

# Examination of the Legal Protection for Indirect Crime Victims of Corruption in Indonesia

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This study aims to examine the legal protection of indirect crime victims of corruption in Indonesia. This research is normative legal research, using secondary data sources. The approach is the legislative, case and concept approach. The findings have shown judges' consideration of legal protection for indirect victims for indirect crime victims of corruption in Indonesia can be divided into two categories, namely juridical considerations and non-juridical considerations. In the case of PT. Bank Muamalat Indonesia, Tbk. Medan branch against the North Sumatra Prosecutor was related to objections to the ruling of the Corruption Case Number: 67 / Pid.Sus-TPK / 2015 / PN. Mdn, on behalf of the defendant, Drs. Khaidar Anwar. It is concluded that because the gas station was purchased using money from PT. Bank Muamalat Indonesia, Tbk. Medan Branch Office was not the result of corruption, so the judge granted the petitioner's claim that the confiscation was invalid by the Medan District Prosecutor.

**Key words:** *Legal Protection, Indirect Victims, Corruption Verdicts.*

## Introduction

The Constitution of 1945 confirms that the State of the Republic of Indonesia is based on the law (*rechstaat*) not based on power (*machstaat*). This means that Indonesia is a democratic rule of law based on Pancasila and the Constitution of 1945, then it upholds human rights and guarantees all people with their position in law and government, and it is obliged to uphold law and government without exception (Hartanty, 2005).

The Old Order Government, as well as the New Order Government, was a basic legal document that was not affected by the idea of change. One reason is that, because they are very executive-heavy, the main provisions of the constitution of 1945 are true of great benefit

to the authorities. Indonesia ranked 118th out of 182 countries in 2012 as the most corrupt country and Transparency International's ranking in the corruption index rose from 114th to 107th in 2015. The number of reports on the sale of cases, the legal mafia, the judicial mafia, the tax mafia, and the case brokers indicates that corruption has infected the law itself (Suratno, 2017).

Enforce the law against corruption; the presence of witnesses (including the plaintiff) is very important in the light of the difficulty that law enforcement officials have to carry out in the absence of witnesses (including the plaintiff) for the crimes they handle. Not many people are willing to take the risk of becoming a whistle-blower and expose the truth of an act of corruption if the exposure of the case does not protect him, his family and his assets from threats. Witnesses working with them (Justice Collaborators) are also hesitant to provide data according to the evidence they have experienced if they are not adequately protected (Mulyadi, 2015).

The sense of justice as well as the confidence and trust of citizens in law and regulation is increasingly being depleted, and can be expressed by the large number of people who want to take vigilant actions in the name of justice, which cannot be achieved by law and regulation, against perpetrators of crimes in society as well as by law enforcement (Hartanty, 2005).

Corruption is a serious problem, it can endanger the stability and security of the country, it can endanger social and economic development, as well as politics, and it can harm democratic values and morality because these acts tend to be cultural. Corruption threatens ideals for a just and prosperous society (Dahlan, 2017).

From a legal point of view, 13 articles (Law No. 31 of 1999 jo Law No. 20 of 2001) clarify the concept of corruption and these articles are grouped into: (1) Financial state losses; (2) Bribery; (3) Embezzlement; (4) Blackmail; (5) Fraud; (6) Conflict of Interest in Public Procurement; (7) Gratification.

## **Research Method**

This research is normative legal research that uses secondary data sources with an emphasis on theoretical and qualitative analysis, also referred to as library research (De Cruz, 2010). This research is analytically descriptive, which means that this research not only illustrates by analysing a situation or symptom, both at the level of positive law but also seeks to provide proper regulation (*das sollen*) and to solve legal problems relating to indirect victims of criminal acts of corruption.

The approaches used in this study are:

- a. The legislative approach that examines all legislation relating to indirect victims in criminal acts of corruption and the laws relevant to the legal issues raised.
- b. The case approach is undertaken through the review of cases involving indirect victims of permanent court decisions on corruption
- c. The conceptual approach is undertaken by analysing the views and doctrines of legal science and to develop ideas which can provide legal understanding for indirect victims, legal concepts and legal principles for the defence of the corruption verdict. Understanding these views and doctrines provides researchers with the basis to develop a legal argument to resolve the issues.

