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# THIRD PARTY LEGAL PROTECTION OF ASSETS SUSPECTED TO BE THE RESULTS OF MONEY LAUNDERING WITHOUT THE THIRD PARTY'S KNOWLEDGE

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**Abstract**
This research examines legal protection for good faith third parties against assets suspected of being the proceeds of money laundering without their knowledge. The focus of the research includes an analysis of Indonesian legal regulations, the application of the principles of justice, and the challenges of implementing legal protection. The results show that there is a legal vacuum that hinders the protection of third parties' rights, especially in distinguishing the proceeds of crime from legitimate assets. In addition, evidentiary mechanisms and slow legal procedures often disadvantage third parties. Research recommendations include accelerating the ratification of the Asset Forfeiture Bill, harmonizing regulations with the principles of justice, and strengthening the evidentiary mechanism and compensation for harmed third parties. Thus, it is expected to create a balance between effective law enforcement and protection of individual rights in handling MONEY LAUNDRING cases in Indonesia.



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## I. INTRODUCTION

Money Laundring ("**TPPU**") is a form of crime that has become a growing concern in Indonesia in recent decades. The term money laundering emerged as a legal term in the United States around the 1930s, describing the practice of mafia groups integrating proceeds of crime into legal business activities to give the impression that the funds were legitimately obtained (Garnasih 2003). Money laundering derived from the proceeds of crime poses a serious threat to the economic stability and integrity of the financial system in Indonesia. As a complex transnational crime, money laundering involves attempts to conceal or disguise the origin of funds obtained from illegal activities such as corruption.

According to Prof. Bambang Waluyo, the scope of corruption in accordance with the United Nations Convention Against Corruption ("UNCAC") of 2003 which has been ratified by Indonesia through Law Number 7 of 2006, one of which is embezzlement, misuse or transfer of property by a public official (Waluyo 2014), So that the funds appear as if they came from a legitimate source. Although MONEY LAUNDRING is not explicitly regulated in Law No. 1 of 2023 on the Criminal

Code ("KUHP"), various articles in the KUHP can be used as a legal basis to ensnare MONEY LAUNDRING offenders, the articles in the KUHP generally relate to crimes against property.

In this case, MONEY LAUNDRING has been and is regulated in Law Number 8 Year 2010 on the Prevention and Eradication of Money Laundering ("MONEY LAUNDRING Law"). Article 1 of the Anti-Money Laundering Law states that:

*"Money laundering is any act that fulfills the elements of a criminal offense in accordance with the provisions of this Law"*

The element referred to in Article 1 of the Anti-Money Laundering Law in this case is every person who transfers, transfers, sells, entrusts, changes the form, exchanges with a currency, places, on assets or a property originating from the proceeds of a criminal offense (Waluyo 2014).

In Indonesia's current legal system, there are regulatory gaps and practical difficulties in distinguishing between assets resulting from corruption and assets that belong to good faith third parties. This is a challenge that needs to be addressed by the Indonesian Criminal Justice System. In dealing with this situation, judges have the authority to conduct legal discovery (rechtsvinding or judge made law). Judges are required to not only stick to the formal and procedural aspects of the law, but must also be able to explore and apply more substantive and deep values of justice.

As an example, there is a corruption case involving PT Asuransi Jiwasraya and PT ASABRI. In the Jiwasraya case, the customers of Adisarana WanaArtha Life Insurance ("AJAW") became the good faith third party affected. The problem arose when AJAW expressed its inability to pay obligations to policyholders because its assets in the form of Single Investor Identification ("SID") containing Sub Securities accounts had been confiscated by the Attorney General's Office of the Republic of Indonesia related to the Jiwasraya case with suspects Benny Tjokro and Heru Hidayat since February 2020.

Although AJAW and its board of directors are not suspects, defendants, or convicted in the Jiwasraya case until July 2021, its customers still suffer losses because they cannot withdraw the value of policy benefits and premium payments that are due. Around 86 (eighty-six) customers who are members of two groups, namely Swanaartha with total funds of around IDR 40,000,000,000.00 (Forty Billion Rupiah) and Forsawa Bersatu with total funds of IDR 53,000,000,000.00 (Fifty Three Billion Rupiah) cannot access their funds. In addition, there are many other customers outside of these two groups who have also experienced the same thing.

