the corporations of the condemned, where the criminal act of corruption is carried out as well as the price of the opponents of the goods replacing the goods, whether the goods or the price of the opponent belongs to the sit- or not, but the criminal offense

¹ Ridwan, ‘Upaya Pencegahan Tindak Pidana Korupsi Melalui Peran Serta Masyarakat’ (2014) 64 Kanun Jurnal Ilmu Hukum.[385].

² Bambang Waluyo, ‘Optimalisasi Pemberantasan Korupsi Di Indonesia’ (2014) 1 Jurnal Yuridis.[168].

concerned with goods which may be confiscated under the aforementioned provisions of this article;

- c. Repayment of sums of money in the amount of money equal to property derived from corruption.

The elucidation of Article 34 asserts:

“In order to obtain maximum results from the state financial recovery effort or the economic turmoil of the country, it is deemed necessary for the appropriation of evidence in the case of corruption not limited to those referred to in Article 39 Criminal Code, so that the additional penalty is an extension regulated in the Criminal Code. If the payment of replacement money can not be fulfilled by the defendant then apply the provisions concerning the execution of the payment of a fine penalty”.

The substance of the provision of Article 34 indicates the willingness of the government to try to recover the state financial losses due to corruption. To further obtain maximum results, then made provisions of Article 35 that allows the seizure of property or goods that exist on third parties. The formulation of Article 35 reads as follows:

“Section 1 Deprivation of goods not belonging to the law shall not be imposed, if the rights of third parties in good faith will be disrupted.

Section 2 If in the judgment decision of the goods includes good third party goods, then they may submit an objection letter against the confiscation of their goods to the court in question within three months after the announcement of the judge. In that case the prosecutor asked his statement, but the interested parties must also be heard his statement”.

According to the draft law (draft) proposed by the government dated July 11, 1970, Articles 34 and 35 were previously in Article 28 and Article 29. After experiencing the process of deliberation with the House of Representatives (DPR-GR), the draft submitted by the government has not changed much.³ The formulation of Article 34 letter a previously confined to the appropriation of “impermanent, intangible and intangible goods”. At the suggestion of Malikoes Soeparto from the Fraction of Development B Work, plunder includes ‘fixed goods’, so the formula becomes “the seizure of fixed and intangible goods which

³ Departemen Kahakiman, *Pemberantasan Tindak Pidana Korupsi : Pembentukan Undang-Undang Nomor 3 Tahun 1971* (Dirjen Pembinaan Hukum Departemen Kahakiman 1971).[29].

are prostrate and intangibles and so on”.⁴ Members of the DPR-GR generally agree on the editorial of Article 29 of the Bill (which eventually becomes Article 35) relating to the act of confiscation of goods that result in corruption that exists on a third party. Even in the General Assembly meeting of the First Round of the DPR GR held on 4 and 5 September 1970, Ny. S. Saljo from the Fraction of Development Work A proposed that the *rechtsherstel* of a well-entrenched third party be made more certain.⁵

The Government responded to Ny's suggestion. S.Saljo in answer to the General Scenario of Act I of September 5, 1970, by stipulating that in principle the usurability of the non-possessed goods may be imposed, if the rights of the third party with the good will be disrupted. But if in the decision of confiscation has already been goods third party *beritikat* well taken seized, then the concerned can submit an objection letter against the confiscation of goods within three months after the announcement of the judge.⁶ Therefore, historically, the essence of the making of the provisions of Article 34 and Article 35 of Law Number 3 Year 1971 in order to maximize the recovery of state finances lost (losses) due to corruption. The Article 35 allows for the appropriation of proceeds of corruption derived from existing criminal acts of corruption on third parties with restrictions as long as such third parties are unlawful.

The provisions of Article 34 and 35 of Law Number 3 Year 1971 are then adopted into the provisions of Article 18 and Article 19 of Law Number 31 Year 1991 concerning the Eradication of Corruption as amended by Law Number 20 Year 2001, with the addition of material and editorial as follows:

1. Article 18 addition in section 1 letter c shall be “complete or partial closure of a company for a maximum period of one year”; letter d in the form of “deprivation of all or part of certain rights or the abolition of all or part of certain profits which have been or may be provided by the government to the convicted person”.

⁴ *ibid.*[247].

⁵ *ibid.*[133].

⁶ *ibid.*[215].

2. The most significant (significant) addition is the existence of a forced effort in the framework of the return of corruption obtained by the defendant:
 - a. Article 18 section 2, “If the convicted person does not pay the replacement money as referred to in section 1 letter b within a period of one month after the decision of the court which has obtained permanent legal force, then his property may be seized by the prosecutor and auctioned off to cover the replacement money”;
 - b. Article 18 section 3 namely 3 “in the event that the defendant does not have sufficient property to pay the replacement money as referred to in section 1 letter b, shall be punished with an imprisonment that does not exceed the maximum threat of the principal penalty accordingly with the provisions of this law and the duration of the penalty already stipulated in a court decision”.

Article 18 The previous Corruption Act is in Article 22 of the Bill. The provision of Article 18 section 1 a is a mixed Article 22 section 1 letter a and b of the bill separating the appropriation of fixed or intangible goods, tangible or intangible property of the convicted company with the property of the convicted person. In the discussion in the DPR, Article 22 of the Bill except section 1 letter a and b are combined into a letter a, the rest has not changed the formulation or editorial so that it becomes Article 18 section 1 letter b, c and d of Law Number 31 Year 1999, even to the lesson of article has not changed. The absence of this redactional change because in general view every fraction in general see the provisions of Article 22 of the Bill has fulfilled one of the objectives of drafting the Bill.