The data collection tool is carried out by taking several data/decisions in the Directorate of the Supreme Court related to victims indirectly in decisions of corruption. In addition, interviews were also conducted to supplement the data with several informants using a list of interview guidelines. Analysis of the data in this study focuses more on the analysis of qualitative methods

## **Literature Review**

### ***Ratio Decidendi on Indirect Victim Law Protection of Criminal Corruption in Indonesia***

Decidendi ratio is a reason or argument used by a judge as a legal consideration which becomes a basis before a case is decided. The judge will retract the facts in the trial which arises and is cumulative with the findings of the witnesses' statements, the defendant's statements and evidence in the judicial practice of the judge's decision before that judicial consideration is ascertained. If the review process is complete, the Panel of Judges are obliged to formulate the legal considerations in advance, before passing the judgment on the case, which will be used as the basis for decision-making in the case.

There are very few legal provisions on the legal protection of third parties in the Law No. 31 of 1999, in conjunction with Law No. 20 of 2001 on the eradication of corruption. The regulation and argument are limited in the form of objection letters to the Court only to a legal remedy within two months after the judgment of the court on confiscation is delivered. The Judge shall then requested from the Prosecutor and the parties concerned the information as well as to be filed with the Petitioner or the Public Prosecutor the Judge's report in the form of a decision, while the process or procedures for the review of an objection have not been stated clearly by law. Where the law/regulation is technically unable to function as a tool for the political and legal transformation, in particular, in its implementation, we can still expect the judge. The judicial practice is variously interpreted by Law No 31 amended and

supplemented by Law No. 20 of 2001 concerning amendments of Law No. 31 of 1999 concerning the eradication of corruption, accordance with Article 19 of Law No 31 of 1999 (Ibrahim, 2016).

The verdict is the Crown of the Judge. Any court decision shall decide the validity of the facts, both in criminal convictions and in the acquittal of any case, except where there is no clear evidence. The assessment by the Court of Justice of the nature of the evidence is driven by Article 194 of the Code of Legal Proceeding. Under the circumstances and types of evidence confiscated, there are several alternatives to this provision that can be applied by the Court (Ibrahim, 2016):

1. Return to the most eligible.

The court's decision in a corruption case against evidence that does not belong to the defendant cannot be handed down if the rights of a third party will be impaired.

2. Confiscated or destroyed or damaged to the benefit of the country.

In the decision of the Court, it is claimed that the evidence has been confiscated or destroyed or damaged, to prevent the re-use of the evidence (Article 194(1) of the Code of Criminal Procedure (CCC)).

3. Stay in the control of prosecutors because in other cases the evidence is still needed.

In the case of ratio decidendi, it can be divided into two categories, namely ratio decidendi and non-ratio decidendi. Ratio decidendi are judges based on legal facts revealed in a court case and set out in the law, which is to be included in decisions such as indictments, statements, witness statements, evidence and articles in the criminal law regulations, whereas the defendant's background and the faith of the defendant can be seen from non-ratio decidendi (Muhammad, 2007) .

The legal position is very important in decision-making. Legal consideration is considered sufficient in the judge's decision if it fulfils the following minimum requirements (Efendi, 2018):

First, judgments under the law and the legislation of judges in the decision-making process of a case must be based on legal and/or legal provisions covering both written and unwritten formal and substantive law as provided for in Article 5(1) of Law No 48 of 2009 on the power of the judiciary. Decisions handed down under the law by judges are null and void which do not satisfy the sense of justice of the society. In the legalist theory, the judge is not only the mouthpiece of the law, but it must also be able to translate or interpret the Articles of Law in a manner that updates articles of the constitution and can serve as a basis for the creation of new laws to bring justice to society (Rifai, 2010).

Secondly, for the sake of justice consideration, one of the purposes of law and regulation is the creation of justice. Justice always needs to be inherent in the decision of a judge since justice is the law and the law itself's main objective. The court was established to uphold the law and justice. A fair trial will bring order and peace. The judge's decision for justice is a very important consideration which must, above all, be regarded by law and the legislation because it turns out that the consideration to justice is a consideration with a highly comprehensive content that includes philosophical, sociological, psychological considerations.