The confiscation and seizure of AJAW's assets by the Attorney General's Office of the Republic of Indonesia disrupted the company's operations, especially in terms of payment of benefits to customers who depend on the turnover of funds in the capital market. This happened because what was seized was the Securities Sub Account containing the SID or Single Identity of Investors in the Wanaarta Capital Market along with the Securities Sub Account ("SRE"). The chronology of the case starts from blocking on January 20, 2020, confiscation on April 7, 2020, and seizure by the state based on a court decision on October 26, 2020.

Based on the 2003 United Nations Convention Against Corruption, which has been ratified into Law Number 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption, 2003 in Indonesia, every state has the responsibility to provide protection to third parties who have good faith. The state is required to establish legal regulations that guarantee the protection of good faith third parties when three things happen: freezing, confiscation, and retrieval of assets. This protection obligation also applies in the process of returning or seizing assets related to corruption crimes.

In the context of corruption crimes, the state and society are categorized as indirect victims, because corruption results in obstruction of development and disruption of public rights. Meanwhile, in the process of confiscation and seizure of assets, third parties who act in good faith become direct victims. The impact becomes very serious, especially when the seized assets are the main assets that sustain their lives. This results in the disruption of various aspects of the third party's life, ranging from daily needs, work activities, access to education, health services, to the overall level of welfare.

In Indonesia's current legal system, there are legal gaps in regulations and practical difficulties in distinguishing between assets that are the proceeds of corruption and assets that belong to good faith third parties. This is a challenge that needs to be addressed by the Indonesian Criminal Justice System. In dealing with this situation, judges have the authority to conduct legal discovery (rechtsvinding or judge made law).

Judges are expected not only to stick to the formal and procedural aspects of the law but also to be able to explore and apply more substantive and in-depth values of justice. The application of the law in Indonesia still focuses on imposing sanctions on perpetrators in the form of prison sentences, confinement, and fines, not on efforts to confiscate the assets of the proceeds of crime. As a result, this system is less effective in providing a deterrent effect because the perpetrators can still enjoy the proceeds of their crimes through the assets they own. (Faizal 2021).

Although Indonesia already has legal provisions on asset forfeiture of money laundering crimes, its implementation still does not reflect the principle of justice, both for the state and the people who are victims. The act of money laundering has a negative impact in the form of hampering national development and reducing the level people's welfare due to the losses incurred (Siburian and Wijaya 2022).

Legally, the limited authority of law enforcement officials in asset forfeiture is due to the absence of special regulations at the level of laws governing asset forfeiture mechanisms without a court decision (Kartika and Saputra 2021). The Draft Law on Asset Forfeiture **("RUU Perampasan Aset")** on Crime is currently being discussed by the House of Representatives of the Republic of Indonesia, but in fact, from 2012 since the proposal of the Draft Law on Asset Forfeiture until now there has been no visible progress, even in 2023/2024 the Draft Law on Asset Forfeiture is still not included in the National Legislation List. The urgency of the formation of this law is increasingly urgent given the increasing complexity of money laundering crimes. The Asset Forfeiture Bill also regulates legal protection for third parties in good faith. This is important considering that in the practice of asset seizure, it often intersects with the interests of third parties who do not know that the assets they own come from the proceeds of criminal acts.

Criminals often utilize various loopholes in the financial system to disguise or hide the origin of assets resulting from criminal acts. One modus operandi that is often used is to involve third parties who do not know the origin of assets in financial transactions. This phenomenon poses a complicated legal dilemma, especially regarding the legal protection of well-intentioned third parties who are involved in money laundering asset transactions without their knowledge. On the one hand, efforts to eradicate money laundering must be carried out comprehensively, including by tracking and confiscating assets suspected of being the proceeds of crime. On the other hand, the interests of good-faith third parties also need to be protected in order to maintain legal certainty in economic traffic.

Harmonization between the Draft Law on Asset Forfeiture and the Principles of Justice is needed, this harmonization needs to be achieved through efforts to harmonize the implementation of the law and safeguarding individual rights so that inequality does not occur. This can be seen in the application of the principle of balance, where asset confiscation is adjusted to the magnitude of the offense that occurred, so as not to cause too severe a punishment that can injure a person's fundamental rights (Sianipar 2024).