Muladi as Minister of Justice at that time, in a speech to the government of the submission of the Bill on Corruption Eradication before the plenary session of the House of Representatives on April 1, 1999, stated that one of the goals of the Bill on Corruption Eradication is to prevent and reduce greater state losses state finances.⁷ This means that one of the objectives of the drafting is in order to save the state financial losses resulting from corruption. The same thing was

⁷ Muladi (Menteri Kehakiman), ‘Keterangan Di Hadapan Rapat Paripurna DPR RI Mengenai Rancangan Undang-Undang Pemberantasan Tindak Pidana Korupsi’ (2008).[5].

also conveyed in the government's response to the general view of the factions in the House of Representatives of the Republic of Indonesia on April 16, 1999, the Minister of Justice also stressed that not to cause greater financial losses and the more miserable the public, corruption crimes need to take precedence. In addition, it is said, corruption is very dangerous and very big impact because it involves the state finances.⁸

Article 19 of Law Number 31 Year 1999, previously in Article 23 of the Anti-Corruption Eradication Bill. According to the government's explanation through Andi Hamzah, Article 23 of this bill is intended to prevent the perpetrators of corruption offenses transfers the treasure of corruption to others.⁹ The government also explained that the entry of third party protection in good faith in the form of the objection is the development of modern criminal law which is inserted in civil damages. The procedural law used in the objection is on the provisions of the next section.¹⁰

In the end, the discussion of Article 23 is changed into five sections in Article 19 section 1 of Law Number 31 Year 1999, where the law of the event is regulated in sections 2, 3, 4, and 5, which reads:

- (1) The court's ruling on the appropriation of non-possessed goods of the defendant is not imposed, if the rights of a properly-entrenched third party will be impaired
- (2) In the case of a court ruling as meant in section 1 as well as good third party goods, the third party may submit an objection letter to the relevant court within no later than two months after the court's decision is pronounced open to the public.
- (3) Submission of objection letters as referred to in section 2 shall not suspend or stop the execution of court decisions.
- (4) Under the circumstances referred to in section 2, the judge shall request the information of the public prosecutor and the interested parties.
- (5) The judge's determination of the objection letter as referred to in section 2 may be requested by appeal to the Supreme Court by the applicant or the public prosecutor.

Listening to the opinions and views of legislative and government members, the essence of the provisions of Article 19 of Law Number 31 Year 1999 to complement

⁸ *ibid.*[10].

⁹ Panitia Khusus (Pansus) DPR RI, 'Risalah Rapat Pansus RUU Tentang Pemberantasan Tindak Pidana Korupsi' (2008).[8].

¹⁰ *ibid.*[23].

the provisions of Article 18 in an effort to maximize the recovery or restitution of financial losses of countries lost as a result of corruption. The method adopted by the legislator by granting clemency clause, other than to the property or goods obtained and or belonging to the defendant/convict, also to the property or the proceeds of the crime which is in the third party. However, the concept of confiscation like this, still gives priority protection to third parties who have good will.

Based on the aforementioned issues, the nature of the existence of Article 18 and Article 19 of Law Number 31 Year 1999, according to the author is not far from the spirit underlying the adopted provisions of Article 34 and Article 35 of Law Number 3 Year 1971, in order to optimize the state financial loss return. Given the increasingly dangerous of corruption crimes, the manner of confiscation of property arranged in Corruption Law is facilitated by the existence of clause of the coercion in the form of confiscation of the convicted property if within one month after the convicting decision the convict does not pay the replacement money and if the convict does not have the property to pay the coffers money is replaced with a prison sentence (Article 18 section 2 and 3 of Law Number 31 Year 1999). The spirit underlying the philosophy of reimbursement of state loss is also included in the consideration of Law Number 31 Year 1999 which states:

“That the criminal act of corruption is very detrimental to the state’s finances or the state’s economy and hampers national development, so it must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution.

That the consequences of corruption that occurred during this time other than detrimental to state finance or state economy, also hamper the growth and continuity of national development that requires high efficiency”.

The consideration of the dangers of corruption has become the basis of thinking in the government’s statement (Minister of Justice) when giving a statement in the plenary session of 1 April 1999, which sees that the problem of corruption is not merely a national problem but has become a transnational issue. Lawmakers have laid a solid foundation and spirit in the recovery of state financial losses. Nevertheless, lawmakers continue to pay attention to the need for the concept of prudence against the appropriation of property of corruption, that is, confiscation

is only imposed on unlicensed third parties. If the confiscation of such property is already committed against a good third party, then, the concerned shall be entitled to object to the appropriation imposed on him.

Court Decision Consideration concerning Deprivation of Third Party Property in the Criminal Act of Corruption

Considering the “strength of proof” or *bewijskracht* from each piece of evidence referred to in Article 184 of the Criminal Procedure Code, the decision is made in¹¹

1. Consideration of the Supreme Court (MA) Decision Number 2127 K/Pid.Sus/2010 dated 13 January 2011 on behalf of the convicted Gunawan Pranoto et al.

The Supreme Court handed down the ruling under Article 19 of the Corruption Act, with a ruling saying “Ordering the appropriation of money obtained from corruption to be returned to the state obtained by PT Kimia Farma Trading and Distribution (PT KFTD) and witness Ateng Hermawan “. MA justify the arguments filed by the Public Prosecutor in the memory of the cassation related to the appropriation of property against a third party, on the grounds that:¹²

“That Defendant I and Defendant II cooperate with dr. Achmad Sujudi, MHA in direct appointment to P KFTD for the procurement of health equipment for 32 (thirty two) hospitals in East Indonesia Region and PMI Pusat, the implementation is sub-contracted to PT Rifa Jaya Mulia as opposed to Presidential Decree Number 18 of 2000 on Guidelines for the Implementation of Goods/Services resulting in the price of medical equipment to be expensive, enriching the defendants and others and causing financial losses to the state.

Regarding the reasons of the Cassation Appellant I / Public Prosecutor point 1 and 2, that the reasons are justified, *judex factie* has incorrectly applied the law of proof, for canceling the decision of the Corruption Court at the Central Jakarta District Court about the appropriation of profits obtained of corruption”.