Thirdly, for the sake of benefits, two things, namely *maslahat* and *harm*, must be taken into account by judges and, above all, by judges of religious courts in their decision-making. Decisions of judges must carry benefits and avoid harm under Islamic legal theory rules (*Usul Fiqh*). The judge's understanding depends on what is good and bad, through the capacity of thorough, purposeful and analytical research and his insight into the *urf* or tradition even if his examination results are limited to worldly benefits. The right of the judges to examine and determine a case is the crown of judges and all parties must respect it with no exception so that no party can interfere in performing their specific functions. Judges will take several matters into account, both those involving the case under examination and the extent of actions and misconduct of the perpetrators, the rights of the victims, their families and the sense of justice within the society.

Decision no 39/Pid. Sus / TPK/2013/PN.Jkt. Pst dated 4th November 2013 of the Central Jakarta District Court, concerning evidence the Judge held that the implementation of the provisions of Article 19 of Law No. 31 of 1999 on the eradication of corruption was inconsistent and infraction, as amended and supplemented by Law No. 20 of 2001, amending Law No No. 31 of 1999 on the eradication of corruption, paragraph 1.

This can be seen in the decision of the evidence put before the Public Prosecutor who in fact owns evidence that is the property of a third party, not the property of the defendant, but still refuses the decision of the evidence confiscated to the State and the auction proceeds will be paid for with the money used by the defendant for money laundering, as well as the rest is returned to third parties. First of all, to recover their rights to evidence taken based on the court decision, the Judge grants legal protection, as creditors, to the third parties, while, other third parties that possess third party property are excluded from legal protection. The Judge does not grant such protection to the other third-party.

Where a third party does not know that by obtaining these items from the defendant, they have been harmful to the other person, if he receives the goods from the defendant in relation to understanding in good faith the right of third parties, as explained in Article 19(1) of Law no. 31 of 1997. In Article 532 of the Civil Code, it is also clear that what a third party means

by receiving goods from the defendant is in bad faith where a party knows that it has harmed others by receiving these goods from the defendant, it is regarded in good faith as a third party so that through decision of the court it must receive legal protection from the State.

Aristotle's above-mentioned judgment from Aristotle's perspective does not reflect justice that is understood as equality, including citizens' equality before the law. Without discrimination between people, the same legal rules should also be applied and applied to all. In law and government, everyone is equal. The decisions of the judges must fulfil the justice perceived in the case by the parties. The justice concerned is substantive justice and not just formal justice.

In essence, justice is accepted and felt by the parties. Formal justice, however, is law-based justice that is not generally reasonable and equal to the parties (Ibrahim, 2016).

**Case of Pt. Bank Muamalat Indonesia, Tbk. Medan Branch (Decision No. 2699 K / Pid.Sus / 2016)**

***Status of Case***

Whereas PT. Bank Muamalat Indonesia, Tbk. Murabahah's funding facilities were provided to PT Dirgantara Deli Trans (respondent III) by Medan Branch (applicant). The Deed No. 28 of 8 June 2011 was taken before Suprayitno, SH, Notary of Medan and the Deed Number 29 of 8 June 2011, Murabah AL Financing Agreement was made before Suprayitno, S.H., Notary of Medan.

The use of the Murabahah financing facility above is to buy one unit of the gas station and purchase of building materials and pumps for the renovation of the gas station, along with the hermitage land located on Medan - Deli Tua street Km. 10.5 and as collateral for providing the Murabahah financing facility, PT. Dirgantara Deli Trans (Respondent III) represented by Hj. Nurmah as Director has submitted collateral to the Petitioner (PT. Bank Muamalat Indonesia, Tbk. Medan Branch) in the form of:

- A Freehold land parcel covering an area of 1,304 M2 located in the Province of North Sumatra, Deli Serdang Regency, Deli Tua District, Deli Tua Village, is registered on Hj Nurmah's Certificate of Ownership No. 20/Deli Tua Village, number 14 203 171 with its derivatives and everything on this spot.
- The plot of land, which is located in the province of North Sumatra, Deli Serdang Regency, Deli Tua district, Deli Tua Village is registered on behalf of the Hj. Nurmah and all that exists and is on the property, like SPBU 14.203.171 Building Unit with its derivatives.

That both collaterals have been bound with Mortgage Rights Rank I (First), respectively with Mortgage Certificate Number 5515/2011 dated November 4, 2011, and Mortgage Certificate Number 5514/2011 dated November 4, 2011, registered under the name of the Applicant as the holder of the Mortgage Rights is PT. Bank Muamalat Indonesia, Tbk. Medan Branch Office issued by the Head of the Deli Serdang Regency Land Office.