This paper will examine aspects of legal protection of third parties in the context of transactions of assets suspected of being the proceeds of money laundering, focusing on situations where third parties are unaware of the illegal origins of the assets. The analysis will include a review of the existing legal framework, both from a criminal law perspective as well as identifying potential legal gaps (Rechtsvacuum) that could harm good faith third parties. Furthermore, it will also discuss efforts that can be made to strengthen legal protection for third parties, while still paying attention to the effectiveness of law enforcement in combating money laundering based on legal methods in terms of asset forfeiture. Through this study, it is hoped that a more comprehensive understanding of the complexity of legal issues arising in the context of money laundering assets involving third parties can be obtained, as well as contributing to the development of a fairer and more balanced legal framework in dealing with this issue.

In closing, this research will examine the regulatory system or legal regulations in Indonesia in protecting the rights of third parties who do not know and are involved in assets involved in money laundering and the application of the principles of justice and legal certainty that must be applied in the practice of asset forfeiture policies against good faith third parties in the absence of unlawful nature and their involvement in the mens rea element in money laundering cases. This study aims to review and analyze three main things related to the legal protection of third parties in money laundering cases in Indonesia. First, this study aims to identify and evaluate the existing regulatory system or legal regulations in Indonesia in protecting the rights of third parties who are not aware of and involved in asset transactions related to money laundering. Secondly, this study aims to examine the application of the principles of justice and legal certainty in asset forfeiture policies against good faith third parties, especially in the context of money laundering crimes and to identify gaps and challenges in the implementation of legal protection against good faith third parties in money laundering cases. Third, this study aims to analyze the procedures and mechanisms that need to be applied in legal practice to ensure fair protection for third parties who are involved in transactions suspected of being the proceeds of crime, but do not know or are involved in the unlawful elements (mens rea) of the crime.

## II. RESEARCH METHODS

This research method uses normative juridical research methods. The normative juridical research method is a library legal research conducted by examining library materials and mere secondary materials (Mahmuji 2003). The problem approaches used in this research are the Statute Approach and Conceptual Approach. The author uses a regulatory basis such as legislation as a legal basis in conducting analysis, which in this case is legislation related to the case discussed using legislation and regulation. In using the statutory approach, researchers need to understand the hierarchy, and principles in legislation. This research analyzes laws and regulations relating to third-party protection of assets originating from money laundering crimes without the knowledge of the third party. Conceptual Approach Researchers will find ideas that give birth to notions, concepts, and legal principles that are relevant to the problems studied, and researchers will make legal arguments in answering the legal problems raised.

## III. RESULTS AND DISCUSSION

### 3.1. Regulatory System or Legal Regulations in Indonesia in Protecting the Rights of Unknowing Third Parties Involved in Assets Involved in the Crime of Money Laundering.

The regulatory framework in the Indonesian legal system provides protection for the rights of good faith third parties, particularly in relation to assets related to money laundring, through various legal instruments based on the principles of justice and legal certainty. The Anti-Money Laundering Law is a fundamental legal instrument that regulates the protection of good faith third parties. This regulation specifically guarantees protection to parties who have no involvement or knowledge, either directly or indirectly, of money laundering activities related to certain assets. Such protection is a manifestation of the principles of justice and legality, which are the main pillars of the national legal system.

The definition of a third party in good faith is based on the provisions in Articles 19 and 38 of Law No. 31/1999 in conjunction with Law No. 20/2001, a person who has legal ownership rights over the seized goods, but is not involved in or has no connection whatsoever with the occurrence of the criminal offense in question, can object to the seizure (Ibrahim 2016). In this case, a third party in good faith is a party who does not have a good relationship of knowledge or intention with the actions of the perpetrator of the crime in committing his criminal act, where the third party does not have malicious intent or intentionality.

Based on the theory and principles of criminal law, we recognize the concept of mens rea as a component that shows the mental state or intention of a person when committing an unlawful act. Mens rea which is taken from Latin means “guilty mind” is a crucial component in determining whether a person can be held criminally responsible. The Indonesian legal system recognizes that a criminal act is not only seen from the actual act (actus reus), but must also consider the intent or awareness of the perpetrator in committing the act (Ar and Rusbandi 2024).

