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Prosecutor's Position in the Third Party Objections the Decision of the Court That
Confiscating Evidence Goods for the State in Narcotic Criminal Acts

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Abstract

1
The District Court Panel of Judges interpreted the remedies of third party objections in good faith to the District Court's decision that confiscating evidence goods for the state in narcotics crime contained in Article 101 paragraph (2) of Law Number 35 Year 2009 Concerning Narcotics is the same as *derden verzet* in the civil procedural law as regulated in Article 195 paragraph (6) of HIR or Article 378 Rv. This is motivated by the absence of an explanation of the objection in Article 101 paragraph (2) of Law Number 35 Year 2009 Concerning Narcotics. Problems that arise are : (1) how the Prosecutor's position is in the case of a third party objections to the decision of the District Court that confiscating evidence goods for the state in narcotics crime, (2) how the criteria of third parties who have good faith in the case of third party objection to the decision of the Court the country that confiscating evidence goods for the state in narcotics crime, and (3) how is the procedure of the third party's objection to the decision of the District Court that confiscating evidence good for the state in narcotics crime. To obtain accurate research data, normative juridical research methods are used which are derived from secondary data collected by the author by emphasizing legal aspects related to the problem and related to existing legal material. From the results of the study it was concluded that: (1) The Prosecutor's position in the matter of a third party in favor of the State Court's decision to confiscating evidence goods for the country in narcotics crime was to represent the State as Defendant / Defendant on the basis of possession of the object of the dispute that was confiscating by the State Court in Narcotics, (2) the criteria of a third party having a good intention in a case of objection to a District Court ruling that confiscating evidence goods for the state in a narcotics crime is obtaining ownership rights as evidenced by agreement letters, not knowing and not allowing such evidence goods to be used as a means or tool help commit narcotics crime, and (3) The third party objection procedure in good faith against the decision of the District Court that confiscating evidence goods for the state in narcotics crime is filed a third party objection to the Prosecutor's Office based on *derden verzet* as stipulated in Article 195 paragraph (6) HIR within 14 (fourteen) days after the announcement of the first level Court decision.

Keywords: *Narcotics Crime; Prosecutor's Position; Third Party Objection*

Introduction

Civil Procedure Law aims to ensure compliance with material civil law. According to M.Nur Rasaid, Civil Procedure Law is a series of legal regulations on ways to preserve and maintain material civil law. With the existence of this civil procedural law, it is expected that the act of judging by itself (*eigenrichting*) will be prevented, at least it can be reduced.¹

Until now, Indonesia does not have a national civil procedural law contained in a law. In 2019, the Government has proposed the Draft Law on Civil Procedure Law (RUU KUHAPer) and the Draft Law on Civil Procedure Law was included in the DPR RI Priority Prolegnas in 2019.² Responding to the above conditions, the source of Indonesian Civil Procedure Law since 1945 until now is still using HIR (*Het Herziene Inlandsch Reglement*) or RIB (*Renewed Indonesian Regulations*), R.Bg (*Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura*) and Rv which are Dutch legal products.

In the provisions of the Indonesian Civil Procedure Code, it is permissible to conduct the confiscation of the assets of the debtor or defendant as regulated in Article 227 in conjunction with Article 197 HIR. In court practice, confiscation of the debtor's assets or confiscation is filed together with the principal claim. In certain cases, the defendant often objects to the confiscation of assets placed on the grounds that the confiscated goods belong to a third party. Most of the arguments or objections are ignored by the Court and if the goods actually belong to a third party, then the third party can file an objection through the legal remedy *derden verzet*. *Derden verzet* for collateral confiscation (*Conservatoir Beslag*), can be submitted by the owner as long as the case being challenged does not yet have a decision of permanent legal force. If the case that has been challenged has obtained a decision that has permanent legal force, then the remedy that can be carried out by a third party for the confiscation is an ordinary civil suit.³

Objection from a third party (*derden verzet*) refers to the provisions of Article 195 paragraph (6) HIR or Article 378 Rv on the grounds :⁴

- 1) confiscated goods do not belong to the defendant but belong to the contender;
- 2) The objection is submitted in the form of a lawsuit for objection by attracting the plaintiff (confiscated applicant) and the defendant (confiscated) as the opposing party.

The provision of *derden verzet* legal remedies in the civil procedural law as regulated in Article 195 paragraph (6) of the HIR is guided by the District Court Judges in the examination of third party objections in good faith to the District Court's decision that confiscating evidence for the state narcotics crime. The Panel of Judges at the District Court interpreted the objection legal remedies contained in Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics as the same as the *derden verzet* provisions stipulated in Article 195 paragraph (6) of HIR or Article 378 Rv.

The Panel of Judges at the District Court interprets the sentence "the owner can submit an objection to the confiscation to the court concerned" in Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics as the same as the *derden verzet* provisions stipulated in the Civil Procedure Code, based on no there is an explanation of the objection in Article 101 paragraph (2) of Law Number 35

¹ M.Nur Rasaid, *Civil Procedure Law*, Sinar Grafika, Jakarta, 2008, p.3.

² Website BPHN; <https://bphn.go.id/news/2018110603020089/Masuk-Prolegnas-Prioritas-2019-BPHN-Kebut-Penyusunan-Naskah-Akademik-RUU-Hukum-Acara-Perdata> (terakhir kali dikunjungi pada 20 September 2019 jam 13.00 Wib) see also Website : <http://www.dpr.go.id/prolegnas/index/id/69> (last visited on 16 October 2019 at 09.00 WIB).

³ M.Yahya Harahap, *Civil Procedure Law (Lawsuit, Trial, Confiscation, Evidence and Court Decision) Second Edition*, Sinar Grafika, Jakarta, 2017, p. 356.

⁴ *Ibid*, p. 406.

Year 2009 concerning Narcotics. In the elucidation of Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics, only states that it is quite clear and does not regulate : how is the objection procedure submitted by a third party in good faith, whether the objection from the third party is a legal remedy in the criminal procedural law system, and whether a decision on a third party's objection can overturn a previous dispossession decision. Furthermore, the question also arises, whether in the third party objection process applies provisions of criminal procedure or civil law? If applicable procedural law for civil procedure, what is the Prosecutor's position? Are the respondent, challenged, defendants or co-defendants? Who has the authority to represent the Prosecutor's Office, Public Prosecutor or State Attorney? This problem creates legal uncertainty related to authorized officials because of unclear legal norms created by related institutions.