Previously, the Jakarta High Court in Decision Number 06 / PID / 2010 dated July 7, 2010 has annulled the decision of the seizure of third party assets. The Prosecutor

¹¹ Bastian Nugroho, ‘Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHP’ (2017) 32 *Yuridika*. [19].

¹² Supreme Court Decision Republic of Indonesia Number. 2127 K/Pid.Sus/2010 2011. [87].

filed an appeal with reasons in point 1 that were confirmed by the Supreme Court, as set forth in the following pages:

Pages 28-30:

“Whereas PT KFTD was established by the Board of Directors of PT Kimia Farma Tbk is not a state-owned company and if PT KFTD benefits, including unauthorized profits derived from disbursement of health procurement projects for Eastern Indonesia (KTI) and the Indonesian Red Cross (PMI) amounting to Rp37.279.492.909,00 (thirty seven billion two hundred seventy nine million four hundred ninety two thousand ninety nine rupiah), resulting in financial losses of the state is not enriching the country but has enriched PT KFTD as a subsidiary of PT Kimia Farma Tbk, so that such unauthorized profits can be seized and confiscated to recover the financial losses of the state including the benefit of the other party as a third party ie ... dst and witness Ateng Hermawan.

Whereas the *judex factie* judgment of the first level ordering the appropriation of profits obtained by PT KFTD and other parties is in accordance with the provisions of Article 19 section 2 of Corruption Law which reads :

” in the case of a court ruling as referred to in section 1 including third party goods having good interest, the third party may file an objection letter to the relevant court within two months after the court decision is pronounced in open court for public”.

Page 31:

“Whereas in addition, if any parties object to *the judex factie* judgment on the seizure, the concerned person may file an objection as referred to in Article 19 section (92) and upon the appeal the first *judex factie* shall issue a determination. Against such determination if the applicant (vide Article 19 section (3) Corruption Act). With the aforementioned mechanism, the *judex factie* of appeal level has exceeded its authority in examining and deciding *a quo*.

That based on the description we reject the *judex factie* consideration of the appeal ... dst”.

2. Consideration of Decision of the Supreme Court Number 1634 K/Pid.Sus/2013 dated November 20, 2013 on behalf of convicted Jakob Purwono et al.

In its decision on page 654, MA RI accepts the reasons for the appeal cassation memory based on the provisions of Article 19 letter 1 related to the provisions of Article 18 section 1 sub-section a of the Corruption Act.¹³ In the judgment page 645

¹³ Supreme Court Decision Republic of Indonesia Number. 1634 K/Pid. Sus/2013.[615-633].

and 655 MA give the following considerations:

Page 645 :

“Whereas the reasons for appeal from the Cassation Appellant/Prosecutor to the Corruption Eradication Commission in ad.I, II, III and IV are justified, because it is incorrectly implements the law because the acts of defendant I and II know that the auctioneer's subcontracting the work of the signed contract alias is a union contrary to Article 32 and Appendix I and so on, so that the defendant I and II act is unlawful”.

Page 655 :

“That besides enriching the partner, from the series of unlawful acts committed by defendant I and II have received money from the partners so that the state loses Rp ... and so on.

That the reason of the appeal of ad.V may also be justified because the judex factie/Court of Justice and the judex factie/High Court have erred in deciding on evidence in the form of money on behalf of the witnesses declared seized for the state, resulting in injustice to witnesses, because the witnesses have return the money to the state through the KPK investigator (Corruption Eradication Commission), then the evidence in the form of money shall be compensated as a deduction of goods in the form of money in the name of the witnesses concerned”.

The reasons for the General Prosecutor's cassatie are accommodated and justified by the Supreme Court, as contained in the following verdict:

Page 621 :

“Regarding the actual amount of state losses in our opinion is correct as the result of calculation of state financial loss from BPKP and so on.

If the judex factie of the first level and the appeal level adds a 15% margin as overhead then the state bears a greater loss so that it will contradict the wishes and ideals of corruption eradication that is to restore the state financial loss to the maximum extent.

That we agree with the judex factie of the appeals level which impose additional criminal sanction on Defendant I and Defendant II to pay the surrogate money and order the deprivation of goods in the form of money to companies and some witnesses who are partners in the procurement and installation activities of SHS in 2007 and 2008 at the Directorate General of LPE of the Ministry of Energy and Mineral Resources. However, we do not agree with the amount of replacement money charged to Defendant I and Defendant II as well as the amount of unfair profit (underline of the author) obtained by companies as judex factie calculations and so on”.

Page 627:

“Then related to some companies that participate in the procurement and

installation activities of SHS FY 2007 and 2008 in the Directorate General of LPE Ministry of Energy and Mineral Resources because borrowed only flag by the witness Victor Matius Djoha such as PT Bina Tirta, PT Tea Kirana, PT Dipa Jaya Sejahtera and CV Niaga Sejahtera, *judex factie* giving consideration that the unfair advantages (undersigned by the author) of the enterprise are deserved of the witness of Victor Matthew Djohan after deducting the fees granted to the owner/directors of the company. In the *a quo* case based on facts in the trial it was revealed that the witness had returned the money ... and so on through the KPK investigator”.

3. Consideration of Decision of the Supreme Court Number 787 K/Pid.Sus/2014 dated July 14, 2014 on behalf of the convicted Indar Atmanto et al.

The Supreme Court of Justice of the Republic of Indonesia upheld the decision abide by Article 20 Section 1 of Corruption Act. The Public Prosecutor demanded that a substitute of Rp1,358,343,346,674.00 be borne by PT Indosat and PT IM2 the prosecution was done separately. The decision of the Corruption Court of the Central Jakarta District Court Number 01/Pid.Sus/2013/PN.Jkt.Pst dated 08 July 2013 granted the request of the Public Prosecutor, but directly charged to PT Indosat and PT IM2 in a decision of Indar Atmanto or without separate prosecution (*splitsing*). The fulfillment of the decision must be done by PT Indosat and PT IM2 within one year after the decision of the *a quo* case (Indar Atmanto case) has a permanent legal force.¹⁴

The MA in its verdict on pages 174-175 gives the following considerations:

“That due to the actions of the Defendant as the President Director of PT. IM2 in collaboration with Kaizad B. Heerjee (Vice President Director of IM2), who is unlawful and self-enriching or others or a corporation has resulted in a state financial loss of Rp1,358,343,346,674.00 (one trillion three hundred fifty eight billion three hundred forty three million three hundred forty six thousand six hundred seventy four rupiah) according to the report of calculation result by BPKP Number SR-1024 / D6 / I / 2012 dated November 9, 2012.