Mens rea in the form of intent or dolus is an element that is often used as a basis for proving a criminal case. In its application, dolus has several different levels, which can be divided into direct and indirect willfulness (Henok 2023). In the process of proving mens rea, law enforcement officials generally use a variety of evidence that can show the existence of malicious intent. Such evidence can be in the form of documentation of oral and written communication, behavioral patterns of the defendant before and after the incident, as well as testimony from people who are close to the perpetrator. (Flora, Henny Saida n.d.).

In this case, the proof of the third party for the elements of the criminal offense is very complex and needs to be proven comprehensively both between the relationship between the good faith third party and the perpetrator or when the third party carries out the process of ownership of the asset. therefore, it is necessary to have regulations that explain in detail so as not to harm the good faith third party if it is not proven to have intentional intent.

When someone commits a careless act that results in harm, even if there is no direct intent to violate the law, they can still be held liable for their negligence. To prove the element of negligence in a criminal offense, supporting evidence is required. For example, in proving the case of a third party, we must see how the evidence of the third party's process in owning an asset without his knowledge is suspected of being the proceeds of money laundering from the corruption crime.

Criminal law theory teaches that in order to be convicted, a person must have guilt (geen straf zonder schuld) this principle implies that a person cannot be sentenced to criminal punishment if there is no evidence of guilt. In other words, when someone violates the law, they can only be subject to criminal sanctions if it is proven that they have an element of guilt in their actions. Fault is an important element that cannot be separated in the application of criminal law.

In terms of being held criminally liable, two things must be proven: the unlawful act committed (actus reus) and the element of guilt or malicious intent (mens rea). If these two elements are fulfilled, then a person can be sentenced according to the applicable provisions (Wibowo 2019). A third party in good faith, who does not know that the assets he receives come from a criminal offense, cannot be said to have mens rea, so he cannot be criminally liable.

From a theoretical perspective, the concept of protection for good faith third parties has a solid foundation, especially when viewed from the doctrine of mens rea. This doctrine, which emphasizes the element of intent or malicious intent, is a crucial parameter in determining criminal liability. In this context, the absence of mens rea in good faith third parties, which is reflected in their ignorance and non-involvement in MONEY LAUNDRING activities, is the basis for exemption from criminal liability. The absence of awareness and intent to engage in illegal activities results in the non-fulfillment of the subjective elements of the criminal offense, so they cannot be held criminally liable.

There are many cases that occur in the implementation of Injustice by Third Parties in the legal process, especially in two aspects. First, at the investigation stage, where investigators seize Third Party assets based solely on testimonies, without conducting comprehensive forensic financial investigations. Second, in court decision-making, where the panel of judges ordered the seizure of evidence belonging to the Third Party without providing adequate explanation of the legal basis and evidence supporting the decision (Zen 2021).

Law Number 8 Year 2010 on the Crime of Money Laundering ("Anti-Money Laundering Law") Article 79 paragraph (4), which reads;

*"Any interested person may file an objection to the court that has made the determination as referred to in paragraph (5) within 30 (thirty) days from the date of the announcement as referred to in paragraph (3)"*

This article only stipulates that an interested third party can file an objection to the blocking of assets suspected of being related to MONEY LAUNDRING but it still takes a long time from the date of announcement. This provides an opportunity for third parties to prove their good faith and defend their rights to the assets, but there is no concrete protection for third parties before the assets go to court. Secondly, the reverse proof principle adopted in the Anti-Money Laundering Law does not apply absolutely to third parties who act in good faith, because they are protected by the presumption of innocence.

In the perspective of legal theory, the loss of unlawfulness (wegvallen van de wederrechtelijkheid) against third parties who act in good faith is based on justification (rechtvaardigingsgronden). This theory asserts that even though an act fulfills the formulation of the offense, if it is done in good faith and without fault, then its unlawful nature is lost. This is in line with the civil law doctrine regarding the protection of good faith third parties (goeder trouw) which has long been recognized in the Indonesian legal system. It can be seen based on Article 36 paragraph (1) of the New Criminal Code which states that:

"*Every person can only be held accountable for criminal offenses committed intentionally or negligently*. "

It stipulates that a person can only be held criminally liable if their actions are committed with an element of intent or negligence. Based on this, third parties who do not have malicious intent cannot be held accountable for criminal acts committed by others. Non-Retroactive Principle stated in Article 1 Paragraph (1) of the Criminal Code which reads;

*"No act shall be subject to criminal sanctions and/or measures, except on the strength of criminal provisions in laws and regulations that existed before the act was committed."*

Based on the provisions of the article, this provides protection to third parties from arbitrary actions. Based on this principle, assets belonging to third parties obtained legally and without knowledge of a criminal offense cannot be seized without a clear legal basis. A law is needed that regulates in detail against good faith third parties so that there is no overlap between regulations and becomes a legal loophole that can harm the rights of the community.