Bagir Manan as quoted by Khairani translates legal certainty into several components, that is : ⁵

- a. Certainty the rule of law that is applied;
- b. Certainty in the legal process, both in law enforcement and legal services;
- c. Authority certainty, that is, the certainty of the office environment or the official authorized to determine or make a legal decision;
- d. The certainty of time in each legal process;
- e. Certainty of implementation, such as the certainty of the execution of a judge's decision.

Hans Kelsen as quoted by Akhiruddin argues that law is a norm system. The norm itself is a statement that emphasizes the "must" or *das sollen* aspect by including some rules about what must be done. Norms are products and intentional human actions. Laws that contain general rules are guidelines for individuals behaving in interacting with communities, both in relationships with individuals and in relationships with communities. Rules become the limit for society in burdening or taking action against individuals. The existence of these rules and the application of these rules give rise to legal certainty.⁶

Based on Article 101 Paragraph (2) of Law Number 35 Year 2009 concerning Narcotics, that those who can submit objections to a District Court ruling that confiscate evidence good for the state in a narcotics crime case are third parties in good faith. The criteria for good faith are not further specified and the explanation of Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics only states that it is quite clear. With the absence of these norms, it is feared that the Judges will no longer be objective when making decisions related to evidence of narcotics crime cases.

Objection of third parties in good faith made after the announcement of the verdict of the first instance of the Court as regulated in Article 101 paragraph (2) of Law Number 35 Year 2009 Regarding Narcotics. As we know, the verdict of the first instance court can be legally binding (*inkracht van gewijsde*) if the Public Prosecutor or Defendant / Legal Counsel does not propose an appeal / cassation and vice versa does not have permanent legal force if the Public Prosecutor or Defendant / Legal Counsel files an appeal / cassation. With the legal effort, the status of the evidence shifts its responsibility to the Panel of Judges of the High Court / Supreme Court. Problems will arise when evidence belonging to third parties in good faith is confiscated for the state by the High Court or the Supreme Court of the Republic of Indonesia while objections from third parties in good faith are only directed against the District Court's

⁵ Khairani, *Legal Certainty Outsourcing Workers' Rights (in view of the concept of an employment relationship between workers and employers)*, Rajawali Pers, Jakarta, 2016, p.17.

⁶ Akhiruddin, dkk. *Legal Certainty in the Settlement of Embezzlement in the Family with the Restorative Justice Method*. International Journal of Multicultural and Multireligious Understanding, Volume 7 Issue 1, Juni 2020, p. 517.

decisions. Therefore, there is no legal protection for third parties in good faith related to the decision to seize evidence belonging to third parties in narcotics crime cases by the High Court or the Supreme Court.

In the opinion of Philip M. Hadjon that legal protection for the people as a government action that is preventive and repressive. Preventive legal protection aims to prevent disputes, which direct government actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in the judiciary.⁷ Legal protection must be given by the government to prevent things that are detrimental to the interests of the community.⁸

The objection of the third party in good faith is submitted within 14 (four) days after the announcement of the decision of the first court. On the other hand, the process of resolving cases of narcotics crime has not been completed with legal efforts, either from the Public Prosecutor or Defendant. Meanwhile, third party objections in good faith were accepted by the District Court and examined based on the provisions of the Civil Procedure Code. This raises legal uncertainty in the future, especially with regard to the execution of evidence whether the Prosecutor is awaiting a decision from the High Court / Supreme Court or carrying out a District Court decision related to the objection of a third party in good faith.

Implementation of court decisions related to criminal acts is the authority of the Prosecutor's Office. Referring to Article 1 number 1 of Law Number 16 of 2004 concerning the Prosecutor's Office it is stated that the Prosecutor is a functional official who is authorized by law to act as a public prosecutor and the implementation of court decisions that have obtained permanent legal force and other powers based on the law. Then, in Article 1 number 6 letter a of Law Number 8 of 1981 concerning Criminal Procedure Law, it is explained that the Prosecutor is an official who is authorized by this law to act as a public prosecutor and implement court decisions that have obtained permanent legal force.

The authority of the government is based on laws and regulations. Theoretically, authority derived from legislation is obtained in 3 (three) ways, i.e.:⁹

- a. Attribution, namely the granting of new governmental authority by a provision in the legislation.
- b. Delegation, i.e., delegation of authority that already exists by a TUN Agency or Officer who has obtained attributive authority to another TUN Agency or Officer.
- c. Mandate, namely granting permission for the use of authority by a government organ to another organ on its behalf.

Based on the information above, it appears that the authority obtained by attribution is genuine because it is mentioned directly from the article of the legislation in this case exemplified by the Prosecutor's Office.

Research on the position of the Prosecutor's Office in the case of third-party objection to the decision of the district court that confiscate evidence of narcotics crime cases for the state in Indonesia is basically from a search conducted, both at the library within the Postgraduate Program Faculty of Law, Andalas University and from the Website of the State University / Other private sector in Indonesia has never been done. However, it is also possible that the same research has been carried out, both at the State University and at the Private University. However, there are differences, especially the problems that have been formulated, the discussion and theoretical framework used.

⁷ Phillipus M. Hadjon, *Legal Protection for the Indonesian People*, PT. Bina Ilmu, Surabaya, 1987, p.29.

⁸ Andi Wika Putri, et al, *Legal Protection of Indigenous Communities on Cultivation Rights Title in Bulukumba Regency*, International Journal of Multicultural and Multireligious Understanding, Volume 7 Issue 1, Februari 2020, p.553.

⁹ Ridwan HR, *State Administrative Law*, Rajawali Pers, Jakarta, 2018, p.101-102.

The formulation of the problems in this writing, namely: (1) What is the position of the Prosecutor's Office in the case of third party objection to the decision of a district court that confiscate evidence of narcotics criminal acts for the State; (2) What are the criteria of a third party having a good intention in a case of a third party's objection to a district court ruling that confiscate evidence of a narcotic crime for the country; and (3) What is the procedure for third party objection to the decision of a district court that confiscate evidence of narcotics crime for the State?