Based on the above, on 4 January 2016 No 67 / Pid. Sus-TPK/2015/PN-Mdn, the Petitioner strongly objected to the decision made by the Corruption Criminal Court (PN-Mdn). In his / her dictum: "Defining SPBU No. 14,203,171 located on Medan-Deli Tua street Km. 10.5 on behalf of Hj. Nurmah is auctioned on behalf of the State."

Whereas the SPBU Number 14,203,171 was originally submitted by the General Assembly from the North Sumatra High Prosecutor's Office (Respondent I) as a confiscated item based on the Determination of the Deputy Chairman of the Corruption Court at the Medan District Court Number 33 / SIT / PID.SUS-TPK / 2015 / PN.MDN. May 04, 2015 Juncto Foreclosure Order Number PRINT-491 / N.2 / Fd.1 / 05/2015 dated May 7, 2015, Juncto Minutes of Confiscation on May 11, 2015.

The applicant states that the gas station number 14,203,171 which is located on Medan - Deli Tua street, kilometer 10.5 on behalf of Hj. Nurmah has no connection and has nothing to do with the Corruption and Money Laundering (TPPU) cases alleged against Drs. Khaidar Aswan (Respondent II) in case Number 67 / Pid.Sus-TPK / 2015 / PN-Mdn., Because of SPBU Number 14,203,171 located on Medan - Deli Tua street, kilometer 10.5 on behalf of Hj. Nurmah was purchased using money from the Petitioner (PT. Bank Muamalat Indonesia, Tbk. Medan Branch Office), not the result of corruption.

Whereas because gas station number 14,203,171 is located in Medan – Deli Tua street, kilometer 10.5 in the name of Hj. Norman is a collateral item to the Petitioner and has been bound with the Mortgage Certificate Number 5515/2011, dated November 4, 2011, and the Mortgage Certificate Number 5514/2011, dated November 4, 2011, registered under the name of the Underwriting Right Holder is PT. Bank Muamalat Indonesia, Tbk. The Medan Branch Office, which is issued by the Head of the Deli Serdang Regency Land Office, is reasonable if the Applicant is declared to be a Mortgage Holder protected by law and determined as a third party in good faith.

Because the petition for Objection can be submitted within the grace period and the procedure specified in Article 19 Paragraph (2) of Law Number 31 of 1999 concerning Eradication of Corruption, as amended by Law Number 20 of 2001 formally, it should be formally accepted.

### ***Ratio Decidendi***

Considering the main point of the Petitioner's petition is that the Petitioner files an objection to the decision on the case of Corruption Number. 67 / Pid.SUS-TPK / 2015 / PN.Mdn, dated 4 January 2016 on behalf of Defendant Drs. Khaidar Aswan, especially regarding the decision which has been determined to be auctioned by the State gas station asset number 14,203.1 71 which is located in Medan-Deli Tua street, kilometre 10.5 on behalf of Hj Nurmah is auctioned to the State because the gas station asset 14,203.171 is a collateral item debt in the name of Hj. Nurmah to the Applicant who has been bound. Under the Underwriting Right Certificate Number 5515/2011 dated November 4, 2011.

In Article 19 paragraph (5) of Law Number 31 of 1999, Juncto of Law Number 20 of 2001, the court's decision regarding the confiscation of items not belonging to the Defendant was not handed down, if the rights of the Third Party in good faith were impaired. Based on the legal facts at the trial, it was revealed that the gas station number 14,203,171 was located in Medan - Deli Tua street, kilometre 10.5 in the name of Hj. Nurmah is collateral goods to the Petitioner since 2011 under the Mortgage Certificate Number 5515/2011 dated November 4, 2011, and the Mortgage Certificate Number 5514/2011 dated November 4, 2011, registered under the name of the Mortgage Holder, PT. Bank Muamalat Indonesia Tbk Medan Branch Office, issued by the Head of the Deli Serdang Regency Land Office, while the Corruption Court at the Medan District Court determined in its decision that the SPBU was auctioned to the State on January 4, 2016.

The SPBU Number 14,203,171 was initially confiscated by the Public Prosecutor at the North Sumatra High Prosecutor's Office (Respondent I) under the minutes of the confiscation on May 11, 2015. By observing the grace period between the binding of the Mortgage Right Agreement on November 4, 2011, and the Court's Decision Corruption in the Medan District Court on 4 January 2016 and besides the quo object has nothing to do with corruption and/or money laundering crimes committed by Defendant Drs. Khaidir Aswar (Respondent II), then based on Article 19 paragraph (1) of Law Number 31 of 1999, Juncto of Law Number 20 of 2001, the Petitioner's objection as a third party in good faith is reasonable.