Considering that on the grounds of *judex factie* (Court of Appeals) which does not charge a replacement money to the defendant, the Supreme Court is of the opinion that pursuant to Article 20 Section 1 of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 on the Eradication of Corruption , which reads:

“In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal prosecution and improper can be made against the

¹⁴ *ibid.*[46].

corporation and/or its management”

Considering whereas therefore the accountability according to the provision of Article 20 section 1 of Law Number 31 Year 1999 in conjunction with Law No. 20 Year 2001 concerning the Eradication of Corruption is conducted by the corporation and/or its management. This implies that the law embraces a cumulative system of accountability in the prosecution and imposition of criminal sanctions on the corporation and/or its management. Therefore, although the Public Prosecutor does not prosecute specifically against the corporation (PT IM2), the defendant's role in the indictment is in the capacity as President Director of PT IM2, so that additional criminal in the form of replacement money as mentioned above may be imposed on the Defendant in the capacity in this case as the President Director of PT. IM2 and or to PT IM2 corporation. Therefore, the Supreme Court is of the opinion that it is necessary to improve the decision of the Court of Appeal by dropping the substitute money to the corporation”.

4. Consideration of Decision of the Supreme Court Number 736 K/Pid.Sus/2009 dated 03 August 2009 on behalf of convicted H Tengku Azmun Jaafar, MA.

MA RI annuls the Jakarta High Court's decision to grant the seizure of property to a third party, with the following considerations:¹⁵

“Whereas in relation to point 5 of the *judex factie* judgment of the High Court of Corruption Court in the Jakarta High Court, the Panel of Judges has exceeded the limits of its authority, for the following reasons:

- a. That the appropriation of property in the context of crime shall be as an additional penalty other than to be limited to the extent to which the property is related to a criminal act committed by the defendant, also in the power of the defendant without disturbing the ownership of a third party, as outlined in Article 18 section 1 Of Law No.31 of 1999 in conjunction with Law no. 20 of 2001.
- b. That the goods/property seized as mentioned in point 5 of the decision of *judex factie* of the High Court of Corruption at the Jakarta High Court have never been forfeited and/or made as evidence, other than the unclear existence and the amount will make it difficult for the executor in the execution of the decision later.
- c. Whereas the special procedural law of confiscation of property in ‘in personam and in rem’ criminal cases until now there has been no law governing it, including procedural aspects of how the procedure of filing objections if the act of confiscating such property is clearly disturbing the interests of a well-entrenched third party”.

¹⁵ Supreme Court Decision Republic of Indonesia Number. 736 K/Pid.Sus/2009 2009. [1350 -1351].

Previous Court of Corruption at High Court of DKI Jakarta (PT DKI Jakarta) with decision Number 12/PID/TPK/2008/PT. DKI dated January 6, 2009, imposing judgment on the appropriation of corruption proceeds against 15 (fifteen) corporations enriched in the a quo case. Against the verdict of the Corruption Crime Court at the Jakarta High Court, a third party, PT Mitra Hutani Jaya and PT Satria Perkasa Agung filed an objection based on Article 19 of the Corruption Act. Although the submission is outside the context of the cassation remedy, the Supreme Court in its verdict on page 1366 considers the objection:

“Considering that although the third party’s objection letter is filed outside the grounds of appeal, but has filed an objection in accordance and fulfilled the provisions (filed within the period) in accordance with Law Number 31 Year 1999 in conjunction with Law Number 30 Year 2001, the Supreme Court is of the opinion that the petition may be considered in the context of the protection of the law against the interests of a well-entrenched third party.

Considering that, as stated, in principle, the “seizure of property” as an additional punishment shall not interfere with the interests of the party concerned, it must be understood that, although against a third party other than not to object, but for the third party’s law, both need to be protected his interests”.

5. Consideration of Decision of the Supreme Court Number 897 K/Pid.Sus/2009 dated August 18, 2009 on behalf of convicted H Burhanuddin Abdullah, MA

MA RI annuls the Jakarta High Court’s decision to grant the seizure of property to a third party namely five persons/witnesses enriched in the a quo case, with the following considerations:¹⁶

“Whereas despite the reasons for the appeal of the Defendant, the Defendant (Judex factie of the Court of Appeal) has seized a number of money belonging to third parties which is not necessarily proven that the third party is not good, and the existence of third party money is unclear.

Whereas in principle, confiscation in the criminal justice system is an additional criminal is limited to objects that have been confiscated and filed as evidence for the interest of the accused. In the verdict the a quo case of confiscation is here in personam, therefore it is not justifiable for the confiscation of objects/ money in the hands of a good faithful third party (vide Article 18 Jo Article 38 section 5 of Law No.31 of 1999 jo Law No.20 Year 2001).

¹⁶ *ibid.*[333-334].

That the plunder made by the Court of Appeal *judex factie* is a “seizure in rem” of property in the hands of a third party that has not been seized, so that it will complicate the implementation/execution later.

Whereas even under the Act of Corruption No.31 of 1999 jo Law No.20 of 2001 to a third party may file an objection, but the procedural law concerning the procedure of its submission to date has not been established.”

“Considering that, although the third party to be looted has not filed a formal objection to the Corruption Court, but since the plunder made by the Court of Appeal *judex factie* includes the scope of ‘law enforcement’ and the Court of Appeal *judex factie* has clearly exceeded its authority, then the Supreme Court of Justice in the appeal level may cancel the seizure in point 5 of the verdict of case No. 14/PID/TPK/2008/PT DKI, because *judex factie* has misapplied the law which can result in the loss of civic rights of third parties be good.