Based on the provisions of Indonesian criminal law, asset forfeiture can only be implemented after a final decision from a panel of judges with permanent legal force (inkracht van gewijsde). However, the procedure stipulated in KUHAP requires a lengthy process. To reach a final court decision, a case can take months or even years (Latifah 2015). As a result, in addition to benefiting the perpetrators of criminal offenses, this can harm the rights of good faith third parties who do not commit criminal offenses but whose assets are seized and require a long time to prove the assets.

In relation to good faith third party victims in the case of seizure of assets allegedly from the proceeds of laundering without the knowledge of this third party, it has a correlation with the mechanism for handling these assets, namely seizure without punishment. Based on the news about the issuance of the Supreme Court Regulation (PERMA) on Confiscation of Money Laundering Assets, the regulation is present to fill the legal lacuna in the procedural aspects related to the implementation of Article 67 of the Anti-Money Laundering Law, especially with regard to asset handling procedures.

The Perma contains three fundamental components covering the scope of the regulation's applicability, the mechanism for submitting requests for asset handling, and procedural provisions regarding asset confiscation. The provisions in this Perma are specifically applied to cases where investigators apply for the handling of assets in situations where the TPPU suspect cannot be found, as regulated in the framework of the TPPU Law. Regarding the regulatory mechanism for the return of asset forfeiture, it is necessary for the investigator to first prove it based on Article 67 of the Anti-Money Laundering Law, which reads;

> *"(1) In the event that no person and/or third party files an objection within 20 (twenty) days from the date of temporary suspension of the Transaction, PPATK shall hand over the handling of the Assets known or reasonably suspected to be the proceeds of the criminal offense to the investigator for investigation.*
>
> *(2) In the event that the alleged perpetrator of the criminal offense is not found within 30 (thirty) days, the investigator may submit a request to the district court to decide the Assets as state assets or returned to the rightful party.*
>
> *(3) The court as referred to in paragraph (2) shall decide within 7 (seven) days at the latest."*

Under the provisions of Article 67 of the Anti-Money Laundering Law, investigators are authorized to request a determination from the District Court regarding the status of assets suspected of being derived from criminal acts. The court can then decide whether the asset will be confiscated into state property or returned to the rightful owner.

It can be said that related to the protection of third parties in the current policy, it must go through the method of proof by the investigator first, which is then related to the guarantee of third party protection through the existence of objections that have been regulated based on the Anti-Corruption Law and PERMA 2/2022 concerning Procedures for Resolving Good Faith Third Party Objections to Decisions on the Confiscation of Goods Not Belonging to the Defendant in Corruption Criminal Cases, that the interests of third parties in good faith have been recognized and protected by the existence of objections. Objections are regulated in Article 19 paragraph (2) of Law Number 31 Year 1999 on Corruption Crime which reads

"In the event that the court decision as referred to in paragraph (1) also includes the goods of a third party who has good faith, then the third party may file a letter of objection to the court concerned, no later than 2 (two) months after the court decision is pronounced in open court"

Subsequently, PERMA 2/2022 was issued to expand the filing of objections by good faith third parties. This objection is a legal protection for good faith third parties and a formal effort that can be taken by good faith third parties whose goods are seized by the state as a result of corruption crimes.

Although the asset forfeiture procedure is legally justified, it should be noted that the forfeited object may be the legal ownership of a third party. In this context, the third parties in question are those who obtain ownership of assets in good faith, without the knowledge that the assets originate from or are related to corruption crimes (Evander 2024). Consequently, the need for legal protection becomes crucial for such good faith third parties, given that their property rights have been taken over through a mechanism of expropriation by the state. This emphasizes the importance of balancing law enforcement efforts with the protection of the rights of innocent parties.