The Decision of the Corruption Court at the Medan District Court Number 03 / Deed. Obstacle-TPK / 2016 / PN.Mdn dated June 27, 2016, as follows:

In Exception:

- Refuse the Respondent's exception to all Objections;

In Principal Case:

1. Grant some of the objections to the petitioners;

2. The applicant shall be determined in good faith by a third party;
3. Determine by law, that: the Public Fuel Filling Station (SPBU) Number 14,203,171 which exists and stands on 2 (two) plots of land each with Certificate of Ownership Number 20 covering an area of + 1,304 M2 and Certificate of Ownership Number 1679 covering an area of + 282 M2, both registered under the name Nurmah written also Hajjah Nurmah, located in North Sumatra Province, Deli Serdang Regency, Deli Tua District, Deli Tua Village, locally known as Medan - Deli Tua street, kilometer 10.5 is collateral goods in Applicant (PT. Bank Muamalat Indonesia, Tbk. Medan Branch) and has been bound based on Mortgage Certificate Number 5515/2011 dated November 4, 2011 and Mortgage Certificate Number 5514/2011 dated November 4, 2011 issued by the Head of the Land Office of Deli Serdang Regency;
4. Set by law that the gas station number 14,203,171 is located on Medan - Deli Tua street, kilometer 10.5 on behalf of Hj. Nurmah was excluded from the Corruption Court Decision (Corruption Court) at Medan District Court on January 4, 2016 Number 67 / Pid.Sus-TPK / 2015 / PNMdn. on behalf of the Defendant Drs. Khaidar Aswan (Respondent II);
5. Imposing costs incurred to the State;
6. Reject the objection of the petitioner to the other than the rest.

Because of the deed concerning appellation application number 03/Akta.Kasasi/Pid.Keberatan-TPK/2016/PN Mdn made by the Registrar at the Corruption Court at the Medan District Court, which explained that on 11 July 2016 the Public Prosecutor at the High Prosecutor's Office North Sumatra submitted an appeal against the District Court's decision.

Considering, that based on the above considerations, it turns out, also, the Judex Facti decision, in this case, is not contrary to the law and/or law, the appeal for cassation from the Appellant / former Respondent I must be rejected.

Considering that because the petition for cassation of the Petitioner / former Respondent I was declared rejected, the case fee was charged to the State; Observing Article 19 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Article 253 Paragraph (1) a, b, c Juncto 254 of Law Number 48 of 2009, Law of Number 8 of 1981, Law Number 4 of 1996 and Law Number 14 of 1985 as amended by Law Number 5 of 2004 and the second amendment to Law Number 3 of 2009 and other relevant laws and regulations;

### *Adjudicate*

Rejecting the cassation request from the Cassation Appellant / former Respondent I: North Sumatra high prosecutor witness; Imposes court fees on appeal to the State.

### *Analysis*

That the applicant (PT. Bank Muamalat Indonesia Tbk, Medan branch) is a third-party victim of a criminal act of corruption against the confiscation of the assets of the defendant (Drs. Khaidir Aswar) by the Medan District Prosecutor's Office. Actions of the Petitioners who object to the confiscation based on Article 19 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 which states: When third parties' interests in good faith are impaired the decision of the court involving the possession of property not belonging to the defendant will not be handed down. In the case of a court decision referred to in paragraph (1) also includes goods of a third party in good faith, the third party may submit an objection letter to the court concerned, no later than two months after the court's decision is pronounced in an open trial for the public.

Submitting objection letters as referred to in paragraph (2) to suspend or stop the implementation of court decisions. The judge collects information from the Public Prosecutor and interested parties under the circumstances defined in paragraph (2). The judge may be appealed to the Supreme Court by the applicant or the Public Prosecutor in support of the objection letter as stated in paragraph (2).