Considering therefore that the seizure by *judex factie* of the High Court other than exceeding the limits of its authority is also not in accordance with Article 39 of the Criminal Code in Article 38 section 5 in conjunction with Article 18 section 1 Sub-Sections of Article 19 section 1 Indonesia Number 31 Year 1999, therefore the *judex factie* judgment of the High Court must be canceled and the Supreme Court will adjudicate itself”.

Decision Analysis

In accordance with the consideration of the Panel of Judges in Decision K2, deprivation shall not be detrimental to any third party in good cause or seizure is not permitted because a third party is not necessarily good. In consideration of Decision K1 especially the Supreme Court Decision Number 2127 K/Pid.Sus/2010 dated January 13, 2011 on behalf of the convicted Gunawan Pranoto et al and Supreme Court Decision Number 1634 K/Pid. Sus/2013 dated November 20, 2013 on behalf of convicted Jakob Purwono et al, the act of confiscation is done on the basis of examination or verification of third party trials receiving the proceeds of criminal act of corruption illegitimate or unlawful. That is, the two groups of judgment put the sufficiency of proof so that it was found the material truth that the third party had acquired the treasure with violating the good faith.

According to Decision K1, a third party has acquired property with a fraudulent incorrect asset, whereas according to the Decision K2 the plunder shall not harm the good third party. This is significant, in both groups the decision allows the seizure of a third party as long as the third party obtains the property with a bad

character. Differences in the views of both of them on the issue of ‘no seizure’, where according to the ruling K2 should not be taken seizure because such seizure is a seizure in the brake that has no regulation other than the reason of difficulty in the execution of the verdict, while the criminal law embraces deprivation in personam. This issue of seizure in rem is not a consideration in Decision K1 because the consideration of confiscation is based on the interpretation of Article 18 relating Article 19 of the Corruption Act. It means that according to Decision K1, seizure without confiscation remains included in the deprivation of personam. Theoretically, according to the author is still acceptable because the general criminal law also recognizes the exceptions in the form of seizure without preceded by the seizure. PAF.Lamintang and Theo Lamintang provide exemplary examples as in Article 111 bis section 2 jo Article 111 bis section 1 of the Criminal Code concerning the means intended to provide assistance to facilitate, prepare or to undertake attempts to overthrow the government; Article 261 sections 1 and 2 of the Criminal Code concerning the tools used to commit crimes provided for in Article 253 of the Criminal Code (imitating, falsifying stamp duty) and others.¹⁷

The concept adopted by the Panel of Judges of Decision K1, even though the property derived from corruption crime has ceased to exist or has been used up, the third party may be imposed with the deprivation punishment for the purpose of returning the property. This is what distinguishes with Decision K2 limited to the confiscation of property that has been confiscated from a third party and brought before the court. Even according to Decision K1 (especially Supreme Court Decision Number 787 K/Pid.Sus/2014 dated July 14, 2014), the judge may impose a substitute appropriation as referred to in Article 18 section 2 of Corruption Act, meet the content of the verdict, then the property (which is not derived from corruption) is seized for the state. Such a ruling is a solution in overcoming the difficulties of execution of the decision of loot.

¹⁷ PAF.Lamintang dan Theo Lamintang, *Kitab Undang-Undang Hukum Acara Pidana : Dengan Pembahasan Secara Yuridis Menurut Yuriprudensi Dan Pengetahuan Hukum Pidana* (Sinar Baru 1984).[173].

According to the author of the plundering that occurred in Decision K1 compared with the plunder in Decision K2 there are several equations as well as differences. Both groups of deprivation were based on evidence revealed at the hearing. The difference is that in K1 the goods are not foreclosed and may not even exist (exhausted), while in K2 the goods are still there and submitted to the court based on the seizure in the investigation. If the third party is proven to have obtained the proceeds of the crime in good manner, then both groups of decisions do not impose the decision on the seizure. The difference, in K1 is not stated by the order of deprivation, whereas in K2, the confiscated property is returned to the third party (the confiscated). This is as mentioned in Decision K1 Number 1634 K/Pid. Sus/2013 dated November 20, 2013 on behalf of the convict Jakob Purwono and others page 627. The Supreme Court received an appeal by the Public Prosecutor for the release of third party assets, the witness of Victor Matthew Djohan for returning the investigation on the money obtained from corruption. Similarly, in Decision K2 Number 736 K/Pid.Sus/2009 dated August 3, 2009 on behalf of convict H Tengku Azmun Jaafar, MA, on page 1366 accepted the objection of a third party PT Mitra Hutani Jaya and PT Satria Perkasa Agung so that both did not comply with the verdict seizure of property.

Both decisions are equally criminal forms (penalties) and other forms of appropriation of third party rights. The difference in Decision K1 of the object of seizure (property) has not existed because there was no previous foreclosure, whereas in Decision K2 the object of confiscation has become the evidence so that in the verdict it will sound the evidence is declared seized for the state. The purpose of seizure in each group of decisions is to restore/save the state financial losses due to corruption. In addition, in both K1 and K2 Rulings, a third party may file an objection right to the appropriation as provided for in Article 19 section 2 of the Corruption Act.