Research Methods

Peter Mahmud Marzuki argues, that legal research is used to produce new arguments, theories or concepts as a prescription in solving problems encountered, so that the answers expected in legal research are right, appropriate, inappropriate or wrong. Thus it can be said that the results obtained in legal research already contain value.¹⁰

The method used in the writing of a thesis is to use a normative juridical problem approach that is to conceptualize the law as norms, rules, principles, or dogmas, by using the statutory approach which is described descriptively based on problems with various legal and literary rules, as well as looking for a legal opinion about the problem that is the object of the problem.

Results and Discussion

1. Position of the Prosecutor's Office in Objection of Third Parties

The Attorney General's authority in the field of Civil law has existed since the Dutch East Indies Government precisely in 1922. This is based on the provisions of Koningklijke Besluit Staatblad 1922 Number 522 concerning *Vertegenwoordige van den Lande in Rechten* which has been amended by Staatblad 1941 Number 31 jo Number 98 which states that: in a process or dispute that is handled in a civil manner, then the one acting for the Government and the state responsible before the Court is Officer Justisi or the Prosecutor who carries out the prosecution's duties at the Court.¹¹ The Justification Officers carry out the duties of *Openbaar Ministerie (OM)* in the *Landraad (District Court)*.¹²

In 1977, the Attorney General's Operations Division through the Special Directorate formed the Civil Law Sub Directorate. The activity of the Sub-Directorate of Civil Law is still limited to efforts to utilize the authority of the Prosecutor's Office to represent the state in Civil cases both as Plaintiffs and Defendants as regulated in Article 123 paragraph (2) HIR / Article 147 paragraph (2) RBg and Staatblad 1922 Number 522 which has been amended by Staatblad 1941 Number 31 jo Number 98.¹³ This establishment was a follow up to Presidential Decree Number 313 of 1968 which stated that the Prosecutor's Office represented the state before the Court in a civil case.¹⁴

In the case of objections by a third party in good faith towards the confiscated evidence by the District Court in Narcotics crime, the Prosecutor's Office shall be the Representative of the State / Government. If the objection case is tried according to the Criminal Procedure Code, the Prosecutor's Office shall be the Representative of the Government and at the hearing will be represented by the Public

¹¹Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2009, p. 33.

¹¹ Chaerul Amir, *Prosecutor's Office Eradicating Corruption (An Analysis: Historical, Sociological, and Juridical)*, Prodeleader, Jakarta, 2014, p.293

¹² Landraad is a daily court for residents of Bumi Putera or similar in civil and civil cases. See Article 94 RO (*Reglement op de Rechterlijke Organisatie en het beleid der Justitie / Judicial and Judicial Policy Organization*).

¹³ M.Yahya Harahap, *Op. Cit*, p.27.

¹⁴ Ilham Gunawan, *The Role of the Prosecutors' Office in Upholding Law and Political Stability*, Sinar Grafika, Jakarta, 1994, p.62.

Prosecutor. Meanwhile, if the objection case is tried according to the Civil Procedure Code, the Prosecutor's Office shall be the Representative of the State¹ and in the hearing will be represented by the State Attorney as the Defendant. The problem is that in Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics, there are no provisions governing procedural law used in adjudicating the third party's objections in good faith and how the Prosecutor's position is in the case. Is the respondent, the defendant, co-the defendant or the party being questioned? This raises uncertainty regarding authorized officials, whether the Public Prosecutor or State Attorney?

One component of legal certainty according to Bagir Manan as quoted by Khairani is certainty of authority.¹⁵ The absence of provisions regulating the procedural law of a third party in good faith, resulting in doubt for the Prosecutor's Office who is authorized to represent the country in the trial of the third party objection in good faith?

The Public Prosecutor and Attorney Attorney both have the authority to represent the state as affirmed in the legislation namely Article 30 of Law Number 16 of 2004 concerning the Indonesian Attorney General's Office.¹⁶ The Public Prosecutor has attributive authority in the criminal field that is acting as the Public Prosecutor and executor of the Court's decision. While the State Attorney Attorney has attributive authority in the field of civil and state administration namely with special powers acting for and on behalf of the state or government in civil and state administrative matters.

In the trial practice that has been carried out by Judges in the District Court, third party objections in good faith are examined based on the provisions of the Civil Procedure Code. The third party has a good intention as the Opponent to sue the Public Prosecutor's Office in the District Court where the decision to confiscate evidence for the state is announced. The Prosecutor's Office is sued on the basis of controlling the object of the disputed goods claimed by third parties in good faith. The lawsuit refers to the Decision of the Supreme Court of the Republic of Indonesia Number: 1072 K / Sip / 1982 which reads: "The lawsuit is sufficiently addressed to those who feel control over the disputed items".

For example in case Number : 14 / Pdt.Plw / 2014 / PN.Stb, Hidayati Zahra Bahri filed a lawsuit against May 5, 2014 in the Stabat District Court against the Decision of the Stabat District Court Number : 21 / Pid.Sus / 2014 / PN.Stb which was read on April 23, 2014 on behalf of the defendant Kosim Nasution. Hidayati Zahra Bahri filed the objection by carrying out a lawsuit against the Government of the Indonesian Republic, the Attorney General's Office of the Indonesian Republic, the North Sumatra High Prosecutor's Office, the Stabat Prosecutor's Office, and the Public Prosecutor in the criminal case No. Reg: PDM-18 / III / Stb / 01 / 2014. Hidayati Zahra Bahri sued the Stabat Prosecutor's Office (as a defendant) with reason the Stabat Prosecutor's Office took control of the disputed object, namely 1 (one) unit of the 2013 Toyota New Avanza in black with Nopol BK BK 1054 ZW and the Stabat Prosecutor's Office was the executor of the judge's decision to carry out an auction of the execution of the dispute object. In fact, in a criminal charge, Stabat Prosecutor's Office demanded that the evidence in the form of 1 (one) unit of the 2013 Toyota New Avanza in black with Nopol BK BK 1054 ZW be returned to the rightful one namely Witness Anton (Witness Anton and Hidayati Zahra Bahri were involved in a car rental business collaboration).