Based on this article, the applicant has the right to submit an objection to the contents of the Corruption Court Decision Number 67 / Pid.Sus-TPK / 2015 / PN-Mdn. which in his / her dictum included: "Determine that gas station number 14,203,171 which is located in Medan - Deli Tua Street, kilometer 10.5 in the name of Hj. Nurmah is auctioned for the State. Because of PT. Bank Muamalat Indonesia is the holder of Underwriting Rights based on the Mortgage Certificate Number 5515/2011 dated November 4, 2011, and the Mortgage Certificate Number 5514/2011 on November 4, 2011.

Under Article 1(1) of Law No. 4 of 1996 on mortgage rights and land-related objects, the following definitions shall apply:

"Underwriting Right on land along with objects related to land, hereinafter referred to as Mortgage Right, is guarantee right which is imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, whether or not following or not and other objects which form an integral part of the land, to pay off certain debts, which give certain creditors priority over other creditors".

In article 19 paragraph (5) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the court's decision regarding the confiscation of goods not belonging to the defendant was not handed down if the rights of the third party having a good intention were impaired. Bank Muamalat is the injured party for the confiscation carried out by the RI Attorney in the Corruption Crime case on behalf of the defendant Drs. Khaidir Aswar, which

is the gas station number 14.203.171 which is located on Medan - Deli Tua street Km. 10.5 on behalf of Hj. Nurmah has no connection and has nothing to do with the Corruption and Money Laundering (TPPU) cases alleged against Drs. Khaidar Aswan in case Number 67 / Pid.Sus-TPK / 2015 / PN-Mdn., because the gas station was purchased using money from PT. Bank Muamalat Indonesia, Tbk. Medan Branch Office, not the result of corruption.

Mortgage as a guarantee institution for a strong land and able to provide legal certainty for the parties has the following characteristics:

1. Give the preferred position or overtake to the holder (certain creditors). From the definition of Underwriting Right as stated above, it is known that the Underwriting Right gives priority to the creditor over other creditors. What is meant by "the position prioritized to certain creditors against other creditors", can be found in the Explanation of General number 4 of Law Number 4 of 1996 concerning Land Mortgage Rights and Objects Related to Land, as follows:

"... What if the debtor is injured, then the creditor holding the Underwriting Right has the right to sell the land used as collateral through a public auction, according to the provisions of the relevant laws and regulations, with the prior right of the other creditors ...". This characteristic in law is known as Droit de preference.

2. Always follow the object guaranteed in the hands of whoever the object is. Provisions of Law Number 4 of 1996 concerning Mortgage Rights and Land Related Objects state that Mortgage Rights still follow the object in the hands of whoever the object is, so the Mortgage Rights will not expire even if the Mortgage Right object is transferred to another party by because of anything. The principle called Droit de suit gives certainty to the creditor regarding his right to obtain repayment from the sale of physical control land or juridical tenure rights, which become the object of the Underwriting Right if the debtor is defaulted, even if the land or land rights which become the object of the Underwriting Right are sold by the owner. or granting Mortgage Rights to third parties.
3. Fulfil the principle of specialty and the principle of publicity, so that it can bind third parties and provide legal certainty to interested parties. The principle of specialty is applied by making the Deed of Provision of Mortgage by the Land Deed Makers Officer. The principle of publicity is applied at the time of registration of granting Mortgage Rights at the Land Office. The registration is an absolute requirement for the issuance of the Underwriting Right and binding the Underwriting Right to a third party.
4. Simple and assured execution performance. Another feature of the Underwriting Right is that the Underwriting Right is a guarantee of land rights that is simple and assured to execute. When the debtor defaults do not need to go through the usual civil suit that takes

time and money. For creditors holding Mortgage Rights, special ways are provided, as regulated in Article 20 of Law Number 4 of 1996 concerning Mortgage Rights and Objects Related to Land.