Deprivation of property in principle is an attempt to forcibly terminate the right of ownership and possession of an object. According to Article 1 Sub-Article 16 of the Criminal Procedure Code, it can be concluded that foreclosures also include forced categories to take control of goods or goods from the confiscated

party. Foreclosures are no different from deprivation actions, which distinguish only the purpose problem. Deprivation of nature disconnects the right of ownership and possession of an object from a ruler or possessor of the object in order to move to the state, whereas forcible seizure attempts according to Article 1 number 16 KUHAP for the sake of proof (which may also end in plunder). In accordance with the principle of *ius curia novit*, the courts are responsible for determining the laws applicable to certain decisions. The court has an *ex officio* legal authority, ie determining unlimited consideration of the arguments put forward by the parties. The court can determine the legal theory that applies even if it is not put forward by the parties. While the parties are exempt from the obligation to determine what the law is against the decision.¹⁸ Although the principle of *ius curia novit* meaning judge is considered to know the law, it is more used as the principle that the judge is prohibited from refusing the case because there is no law, but the principle can also mean that judges are free to choose legal considerations which is most appropriate in deciding a case. The judge is free to choose the proper application of the law in prosecuting the case insofar as it is compatible with the competence of the type of case in which he is judged.¹⁹

The Panel of Judges Decisions K1 and K2 are legally proven to consider that the deprivation of property against third parties requires sufficient proof that a third party has obtained a corrupt treasure of corruption with a bad character. The difference is only confiscated or not before the object of booty, meaning there are procedural considerations made by the Panel of Judges each group of different decisions, although by the author according to the author's differences the two groups of decision is not a principle. However, the absence of uniform compulsion in the decision makes the execution implementation problem. Decision K1 especially Decision Number 2127 K/Pid.Sus/2010 dated January 13, 2011 and Decision Number 1634 K/Pid.Sus/2013 dated November 20, 2013 has no executorial

¹⁸ Dahlan Sinaga, *Kemandirian Dan Kebebasan Hakim Memutus Perkara Pidana Dalam Negara Hukum Indonesia* (Nusa Media 2015).[131].

¹⁹ *ibid.*[130-131].

force because there is no substitute appropriation order if the third party does not implement the decision content. This is in contrast to Decision K1 Number 787 K/Pid.Sus/2014 dated July 14, 2014, accompanied by a replacement booty order, that is if within a certain time the third party does not meet the content of the decision of property seized for the country. This means that such a verdict has more executive jigs than the second decision of the previous K1 decision. Amar decision Number 787 K/Pid.Sus/2014 dated July 14, 2014 on behalf of the convicted Indar Atmanto et al, reads as follows:

“To punish PT Indosat and PT Mega Media (PT IM2) to pay replacement money and so on provided that PT Indosat and PT Mega Media (PT IM2) do not pay the replacement money within one month after the decision has legal force fixed, then the property of PT. Indosat Mega Media (PT IM2) was seized by the Prosecutor and auctioned off to pay the replacement money”.

Although Decision K1 Number 787 K/Pid.Sus/2014 dated July 14, 2014 has more advantages, but the decision is based on the seizure of third parties under the provisions of Article 20 section 1 Corruption Act, not the provisions of Article 19 Corruption Act. According to Article 20 section 1 Corporations Corruption Law may be a suspect or defendant on condition that the offense is committed by: a) persons based on employment, acting in corporate environment, individually or jointly, b) persons based on other relationships, acting in a corporate environment, individually or jointly.²⁰

In accordance with the formulation of Article 20 section 3, criminal prosecution and improper can be made against the corporation and/or its management. According to R. Wiyono, the provision has the meaning to prosecute and impose criminal punishment in the event of a crime perpetrated by or on behalf of the corporation, embraced by an alternative cumulative system, meaning that criminal prosecution and punishment may be made against ‘corporations and administrators’ or ‘corporations’ ‘administrators’ only, which of course depends on the case of the

²⁰ R.Wiyono, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi* (2nd edn, Sinar Grafika 2008).[154].

position of the criminal corruption case.²¹

The author agrees with the opinion of R. Wiyono, but still must be clarified understanding when ‘demand and impose criminal’ against the corporation. According to the author, if a corporate crime is committed by or on behalf of a corporation, then the suspect referred to as a defendant in the court is of an alternative cumulative nature. The Prosecutor may file his or her sole or corporation only or both as a defendant, so that the charges and sentences handed down will depend on who is presented as the defendant in the hearing. This means that the nature of alternative cumulative punishment follows the defendant submitted to the hearing, not in the perspective of Supreme Court Decision Number 787 K/Pid.Sus/2014 dated July 14, 2014. The alternative cumulative context does not mean one legal subject submitted to the trial, two legal subjects punishment.

Barda Nawawi Arief said that by making the corporation as the subject of corruption crime, the criminal system and its punishment are oriented to the corporation, so there must be a provision as regulated in Article 20 of the Corruption Act. Article 20 shall only provide guidance on the steps to be taken if the corporation becomes a suspect or subject of corruption, the procedural law presents it and the principal penalty in the form of criminal penalty of fine. While the additional criminal still apply the provisions of Article 18 of the Corruption Law as long as that can be imposed on the subject of corporate law. If the Public Prosecutor submits the corporation as the defendant in the hearing, then the penal provisions in the form of fines and additional criminal payments of replacement money as referred to in Article 18 of the Corruption Act shall be applied. The Supreme Court Judge in consideration of Decision Number 787 K/Pid.Sus/2014 dated July 14, 2014 states “although the Public Prosecutor has never filed a specific prosecution against the corporation” in the a quo case, but the ruling imposed a substitute penalty to PT Indosat and PT IM2, as regulated in Article 18 section 1 a and section 2 of Corruption

²¹ *ibid.*

Act²² PT Indosat and PT IM2 are actually only as unrelated third parties so it is impossible to impose the principal penalty. Therefore, the reference of the provision of Article 20 Section 3 of Corruption Act according to the author is not appropriate because the consequence is applied to the penalty provision stipulated in Article 20 section 7 of Corruption Act. PT Indosat and PT IM2 are more appropriately subject to the seizure order pursuant to Article 19 section 1 which is attributed to Article 18 section 2 of the Corruption Act to facilitate the execution. Regardless of the differences used as the basis of the law of confiscation, all the decisions of the Supreme Court in the Decision K1 and K2 are equally meaning that the seizure will not be made against the party when the acquired property in a way itikat good. In addition, the process of confiscation of both means in both Decision K1 and K2 equally places sufficient proof before imposing third-party asset deprivation, before the third party is liable for theft.