When referring to the *derden verzet* procedure regulated in Article 195 paragraph (6) of the HIR or Article 378 Rv, then the objection is submitted in the form of a claim for objection by appealing the plaintiff (confiscated applicant) and the defendant (confiscated) as the opposing party. Based on the aforementioned provisions, Hidayati Zahra Bahri should not only be suing the Prosecutor's Office but also suing the defendant (Kosim Nasution) as the party who controlled the object of the previous dispute. The Prosecutor's Office based on Article 195 paragraph (6) of the HIR should be located as a Co-Defendant

¹⁵ Khairani, *Op.Cit.*, p.17.

¹⁶ Ridwan HR, *Op.Cit.*, p.101-102.

and be withdrawn in a claim for objection on the basis of controlling the object of dispute confiscated by the Stabat District Court in a narcotic crime. But in reality, the Stabat District Court Judge accepted a lawsuit by a third party in good faith (Hidayati Zahra Bahri) who turned out to lack the parties to even grant Hidayati Zahra Bahri's demands and sentence the Defendant (the State Attorney) to pay the case fee because he was on the losing side. Whereas the actions of the Prosecutor's Office confiscating, prosecuting and implementing Judges' decisions are legal and regulated in statutory regulations. Inappropriate institutions that implement the provisions of the legislation are punished as stated in Article 50 of the Criminal Code which reads: "Anyone who commits an act to implement the provisions of the law, is not convicted".

Decision of the Stabat District Court Number: 14 / Pdt.Plw / 2014 / PN.Stb An.Hidayati Zahra Bahri who granted Hidayati Zahra Bahri's claim to be ruled out by the Medan High Court Judge Council in the narcotics crime case Number: 315 / PID / 2014 / PT- MDN and the Indonesian Supreme Court Judge Council in the case of narcotics crime number: 1258.K / Pid.Sus / 2014. The two judicial institutions still confiscated evidence in the form of 1 (one) unit of the 2013 Toyota New Avanza in black with Nopol BK BK 1054 ZW. This is due to the absence of provisions that the District Court decisions related to cases of third party objections in good faith are attached and considered in the examination of narcotics criminal cases by the Panel of Judges of the High Court or the Supreme Court. The issue of legal uncertainty arises when it comes to the execution of judges' decisions. Which decision will be carried out by the Prosecutor's Office. Is the Decision of the Supreme Court of the Republic of Indonesia Number: 1258.K / Pid.Sus / 2014 or the Decision of the Stabat District Court Number: 14 / Pdt.Plw / 2014 / PN.Stb ? This uncertainty occurs due to the absence of norms related to the procedural law used and the time of filing an objection in the case of a third party objection in good faith.

Decision of a criminal case can be one of the evidences in a civil case. Likewise, a civil case verdict can become evidence in a criminal case. This will be achieved if the decision has permanent legal force. While in the case of An.Hidayati Zahra Bahri's objection, the criminal case's decision has not been legally binding.

The requirement for permanent legal force is also in line with the Supreme Court Jurisprudence Decision No.628 K / Pid / 1984 where the Supreme Court orders the Bandung High Court to await the decision of a court of law with permanent legal power related to the status of land ownership.

2. Third Party Criteria in Good faith in the Case of Objection to the Judgment of Confiscation of Evidence in Narcotics Crimes.

In Article 1338 paragraph (1) of the Civil Code the principles of freedom of contract, the principle of consensualism, and the binding power of the agreement are concluded. These principles are in one unified system and do not stand alone. Related to the binding power of the agreement, it applies as a law for the parties that made it (pacta sunt servanda), in certain situations the applicability is limited, one of which is in good faith.¹⁷

The principle of good faith has a very important function in the constellation of contract law. Limits on good faith are difficult to determine, but it is generally understood that good faith is a contractual obligation. Thus good faith is one form of legal obligation that must be obeyed throughout the entire contract process.¹⁸

¹⁷ Agus Yudha Hemoko, *The Law of Agreement on Proportionality Principle in Commercial Contracts First Edition*, Prenadamedia Group, Jakarta, 2014, p.134.

¹⁸ Syarifuddin, *License Agreement and Copyright Registration*, Bandung, PT.Alumni, 2013, p.74.

Referring to Article 1338 paragraph (3) of the Civil Code, it is stated that: "The agreements must be implemented in good faith". This means that the agreement was carried out according to propriety and justice. According to Hoge Raad on 9 February 1923 it was formulated that the agreement must be carried out "volgens de eisen van redelijkheid en billijkheid" which means good faith must be carried out according to decency and appropriateness.¹⁹

Legal protection for third parties in good faith as regulated in **Article 101 paragraph (2) of Law Number 35 Year 2009 Concerning Narcotics** has long been considered. If the Law on Narcotics that has ever been applied in Indonesia is traced, the existence of Article 101 paragraph (2) is actually a repetition of the provisions of the old Narcotics Law, namely:

- a. Article 29 paragraph (3) of RI Law Number 9 of 1976 Concerning Narcotics, states that: "If in the decision to confiscate narcotics and tools used in a crime including belonging to a third party in good faith, the owner can submit to the relevant Court the objection to the appropriation, within 3 (three) months after the announcement of the Judge's decision".
- b. Article 77 paragraph (3) of Law Number 22 Year 1997 Concerning Narcotics, formulates as follows: "In the event that the appropriated tool as referred to in paragraph (1) is the possession of a third party in good faith, the owner may submit an objection to the appropriation court in question, within 14 (fourteen) days after the announcement of the first-level court decision".