### 3.2. Application of the Principles of Justice and Legal Certainty That Must Be Applied in the Practice of Asset Forfeiture Policies Against Good Faith Third Parties in the State of Loss of Illegality and Its Involvement in the Mens Rea Element in Money Laundering Cases.

In its application based on current legal regulations, law enforcement officials are very difficult to seize assets resulting from criminal acts that have been controlled by the perpetrators of criminal acts. There are many difficulties encountered in efforts to seize assets resulting from criminal acts, such as the lack of instruments in efforts to seize assets resulting from criminal acts, there is still a lack of understanding of the mechanism for seizing assets resulting from criminal acts by law enforcement officials, as well as the length of time required until the assets resulting from criminal acts can be confiscated by the state, namely after obtaining a court decision with permanent legal force (Fuadi, Putri, and Raharjo 2024).

The Asset Forfeiture Bill emphasizes the state's authority to seize assets without imposing criminal sanctions (non-conviction based asset forfeiture). In this bill, there is no explicit use of the word “victim”. However, Article 44 paragraph (2) states that a court decision can order the return of assets to those who have legitimate rights, which can include victims, prosecutors, and government agencies. Unfortunately, the draft law does not provide clear parameters for identifying assets resulting from money laundering crimes, especially in distinguishing between the overall assets of the perpetrator and assets obtained from the proceeds of crime involving the victim (where in the case of money laundering, the ownership of these assets is divided between the perpetrator and the victim) (Joshua and Rahaditya 2024).

In recent years, the crime of money laundering (TPPU) continues to be a serious concern in Indonesia, especially in relation to the application of Law Number 8 of 2010. Based on statistical data reports generated from PPATK sources on the accumulation of Court Decisions involving Money Laundering Crimes based on Law Number 8 of 2010 in the provisions of articles 3, 4, and 5, in the last 2 (two) years from 2022 to February 2024 MONEY LAUNDRING cases have touched a number of 205 cases, as can be seen in the following table;

| Pasal TPPU/ TPPT | 2022 | 2023 | 2024 (s.d. Feb 2024) |
|---|---|---|---|
| (1) | (2) | (3) | (3) |
| UU No. 8 Tahun 2010 | 100 | 85 | 20 |
| Pasal 3 | 93 | 69 | 18 |
| Pasal 4 | 1 | 2 | - |
| Pasal 5 | 6 | 14 | 2 |
| UU No. 9 Tahun 2013 | 17 | 5 | - |
| Pasal 5 | 17 | 5 | - |
| Belum diketahui* | - | 6 | - |
| **Total** | **117** | **96** | **20** |

Catatan:
Terdapat pengkinian data putusan Tahun 2022 dan 2023
*Belum terdapat dokumen putusan pada *website* Direktori

Table1. Number of Court Decisions Related to Money Laundering Crime (TPPU)

Based on the statistical data above, the urgency of confiscation and seizure of assets involving third parties who are in good faith without knowing the origin of the assets and are direct victims of money laundering is a serious problem, because these third parties are the most disadvantaged parties (Uang et al. 2024). This situation becomes more severe when the seized assets are their main source of livelihood, impacting their ability to fulfill their daily needs, including employment, education, health, and general well-being.

Article 19 paragraph (2) of Law No. 31/1999 on the Eradication of Corruption ("Anti-Corruption Law") restricted the rights of third parties as it only allowed the filing of objections after a first instance court decision. This restriction caused third parties to lose the opportunity to file an objection when the forfeiture of goods occurred based on an appeal or cassation decision, so the article was deleted. The Supreme Court attempted to resolve this issue by issuing PERMA 2/2022, which, while expanding the opportunity to object, still requires clear criteria for proving the good faith of third parties to prevent the need for rechtvinding so that third parties do not have to object even in the first instance, in a protracted dispute in court that causes harm to the rights of third parties.

There are two expert opinions, First, according to Maria S.W. Sumardjono explained that legal certainty has two important aspects. First, from a normative perspective, it requires the availability of laws and regulations that can support operational implementation. Second, from an empirical point of view, these regulations must be implemented consistently and responsibly by authorized legal implementers (Sumardjono 1997). A regulation Every regulation must fulfill two main criteria in its creation and promulgation. The first criterion is clarity, which means that the regulation must be written in a way that does not create ambiguity or multiple interpretations. The second criterion is logical, where the regulation must be able to integrate with the existing norm system without creating contradictions or conflicts with other norms (Halilah and Arif 2021).