Article 19 section 2 of the Corruption Act guarantees the rights of third parties to file an objection when the act of deprivation harms the rights of those who have good trade. This implies, in the process of confiscation they are both still in the context of due process of law, which in Indonesian can be translated by the term “fair judicial process” as opposed to an arbitrary process or “arbitrary process based on law enforcement authorities “. According to Tobias and Petersen as quoted by Mardjono Reksodiputro, the minimal elements of due process of law are hearing, coounsel, defense, evidence and a fair impartial court.²³ By citing Tobias and Peterson's opinion, at least the notion of ‘hearing the defendant’ is interpreted ‘to hear the statement of the third party’, so that the concept of confiscation of property against the third party both in Decision K1 and K2 meets the due process of law standard and can still be said still in the corridor third party human rights protection.

²² Supreme Court Decision Republic of Indonesia Number.787 K/ Pid.Sus/2014 2014.[46 and 176].

²³ Mardjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana* (Kumpulan K, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia 2007).[182].

The seizure of both ways in both K1 and K2 Decisions ends in a verdict where the assets obtained by a third party are declared seized for the state, even though a third party does not become a defendant in a case in which he is liable for deprivation. The verdict of breathing leads to the disconnection of ownership rights and the possession of possessions declared deprived of the state. Thus the concept of plunder embraced in both Decisions (K1 and K2) in my opinion both share the principle of presumption of guilt.

The process of confiscation of property against third parties as provided in Decisions K1 and K2 is based on procedures, each of which considers the law of evidence and protection of third parties. Both adhere to the presumption of guilt as the development of the current concept of criminal law, such as arrest, search and reversal of the burden of proof in corruption cases. Based on the foregoing, the concept of confiscation of third parties without preceded by the first seizure in Decision K1, in terms of the principles of criminal law and human rights can still be juxtaposed with the concepts of legal action adopted by Indonesian law (Criminal Code) such as arrest, detention, seizure preceded by foreclosure measures in Decision K2 and reversal of burden of proof. Even more so, the concept of reversing the burden of proof with all improvements such as the balanced probability of principle, remains considered relevant and does not violate the presumption of guilt or human rights.

Deprivation of property against third parties as in Decision K1 is viewed from the point of view of the right to guarantee the balance of the fulfillment of the rights of society in general. The process of expropriation in this way will further accelerate the fulfillment of human rights, because the restoration of financial losses of the state does not have to wait for criminal proceedings against third parties who have obtained the proceeds of corruption. The non-comprehensively settling lawsuits to address the human rights issues of the wider community and engage in the protection of human rights of corrupt lovers will be trapped in what Anton F Susanto calls 'communication distortion'. The examination of the case is linear in the purpose of the defendant's error, not the requirement to settle the matter to be

true and fair.²⁴ The emergence of Law Number 28 of 1999 on the Implementation of a Clean and Free State of Corruption, Collusion and Nepotism, is an affirmation that corruption damages the joints of people's lives. State money is usurped by irresponsible people, indirectly robs the rights of the people, because in every dollar of state money there is the right of the people. Society here is not just a citizen, but also can society in the sense as a human being who has the right to the civil wealth of the state.²⁵ This is in accordance with the concept of seizure of proceeds of crime based on a fundamental principle of justice that one should not take advantage of illegal activities, a crime should not benefit the perpetrators.²⁶

Hence the concept of plundering in such a way as in Decision K1 the author of value puts more of each right in proportion. The third party may immediately fulfill its obligation to return the proceeds of the crime and to guarantee its rights, the third party is given an opportunity to defend itself by filing an objection. The third party is not justified as a person who commits a crime so that it must be subject to the principal penalty, but it is sufficient to prove that third parties have obtained treasures from corrupt acts with bad attributes, except for a third party who is actually a participant, the prosecutor still has to prove his participation in the criminal act of crime.

On the other hand, the process of confiscation in Decision K1 can guarantee the right of the people to be immediately fulfilled through the development process with funds that have been lost due to corruption. If the concept of deprivation like this is executed, the loss of state finances because taken by third parties that are not unionized either do not have to wait for the criminal process against the concerned. Recovery of financial losses of the state does not need to wait a long time because it does not have to process the criminal against third parties. Conversely, if these

²⁴ Anton F. Susanto, *Hak Asasi Manusia : Menuju Kesejahteraan Sempurna: Makna Simbolik Kekerasan Dalam Proses Peradilan Pidana* (Refika Aditama 2011).[117].

²⁵ Kamri.A, *Hak Asasi Manusia : Korupsi, Pidana Mati Dan HAM: Sekilas Tinjauan Peradilan Pidana* (Refika Aditama 2012).[154].

²⁶ Peter Alldridge, *The Moral Limits of the Crime of Money Laundering* (University Of California 2014).[284].

methods of deprivation are not exercised, unauthorized third parties are always in a disadvantaged position to continue to enjoy the proceeds of crime, while the broader society by itself is always in a disadvantaged position.

The 1945 Constitution guarantees the full protection of property rights over material, so that every citizen can not be subjected to arbitrary acts of plunder. Article 28G Section 1 of the 1945 Constitution states: “Everyone shall be entitled to personal protection, honor, dignity and property in that of his power, and shall be entitled to a sense of security and protection from the threat of fear to do or not to do which is a fundamental right . “However, the guarantee of the implementation of Human Rights is not absolute. The 1945 Constitution stipulates that human rights guaranteed by the constitution must respect the human rights of others. A third party as a person can not get the property that it knows comes from corruption crimes that harm the state or other citizens. In addition, the implementation of human rights is also limited by other values including demands of justice according to moral considerations, as affirmed in Article 28J section 1 and 2 of the 1945 Constitution, namely:

“Section 1 Everyone shall respect the human rights of others in the orderly life of society, nation and state.

Section 2 In exercising their rights and freedoms, each person shall be subject to the restrictions laid down by law with the sole intent of ensuring the recognition and respect of the freedoms of others and to fulfill fair demands in accordance with moral judgment, religion, security and public order in a democratic society”.