Based on the two laws above basically provides protection to **third parties in good faith**. The intended protection relates to ownership rights. In Article 570 the Civil Code clearly states that :

"Property rights are the rights to enjoy the usefulness of a material freely, and to act free of that material with complete sovereignty, as long as it is not in violation of laws or general regulations stipulated by a power that has the right to determine it, and does not interfere with the rights of others . All of that by not reducing the possibility of revocation of that right in the public interest based on the provisions of the Act with payment of compensation."²⁰

From the provisions of Article 570 of the Civil Code above it can be understood that property rights are limited by law, the rights of others and the public interest. However, the provisions of this article are not a reason for depriving someone of their property. Therefore, it is not fair if there are legal provisions that contain norms in the form of the ability to confiscate the rights of others even if the person has good faith. This is what underlies the existence of **Article 101 paragraph (2) of Law Number 35 Year 2009 Regarding Narcotics**. If related to Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia, such ownership rights may not be arbitrarily taken over by anyone. However, in its implementation it is obliged to comply with restrictions set forth in the Law as regulated in Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia. These restrictions are made with the sole purpose of guaranteeing recognition and respect for the rights and freedom of others and to fulfill fair demands in accordance with moral considerations, religious values, security and public order in a democratic society.

According to the consideration of the Constitutional Court Panel of Judges in the Constitutional Court Decision Number: 021 / PUU-III / 2005 dated March 1, 2006 that the confiscate of property rights does not necessarily conflict with the 1945 Constitution of the Republic of Indonesia. Confiscation of ownership can be justified as long as it is carried out in accordance with the principle of due process of law, even more so for property rights born due to legal construction including ownership rights born from

¹⁹ Agus Yudha Hermoko, *Op.Cit.*, p.135.

²⁰ R.Subekti dan R.Tjitrosudibio, *Code of Civil law*, PT.Pradya Paramita, Jakarta, 2004, p.171

fiduciary security agreements.²¹ However, apart from the validity of the confiscating of property rights as long as it is carried out in accordance with the principle of due process of law, the ownership rights of third parties in good faith must still be protected. The Panel of Judges of the Constitutional Court in its consideration also justified the practice of applying the law by the Sengeti District Court in civil cases Number: 04 / Pdt.Plw / PN.Sgt which granted the petitioner's objection to the confiscation of the applicant's ownership rights over evidence.

In the trial practice to determine whether the third party has a good intention or not, the Panel of Judges combines the Goodwill Principle contained in Article 1338 paragraph (3) of the Civil Code with Article 55 of the Criminal Code and Article 56 of the Criminal Code.²² This can be seen in the consideration of the Stabat District Court Judge in the Civil Objection case Number: 14 / PDT.PLW / 2014 / PN.STB page 29 which states: Opponent as owner of 1 (one) black Avanza in 2013 with police number BK 1054 ZW, did not know and did not allow the car to be used as a means or a tool to commit narcotics crime. If the Opponent knows and gives permission for his car to be used to help narcotics crime, it is confirmed that the Contender is subject to Article 56 of the Criminal Code and Article 132 paragraph (1) of Law Number 35 Year 2009 Regarding Narcotics. Similar considerations are also found in the Decision of the Panel of Judges of the Pekanbaru High Court Number: 110 / PDT / 2014 / PT.PBR page 22 which states: Opponents as holders of Property Rights and holders of Fiduciary Rights never control or hold 1 (unit) black Avanza car metallic with BM 115 CH police number so Opponent does not know what is used for 1 (unit) Avanza car.

Principle of Good faith in determining the legal standing of the applicant objection or contender seen from the way the contrarian obtained ownership rights as evidenced by the agreement letters.²³ For example in the Civil Resistance case Number : 14 / PDT.PLW / 2014 / PN.STB, the applicant objected on behalf of Hidayati Zahra Bahri to submit evidence in the form of letters:

- a) Photocopy of a 2013 (1) unit of Toyota New Avanza motorized vehicle number in black with police number BK 1054 ZW issued by the National Police of the Republic of Indonesia in North Sumatra on behalf of the Applicant (Hidayati Zahra Bahri);
- b) Photocopy of Statement Letter Number: 388857/220114 / ASF made by PT.Astra Sedaya Finance which explains that Hidayati Zahra Bahri has a financing agreement with fiduciary guarantees based on agreement number 01500509001932933 with PT.Astra Credit Companies;
- c) Photocopy of Letter from CV.Alde Karya Taxi and Rent Car explaining 1 (one) unit of 2013 Toyota New Avanza in black with police number BK 1054 ZW used for car rental business managed by Anton (brother of Hidayati Zahra Bahri).

Based on the letter of evidence above the Panel of Judges argues that 1 (one) unit of the 2013 Toyota New Avanza in black with police number BK 1054 ZW is the applicant's right, namely Hidayati

²¹ Judge Harjono in the Constitutional Court Decision of the Republic of Indonesia Number: 021 / PUU-III / 2005 dated March 1, 2006 argues: A financing company (leasing) is not properly referred to as the car owner if the Debtor still recognizes the obligation to pay its debts.

²² Article 55 of the Criminal Code states 4 (four) groups that can be convicted, namely: the perpetrators (pleger), ordered to do (doenpleger), participate (medepleger) and advocates (uitlokker). Article 56 of the Criminal Code states the groups that are convicted as crime aides, namely: those who deliberately provide assistance when the crime is committed and those who provide the opportunity for means or information to commit a crime. (see: Teguh Prasetyo, Criminal Law. Rajawali Press, Jakarta, 2011, p.205).

²³ Article 584 Civil Code: Property rights for a material cannot be obtained by other means, but by ownership (claiming), because of attachment, because it is expired, because of inheritance, either according to the law or according to a will, and because the appointment or surrender is based on a civil event to transfer property rights, carried out by people who are entitled to act freely about the material.

Zahra Bahri. The Panel of Judges in civil cases ignores the principle of bezit recht regulated in Article 1977 of the Civil Code in which anyone who controls a movable object is considered as the owner. The Panel of Judges determined that those who had legal standing filed an objection were those whose names were listed in the Proof of Ownership of Motorized Vehicles (BPKB) namely Hidayati Zahra Bahri.

Thus, in the latest developments the bezit recht principle does not apply to motorized vehicles. During a traffic vehicle raid by the Police, the bezit recht principle can be applied. However, the evidence at the trial that is considered as the legal owner is the party whose name is listed in the Proof of Ownership of Motorized Vehicles (BPKB). Thus it can be understood why there are differences of opinion between the Public Prosecutor and the Panel of Judges in criminal cases Number: 21 / Pid.Sus / 2014 / PN.Stb where the Panel of Judges confiscate evidence 1 (one) unit of the 2013 Toyota New Avanza in black with Police number BK 1054 ZW for the state.