In connection with this expert opinion, legal certainty has two important aspects that must be considered. First, in terms of rules, it is necessary to have complete laws and regulations that support the real implementation of the law. Second, in terms of application, these regulations must be carried out consistently and responsibly by the authorized parties. Good regulations must be formulated clearly and logically. Clarity means that it does not cause doubt or multiple interpretations, while logical means that the regulation is in harmony with other norms, so that there is no clash or conflict between rules. This is important so that the law can provide certainty and function effectively in society.

Legal certainty in asset forfeiture involves clarity of legal rules, procedures, and the rights of third parties. In the case of the loss of the unlawful nature of the asset or the absence of the mens rea element on the part of the third party, legal certainty should ensure that the Asset is not seized arbitrarily where any forfeiture action must be based on sufficient evidence and a valid court decision. Then the third party must be given access to file an objection and obtain compensation if proven innocent. However, the current Anti-Money Laundering Law still has a Rechtvacuum regarding a more detailed asset dispute resolution mechanism, including arrangements for compensation to third parties.

The urgency of the Asset Forfeiture Bill has not yet been listed in the 2025/2026 National Legislation Program priorities, so there is still an opportunity to make changes considering that this draft is not final after the current change of government. An in-depth study is needed to revise the provisions related to the confiscation of victims' assets, including various aspects such as criteria for returning assets to victims, evidentiary mechanisms, procedural stages, and provisions for compensation if victims do not obtain rights to their assets. Based on the existence of a rechtvacuum on the legal protection of good faith third parties in cases of asset forfeiture of these third parties, the asset forfeiture clause can be proposed as follows;

1. Regarding the Asset Forfeiture Evidence Scheme, law enforcement must verify third party data based on indicators of the existence of the principle of mens rea and the principle of unlawful acts committed (actus reus) on the involvement of third parties in the realm of investigation before entering the trial by collecting evidence comprehensively both in terms of when the third party obtained the asset or the relationship between the third party and the perpetrator of the money laundering crime.
2. Regarding compensation for assets confiscated from good faith third parties, when the ownership or location of the victim's assets cannot be ascertained, the judge is obliged to consider providing additional penalties in the form of compensation losses to be paid by the perpetrator. If after the court decision is rendered, the Prosecutor's Office manages to locate and identify the assets allegedly belonging to the victim, the Prosecutor may apply for a determination of the ownership of the assets to the Judge at the district court handling the case.

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## IV. CONCLUSION

In the Indonesian legal system, there are regulatory gaps that often cause harm to third parties who are unaware of the illegal origin of the assets. This is due to the lack of procedural clarity and legal regulations that can protect third parties from unjust asset forfeiture. Legal protection for good faith third parties is crucial to maintain justice and legal certainty in such cases. From a theoretical perspective, the concept of mens rea and the principle of non-retroactivity provide a legal basis to protect third parties who are unaware of the involvement of assets in a criminal offense. However, implementation in the field often still faces challenges, such as the lack of comprehensive evidence and the length of the legal process until the court decision becomes final. Third parties often become direct victims in asset forfeiture cases, which impacts their economic and social welfare. Therefore, strengthening regulations through the Draft Law on Asset Forfeiture is very urgent.

The slow legal process and lack of legal instruments for asset forfeiture without conviction are obstacles to achieving justice. This shows the importance of improving legal mechanisms that are more responsive and fair. Efforts to address legal gaps (rechtvacuum) are urgently needed, including the acceleration of the discussion of the Draft Law on Asset Forfeiture. This bill is expected to provide further clarity on asset forfeiture mechanisms, compensation for aggrieved third parties, and effective evidentiary procedures. Harmonization of regulations with the principles of justice and legal certainty is also important to maintain a balance between law enforcement and protection of individual rights.

The government needs to accelerate the passage of the Asset Forfeiture Bill with a focus on protecting good faith third parties. Law enforcement officials should be trained to understand the principles of evidence and fairness in MONEY LAUNDRING cases. In addition, courts should be provided with more detailed guidelines on how to handle cases involving third parties, including compensation mechanisms. Collaboration between various legal institutions can speed up case resolution and reduce the burden on innocent third parties.

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Rancangan Undang-Undang Perampasan Aset

**4. Other Resource;**

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