The concept of deprivation used in Decision K1 is a means of finding substantive justice, as a middle-of-the-middle justice, which the authors say is fair justice. With this concept of substantive justice according to the author can minimize violations of the rights of each component in the process of working law. The protection of each party by considering the proportionality of the human rights of another person or citizen (state) and the rights of the party subject to proportional deprivation. The third party shall be entitled to the protection of his / her possessions in his power, nevertheless the protection of that right shall proportionately consider the rights of others in the order of public life and the

state. Such deprivation according to the author is more in accordance with the nature of the provision of Article 19 of the Corruption Act.

However, the provisions relating to the confiscation of property against third parties as provided for in Article 19 of the Corruption Act are still multi-interpretive. In addition, there are still some substantial weaknesses that have not fully guaranteed the third party's human rights, in addition to other juridical technical issues, namely:

1. There is no obligation of the court registry to notify the decision to a third party subject to the act of appropriation, so that a third party may not know the contents of the decision until the end of the filing period.
2. Technically a judgmental judgment verdict is a decision of ownership dispute (which is the domain of civil law), but it is not clear that the procedural law is used, civil law or criminal law.
3. The objection is in the form of an objection, but it is not clear what the decision of the objection, determination or decision will be made.
4. Not regulated, whether the principal case judge can hear the appeal.

Conclusion

The nature of the arrangement of confiscation of assets against third parties in the Corruption Act is to maximize the restoration of the rights of the state or society who have been disadvantaged by the criminal act of corruption. Deprivation of property against a third party is made because of the payment of surrogate money that can be imposed on the defendant only on the property obtained by the defendant from corruption. Deprivation of property against third parties in corruption is done by considering the interests of the state or society who are harmed as a result of corruption and consider the protection of the rights of third parties, thus fulfilling the principle of proportional justice as a substantial justice capable of mixing all purpose law.

Considerations that may be drawn from certain court decisions relating to the appropriation of property against third parties in the criminal act of corruption, that in the context of saving the state finances, a judge in a corruption case may impose the act of appropriation of property against a third party without preceding seizure as payment of replacement money, to the extent that based on evidence revealed

in third-party trials is unlawfully good. In order to guarantee the execution of the decision, the judge may order that within a certain period of time a third party fulfills the decision content, and if the verdict can not be executed then its property may be seized by the prosecutor and subsequently auctioned for the state.

The legal concept of confiscation of property against third parties without the foreclosure is still relevant to be applied in the decision of the criminal act of corruption, not against human rights and applicable legal principles and is an effective and efficient effort to recover the state financial loss in action criminal corruption processed by criminal law. Nevertheless, because the provision is still multi-tafsif and there are still weaknesses in ensuring third party human rights it is necessary to amend the amendment, which includes the obligation of the registrar to notify the verdict, the procedural law to the objection, the form and the strength of the objection decision.

Bibliography

Adrian Siutet, *Implementasi Hukum Atas Sumber Pembiayaan Daerah Dalam Kerangka Otonomi Daerah* (Penerbit Sinar Grafika 2009).

Arief Sidharta, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum* (Refika Aditama 2008).

E.Utrecht, *Introduction to Administrative Law of the Republic of Indonesia* (Pustaka Tinta Mas 1986).

F.A.M. Stroink J.G. Steenbeek, *Inleiding in Het Staats-En Administratief Recht* (Alphen aan den Rijn 1983).

Hilaire McCoubrey and Nigel D. White, *Textbook on Jurisprudence* (2rd edn, Blackstone Press Limited 1996).

Jazim Hamidi and Mustafa Lui, *Dekonstruksi Hukum Pengawasan Pemerintahan Daerah* (UB Press 2011).

Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta 2015).

Kabupaten Banjar, 'Pengelolaan Keuangan Daerah Yang Baik Merupakan Instrument' (banjarkab, 2018) <<http://banjarkab.go.id>> accessed 2 February 2018.

Muhammad Djafar Saidi, *Hukum Keuangan Negara* (Raja Grafindo Persada 2008).

Philippe Nonet and Philip Selznick, *Hukum Responsif* (Nusamedia 2007).

Riant Nugroho, *Kebijakan Publik Di Negara-Negara Berkembang* (Pustaka Pelajar 2014).

Sri Hayati, 'Pengembangan Model Manajemen Pembiayaan Sekolah Menengah Pertama (SMP) Rintisan Sekolah Bertaraf Internasional (RSBI) Di Kota Magelang' (2011) 1 *Journal of Economic Education* <<https://media.neliti.com/media/publications/17881-ID-pengembangan-model-manajemen-pembiayaan-sekolah-menengah-pertama-smp-rintisan-se.pdf>>.

Suryansyah Murhami, *Aspek Hukum Pemengawasan Pemerintah Daerah* (Laksbang Mediatama 2008).

Suyamto, *Beberapa Aspek Pengawasan Di Indonesia* (Sinar Grafika 1994).

Triyastuti Setianingrum, 'Komitmen Anggaran Pendidikan Di Kota Pendidikan Yogyakarta Masih Belum Mencapai 20 Persen' (2017) 18 *Populasi*.

Toto Suharto, *Pendidikan Berbasis Masyarakat: Relasi Negara Dan Masyarakat Dalam Pendidikan* (LKIS 2012).

Widodo Ekatjahjana, *Pengujian Peraturan Perundang-Undangan Dan Sistem Peradilannya Di Indonesia* (Pustaka Sutra 2008).

Wirjono Projodikoro, *Asas-Asas Hukum Tata Negara Di Indonesia* (Dian Rakyat 1989).

Virgayani Fattah, 'Hak Asasi Manusia Sebagai Jus Cogens Dan Kaitannya Dengan Hak Atas Pendidikan' (2017) 32 *Yuridika* <<https://e-journal.unair.ac.id/YDK/article/view/4775/pdf>>.