Meanwhile, the Public Prosecutor in accordance with the Case Register Number of Claims: PDM-18-III / STBA / 01/2014 dated April 1, 2014 filed a claim that 1 (one) unit of a 2013 Toyota New Avanza car in black with police number BK 1054 ZW be returned to those entitled through the Witness Anton on the grounds that the evidence was confiscated from Anton as the owner of the CV. Alde Karya Taxi and Rent Car rental business. This is in accordance with the principle of bezit recht regulated in Article 1977 paragraph (1) of the Civil Code where anyone who controls a movable object is considered the owner so the Public Prosecutor returns 1 (one) unit of the 2013 Toyota New Avanza in black with police number BK 1054 ZW to Witness Anton.

In addition to the name of the owner stated in the documentary evidence, if referring to the decision of the Constitutional Court of the Republic of Indonesia Number: 021 / PUU-III / 2005 dated March 1, 2006, PT. Astra Sedaya Finance as a private legal entity that provides financing is also entitled to file an objection to the decision of appropriation evidence in the form of 1 (one) unit of the 2013 Toyota New Avanza in black with police number BK 1054 ZW. This objection can be submitted on condition that the debtor (Hidayati Zahra Bahri) no longer pays his debt to the creditor (PT. Astra Sedaya Finance) or the *wan prestasi* (do not fulfill obligations) and acknowledges the existence of the *wan prestasi*.²⁴

Recognition of *wan prestasi* is in accordance with the ³ Decision of the Constitutional Court Number: 18 / PUU-XVII / 2019 dated January 6, 2020, in which the Financing Company can no longer unilaterally withdraw fiduciary objects and must first request an execution request from the District Court. The Financing Company may only execute without submitting an application to the Court on condition that the Debtor recognizes the existence of a *wan prestasi*.²⁵

²⁴ In Indonesia, the first jurisprudence that allowed the entry into force of Fiduciary institutions was Arrest Hoogerechtshof on 18 August 1932. After the entry into force of the 1960 Basic Agrarian Law, the Supreme Court through Decision Number 372 K / Sip / 1970 dated 1 September 1971 stated: The surrender of absolute property rights as collateral by third parties only apply to movable objects. (see: Andi Hamzah and Senjun Manullang, Fiduciary Institutions and Their Application in Indonesia, Ind-Hill Co., Jakarta, 1987, p.68-69).

²⁵ ³ K Decision Number: 18 / PUU-XVII / 2019 dated January 6, 2020:

1. Declare Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees (Statute Book of the Republic of Indonesia Number 168 of 1999, Supplement to Statute Book of the Republic of Indonesia Number 3889) as long as the phrase "executive power" and phrase "equals a court decision which has permanent legal force" contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force so long as it is not interpreted "to fiduciary guarantees without agreement on breach of contract (default) and debtors object to voluntary surrender of objects subject to fiduciary security, then all legal mechanisms and procedures in carrying out the execution of the Fiduciary Guarantee Certificate must be carried out and apply the same as the execution of a court decision on that has permanent legal force".
2. Declare Article 15 paragraph (3) of Law Number 42 Year 1999 concerning Fiduciary Guarantee (State Gazette of the Republic of Indonesia Number 168 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "breach of promise" is contrary to the State Constitution The Republic of Indonesia of 1945 and has no binding legal force insofar as it is not interpreted that "the existence of a breach of contract is not determined unilaterally by the creditor but on the basis of an agreement between the creditor and the debtor or on the basis of legal efforts that determine the occurrence of breach of promise".

3. Third Party Objection Procedures to the Decision of Confiscate Evidence Goods in the Narcotics Criminal Act

In narcotics crime², legal action against the confiscate of evidence to the state is objectionable. The objection was filed by the third party as the owner of the goods in good faith to the District Court who decided the narcotics crime case with a maximum period of 14 (four) days after the announcement of the District Court's decision. The procedure for submitting an objection is not regulated further in narcotics crime and the explanation of Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics only states that it is quite clear. This raises problems for law enforcement officials, especially Judges and Public Prosecutors regarding the procedural law used.

In the criminal procedure code itself, there is no regulation regarding objections after the final verdict. The legal remedy for the final decision is only 2 (two), namely ordinary and extraordinary legal remedies. Ordinary legal remedies are further divided into 2 (two), namely appeals and cassation. Meanwhile, extraordinary legal remedies consist of 3: Cassation in the Interest of the Law and Review. Legal remedies are usually carried out on final decisions that have no permanent legal force, while extraordinary legal remedies are applied to final decisions that have permanent legal force (*in kracht van gewijsde*).

However, the Criminal Procedure Code accommodates the interests of the aggrieved party due to an act which forms the basis of the indictment by the public prosecutor. The aggrieved party may submit a request to merge the case for the compensation suit with the criminal case. The request is submitted before the Public Prosecutor submits a claim or in the event that the Public Prosecutor is absent, the request is submitted before the Judge makes a decision.²⁶ The provisions of the Civil Procedure Law apply to the claim for compensation.

The injured party includes the victim submitting a claim for compensation to the defendant related to the confiscated object / evidence of the injured party being used as a means to commit the crime. The claim is filed with the suspect as a defendant on the basis that the defendant has committed an illegal act in which the defendant has used the plaintiff's objects / property as a means or tool for crime.

If guided by Article 39 paragraph (1) of the Criminal Code which states that, what can be confiscated are goods belonging to the convicted person obtained from a crime or intentionally used to commit a crime, then the provisions of Article 101 paragraph (1) of Law Number 35 Year 2009 About Narcotics is actually not much different from Article 32 paragraph (1) of the Criminal Code. Only private property can be confiscated and goods belonging to third parties in good faith must be protected. The problem arises, when will the third party in good faith be questioned before the trial and prove its ownership of the confiscated items / evidence ?