5. In the case of confiscation of the Mortgage Rights object (SPBU Number 14,203,171 which is located on Medan - Deli Tua street, kilometer 10.5 on behalf of Hj. Nurmah) conducted by the Medan District Prosecutor's Office based on a court decision with Reg. No. 67 / Pid.SUS-TPK / 2015 / PN.Mdn, dated 4 January 2016 on behalf of Defendant Drs. Khaidar Aswan has harmed third party holders of mortgage rights.
6. If the debtor granting the mortgage right has committed an act of corruption then the responsibility of the act is not the creditor holding the mortgage right, but it is entirely the debtor's responsibility. Therefore, creditors holding Mortgage Rights must obtain legal protection from the court because of the good faith they have because mortgage creditors are based on the principle of good faith in carrying out mortgage agreements. Article 7 of Law no. 4 of 1996 on mortgage rights states: 'The rights to liability shall remain in the hands of any person whose object is to undertake the object.' The execution, for the sake of justice based on the Almighty God, shall have the same power as the decision of the court because it has the right. Therefore, third parties who have good faith who have entered into a material security agreement through the Mortgage Rights under the law are required to obtain legal protection from law enforcement officials. Because of that the court's decision that had confiscated the Mortgage Guarantee object from the defendant because it was related to a criminal act of corruption had made a decision that was detrimental to the third party
7. The Underwriting right holder. If the applicant or creditor who holds the mortgage rights is a state bank, then the creditor that holds the mortgage rights must be legally protected because he has entered into a bond guarantee in good faith with the debtor. If in the future it turns out that the object of the bondage that has been bound is obtained from the results of a criminal act of corruption, then it is not the responsibility of the creditor who holds the rights but is fully the responsibility of the debtor giving the mortgage right, even though in the criminal act of corruption committed by the creditor. The dependents have harmed the country's finances, but the debtor's immovable property which has been bound by the guarantee of the mortgage against the creditor, cannot be confiscated by the state, because the object of the mortgage is a guarantee of the debtor's debt to the creditor in full and his execution authority rests with the creditor of the right holder dependents.

Based on that, the legal position of the Underwriting Right object remains as collateral for the debt to the creditor as the holder of the Underwriting Right certificate which is a droit de preference or the preferred creditor has the authority to take legal action on the Underwriting

Right object if the debtor defaults in the repayment of the debt. The state has no authority to confiscate through a court decision on immovable objects that have been bound with guarantees of Mortgage, even though the immovable object is related to a Corruption case.

As a result of the confiscation carried out by the Prosecutor on the court's decision, the applicant's objection (PT. Bank Muamalat Indonesia Tbk, Medan branch) over the auction became the object of mortgage (SPBU No. 14,203,171 located on Medan - Deli Tua street Km. 10.5 above the name Hj. Nurmah) so that they filed a lawsuit to the Medan District Court with Register No. 03 / Deed. Objection-TPK / 2016 / PN.Mdn jo Decision No. 2699 K / Pid.Sus / 2016, which in essence in the said decision states that the Petitioner (PT. Bank Muamalat Indonesia Tbk, Medan branch) is a third party in good faith and confiscation carried out against SPBU Number 14,203,171 located in Medan - Deli Tua street, kilometer 10.5 on behalf of Hj. Nurmah, was illegitimate and was issued from the Corruption Court Decision (Tipikor) at Medan District Court dated January 4, 2016 Number 67 / Pid.Sus-TPK / 2015 / PN.Mdn. on behalf of the Defendant Drs. Khaidar Aswan.

## **Conclusion**

The Judges' consideration of legal protection for indirect victims of criminal acts of corruption in Indonesia can be divided into two categories, namely juridical considerations and non-juridical considerations. In the decision of a criminal act of corruption against indirect victim protection efforts, the judge gave consideration based on the juridical facts revealed in the trial; one of the decisions was the Case of PT. Bank Muamalat Indonesia, Tbk. Medan branch against the North Sumatra Prosecutor was related to objections to the ruling of the Corruption Case Number: 67 / Pid.Sus-TPK / 2015 / PN. Mdn on behalf of the Defendant Drs. Khaidar Anwar who determined to be auctioned by the State gas station assets number 14.203.171, based on the case and the facts revealed where the gas station assets were still collateral that had been placed Underwriting Rights Number: 5515/2011 registered under the name of the Rights holder PT. Bank Muamalat Indonesia, Tbk, Based on this PT. Bank Muamalat is the injured party for the confiscation carried out by the RI Attorney in the Corruption Crime case on behalf of the defendant Drs. Khaidir Aswar, which is the gas station number 14.203.171 which is located on Medan - Deli Tua street, kilometre 10.5 on behalf of Hj. Nurmah that has no connection and has nothing to do with the Corruption and Money Laundering (TPPU) cases alleged against Drs. Khaidar Aswan in case Number 67 / Pid.Sus-TPK / 2015 / PN-Mdn. Because the gas station was purchased using money from PT. Bank Muamalat Indonesia, Tbk. Medan Branch Office was not the result of corruption, so the judge granted the petitioner's claim that the confiscation was invalid by the Medan District Prosecutor.

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