When referring to Article 98 of the Republic of Indonesia Law No. 8 of 1981 concerning Criminal Procedure Law, a third party in good faith can be questioned before a trial in relation to a claim for compensation before the judge issues a criminal decision. Defendant (suspect) is required to compensate third parties in good faith as much as the price of goods / goods seized or will be confiscated

³ Stating Explanation of Article 15 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantee (State Gazette of the Republic of Indonesia of 1999 Number 168, Supplement to the State Gazette of the Republic of Indonesia Number 3889) as long as the phrase "executive power" is contrary to the Basic Law The Republic of Indonesia in 1945 and has no binding legal force insofar as it is not interpreted "to fiduciary guarantees for which there is no agreement on breach of contract and debtors object to voluntary submission of objects which become fiduciary guarantees, then all legal mechanisms and procedures in the execution of the execution of the Fiduciary Guarantee Certificate must be carried out and applies the same as the implementation of the court decision which has permanent legal force".

²⁶ Article 98 of the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law, State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3258.

and added to costs incurred by third parties in good faith. It's just according to M. Hanafi Asmawie, if the items confiscated by the investigator including the evidence can not be requested for compensation.²⁷ This has made it difficult for third parties in good faith to file compensation claims with the suspect. Evidence such as motor vehicles that were confiscated from the suspect are "Petunjuk" evidence that supports the successful proof of the public prosecutor before the trial.

Judging from the Legal Protection Theory, Preventive Legal Protection aims to prevent disputes.²⁸ Lawmakers are not careful in formulating legal protection for third parties in good faith. There is no norm in Law Number 35 Year 2009 concerning Narcotics which states: "The court's decision regarding the confiscation of goods not belonging to the defendant is not handed down, if the rights of third parties in good faith will be impaired". In fact, there is Repressive Legal Protection as stated in Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics. It's just that the repressive protection is not optimal due to unclear legal norms that are applied so as to cause multiple interpretations among law enforcement, uncertainty of execution and detrimental to third parties in good faith.

Preventive legal protection of third parties in good faith can be seen in other laws and regulations, one of which is Article 19 paragraph (1) of the Republic of Indonesia Law No. 31/1999 concerning Eradication of Corruption Crimes as amended by RI Law No. 20 The year 2001 reads: "The court's decision regarding the confiscation of goods not belonging to the defendant is not handed down, if the rights of third parties in good faith will be impaired". This provision originally originated from Article 7 paragraph (2) of the Emergency Law of the Republic of Indonesia Number 7 of 1955 concerning the Investigation, Prosecution and Judgment of Economic Crimes. This norm requires Investigators, Public Prosecutors and Judges to selectively sort confiscated objects / evidence that will be confiscated for the state. The Investigator or Public Prosecutor may request a third party in good faith to be a witness in relation to confiscated objects / evidence before the judge's decision is rendered.

In practice justified criminal decisions that have permanent legal force (in kracht van gewijsde) become the basis of lawsuits and evidence in civil cases. There is no problem when the Decision of the District Court which has permanent legal force (in kracht van gewijsde), is submitted by the third party in good faith within 14 (fourteen) days after in kracht van gewijsde. Problems arise when a third party has a good intention to file an objection while the Public Prosecutor submits a legal remedy, either an appeal or an appeal against a narcotics crime case. This results in injustice to third parties in good faith if the Decision of the Court of Appeal or the Supreme Court confiscating evidence belonging to the third party. While the submission of the objection is limited to the first instance court decision (District Court).

Until now, the Supreme Court of the Republic of Indonesia has not issued Circular related to the absence of norms in the objection procedure against the decision to confiscate evidence belonging to third parties in good faith. In fact, legal protection for third parties in good faith in Corruption has been regulated through the Supreme Court Circular Letter No. 1 of 2017 concerning the Imposition of the Results of the Plenary Meeting of the 2017 Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court.

In various District Court decisions related to third party objections in good faith, the Panel of Judges accepts third party objections in good faith in the form of a third party objection suit by referring to *terden verzet* as stipulated in Article 195 paragraph (6) of the HIR which reads:

"If the implementation of the decision is resisted, also the resistance is carried out by another person who recognizes the confiscated item as his possession, then that and all disputes regarding the forced effort

²⁷ M. Hanafi Asmawie, *Compensation and Rehabilitation According to the Criminal Procedure Code*, PT. Paramnya Paramita, Jakarta, 1990, p.4

²⁸ Phillipus M. Hadjon, *Op.Cit.*, p.29

ordered, submitted to and decided by the district court in which the jurisdiction must be carried out a decision that's every twenty-four hours."

The same thing is also found in Articles 378 and 379 Rv (Reglement op de Rechtsvordering) which reads:

Articles 378 Rv:

"Third parties have the right to take a stand against a decision that harms their rights, if they are personally or their legal representatives, or the party they represent is not called in court, or because of a merger of cases or interference in the case was once a party. "

Articles 379 Rv:

"This resistance was examined by a judge who handed down the ruling. Resistance is submitted with a summons to appear before the hearing of all parties who have received a decision and general rules regarding how to proceed in this fight. "

Even though the objection of a third party in good faith is interpreted as a third party resistance suit (*derden verzet*) in the civil procedural law, but its implementation deviates from the provisions of Article 379 Rv where only the Prosecutor's Office is sued while the defendant commits an act against the law or a criminal offense is not being sued. In fact, the Attorney General's Office is deemed to have committed illegal acts because it carried out a District Court ruling that confiscated evidence belonging to a third party in good faith. The Prosecutors' Office is more suitable to be sued as Co-Defendant because they have mastered the evidence which is the object of the dispute. This is in accordance with the consideration of the Decision of the Supreme Court of the Republic of Indonesia Number 1072 K / Sip / 1982 dated August 1, 1983 with the rule of law: "A lawsuit is sufficiently addressed to those who feudely control the disputed items".²⁹

This deviation is an effort of the Panel of Judges to explore, follow and understand the legal values that live in society. With adagium *curia novit jus*, the judge is considered to know and understand all the laws. This is the judge has the authority to determine which procedural law will be applied to fill the void in norms in Article 101 paragraph (2) of Law Number 35 Year 2009 Concerning Narcotics.

In adjudicating a third party objection lawsuit, the Panel of Judges did not consider the amount of damage the third party had in good faith. If there is a demand to pay compensation money, it will be rejected by the Panel of Judges. This is because the objective of the objection legal remedies as referred to in Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics is to protect the property of third parties in good faith. If a claim for objection is granted by the Panel of Judges, the criminal decision as long as it is related to the consiscating of evidence for the state is corrected and the evidence is returned to a third party in good faith.

The next thing that becomes a problem is the case costs. In Article 58 Rv it is stated that: "Whoever is declared defeated in the decision, to pay the case fee." If the Panel of Judges consistently hears objections from third parties in good faith (contenders) in the form of third party objection claims as regulated in Article 378 Rv, the case costs should be borne by the defendant / convict. It is the conviction that causes harm to the plaintiff / contender. The Prosecutor's Office as the Defendant / Co-Defendant who was withdrawn in a lawsuit because he controlled the object of the dispute must be exempt from the case fee on the basis of carrying out the command of the Law as affirmed in Article 50 of the Criminal Code.

²⁹ R.Soeroso, *Jurisprudence of Civil Procedure Law Part 2 Regarding Parties in Case*, Sinar Grafika, Jakarta, 2011, p.391.

In submitting an objection to a decision of confiscate of evidence belonging to ² third party in good faith, the competitor is bound to a predetermined time period of 14 (four) days after the announcement of the first-level Court decision. This norm is quite confusing law enforcement officials, especially prosecutors and judges. In Article 195 of Law Number 8 of 1981 concerning Criminal Procedure Law it is formulated that: All court decisions are only valid and have legal force if pronounced in a hearing open to the public. Furthermore, Article 245 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law regulates: Appeals for cassation shall be submitted by the applicant to the court clerk who has decided his case in the first instance, within 14 (fourteen) days after the court's ruling the appeal was requested to be notified to the defendant. Thus, the Criminal Procedure Code itself does not recognize the term announcement of the decision of the first court.

The announcement of the Court's verdict was found outside Law No. 8 of 1981 concerning Criminal Procedure Law. For example, in Article 79 paragraph (3) of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Acts and Article 38 paragraph (3) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by the Law Number 20 of 2001. Specifically, Article 38 paragraph (3) of Law Number 31 of 1999 concerning Eradication of Corruption, as amended by Law Number 20 of 2001, the decision announced by the Public Prosecutor is related to the absence of the defendant in the hearing Corruption Court. If a defendant has been legally called and does not appear in court without a valid reason, then the defendant's case can be examined and decided without his presence. Previously, the obligation to announce the Court's decision in the Law on the Eradication of the Corruption of the Old Corruption (Law Number 3 of 1971 concerning Eradication of Corruption) was charged to the Registrar by attaching it to the notice board of the Court and the Regional Government Office.

According to Leden Marpaung, the absence of the defendant in corruption, economic and subversion cases is known as *in absentia* or No Rule Without Exception. The Supreme Court itself in Circular Letter No. 6 of 1988 concerning Legal Counsels or Lawyers Who Received Power of Attorney / Defendant "IN ABSENTIA" asked the Chairperson of the High Court and the Chairperson of the Indonesian District Court not to serve the Legal Counsel or Attorney granting power of attorney from the accused / convicted occurred after the defendant's summons by the Judge. This is based on the suspicion of the defendant who deliberately did not want to attend with the intention of benefiting the defendant or hindering the course of court hearings and the implementation of decisions.³⁰

Meanwhile, ¹ Article 101 Paragraph (2) of Law Number 35 Year 2009 Regarding Narcotics does not stipulate that objections raised by third parties in good faith are against the Decision of the District Court that is *In Absentia*. However, when referring to legal certainty, it can be interpreted that the possible intentions of the draft Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics are objections to the appropriation of tools or goods by third parties in good faith related to the Decision of *In Absentia* of the District Court as is the case with Article 38 paragraph (7) of Law Number 31 of 1999 Concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001. With a period of filing an objection for 14 (fourteen) days, the draft author is confident that this will not occur legal appeal or legal casation from the Suspect arguing that the Suspect ran away or did not attend the trial without a valid reason. Thus, there will be no conflict between the Criminal Procedure Code and the Civil Procedure Code. Meanwhile, in reality ¹ the practice of narcotics crime filing an objection to the appropriation of said equipment or goods by a third party in good faith is addressed to the Decision of the District Court with the presence of the Suspect where the Suspect and the Public Prosecutor have the right to file criminal proceedings either appeal or cassation. This raises uncertainty in procedural law and uncertainty in execution.

³⁰ Leden Marpaung, *Criminal Case Handling Process (At the Prosecutors' Office & District Court Legal & Execution Measures) Part Two*, Sinar Grafika, Jakarta, 2011, p.94-95.

Conclusion

1. Position of the Prosecutor's Office in the fight of a third party in good faith against the decision of the District Court that confiscating evidence of narcotics crime cases is representing the state as Defendant on the basis of controlling the object of dispute that is confiscated for the state by the District Court in a narcotics crime case.
2. The criteria of a third party having a good intention in a case of objection to the decision of a District Court that confiscating evidence of a narcotic crime for the state is to have ownership rights to the evidence evidenced by the agreement letters, do not know and do not allow the said instrument / evidence used as a means or tool to commit narcotic crime.
3. The third party objection procedure in good faith against the decision of the District Court that consicate evidence of narcotics criminal acts for the state is by filing a third party claim / objection to the Prosecutor's Office based on *derden verzet* as regulated in Article 195 paragraph (6) of the HIR and in period of 14 (fourteen) days after the announcement of the decision of the first instance Court (district court).

Suggestion

1. The position of the Prosecutor's Office in cases of objection by third parties in good faith against the decision of the District Court that confiscating evidence of narcotics crime cases for the state is confirmed by representing the country as the Defendant / Co-Defendant or the Party being questioned through the addition of Article in Law Number 35 Year 2009 About Narcotics.
2. Criteria for third parties having good intentions to be formulated in the explanation of Article 101 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics by referring to Article 1338 paragraph (3) of the Civil Code, Article 55 of the Criminal Code and Article 56 of the Criminal Code.
3. A third party objection procedure in good faith to be filed against a decision to confiscating evidence for the state by the District Court in a narcotics crime that has permanent legal force in the form of a lawsuit against the convicted and prosecutor. For this reason, a revision of Article 101 paragraph (2) of Law Number 35 of 2009 concerning Narcotics is carried out.

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