



DOI: <https://doi.org/10.38035/sijal.v3i1>
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Legal Protection for State-Owned Banks as Credit Holders Whose Collateral Objects Have Been Confiscated by the State in Respect of Criminal Acts of Corruption

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Abstract: Protection for State-Owned Banks as The object of the Mortgage Rights Holder The guarantee Confiscated by the State Action Corruption Crime, The law does not automatic play a role in economic development. Economic development law can create three quality: “predictability”, “stability”, and “fairness”. The absence of uniformity, existence confusion and misunderstanding about state finances and state losses have bring in uncertainty law and finally hamper economic development. Research This use study juridical normative or study law literature that is research conducted with method research material library or secondary data , a process for find rule law , principle law and doctrine law For answer issue the law faced . Research result show that the law in Indonesia is still need to be completed For related protection law for state-owned banks as holder right the object of responsibility the guarantee confiscated by the relevant state action criminal corruption.

Keywords: BUMN, Legal Protection, Action Criminal Corruption

INTRODUCTION

Law does not automatically play a role in economic development. For can promote economic development law must can create three quality: “*predictability*”, “*stability*”, and “*fairness*”. The absence of uniformity, existence confusion and misunderstanding about state finances and state losses have bring in uncertainty law and finally hamper economic development.

With the birth of the Mortgage Rights Law No. 4 of 1996 (UUHT), the position right responsibility within law guarantee national, needs to be studied For see various content meaning, principles, functions in the network and then cross existing and future laws there is. Thought This in line with MPR Decree No. II/1983 which mandates that development material law directed towards the realization system law national that serves the interests national.

Civil law Still nature pluralistic based on as Article 163 of the Civil Code, residents The Dutch East Indies were divided in three group that is group Europe subject to the same BW with what applies in the Netherlands, earth son or group indigenous subject to law customs, as well as the Foreign Eastern group in general subject to BW except For field certain subject to law customs.

After proclamation Indonesian independence, based on the 1945 Constitution Article II of the Rules Transition determine that all existing state bodies and regulations Still direct valid during Not yet held a new one according to this Constitution but must tested with the values contained in Pancasila and the 1945 Constitution.

System law national which has principle philosophical there is in Pancasila, the principle existing constitutional in the 1945 Constitution and the principles existing operations in GBHN and beyond principles the explained in principles general and basic special. BW contains a number of principles general and principles special that must be integrated, there is harmonious, balanced and obedient relationships principle.

Land as object Already from Formerly own very strategic position in life society and from time to time have mark keep adding increased, so that awareness For fix problem land felt increasingly urgent. With consideration that's it the Indonesian government is trying for give regulations that are national at a time end principle dualism law land, UUPA is renewal First in BW field.

With thus arrangement about law land has is One unity (unification) law) namely only There is One law land only applies as system law national service to interest national. Book II BW as far as it goes earth, water and riches nature contained inside it except provision about mortgage that is still outstanding valid from the start its validity Constitution this. Unification efforts law land through UUPA it turns out Still Not yet completed, mission unification it is very clear in the field right liability or law guarantee as emphasized in UUPA dictum and in Article 51 and Article 57 of the UUPA, where provision mortgage and creditverband Still enforced.

The UUPA is in effect even though considered as something success in the field political land However Still leave question about form system law object national, considering that UUPA is part from system law object national which should be is at in framework system clear law, but it turns out Not yet come true system law object national so that can it is said that developments that occur then nature partial.

After ongoing so long implementation mortgage and creditor precisely cause problem Because show contradiction principle between principle land law adopted by BW which adheres to principle adhesion vertical (accession vertical) with the principles adopted by UUPA are principle separation horizontal (horizontal) scheiding). and not enough adequate protection and certainty law for the perpetrators economy, meanwhile demands will the need settings in the field law supporting guarantees activity economy the more urgent, Many highlights directed to provision institution sourced guarantees western law at the time the implementation of UUPA, even though That only nature temporary However disabled if associated with UUPA's mission aims create unification law land. Considering principles and systems distant law different between UUPA based on Customary Law and mortgages and credit guarantees which originate from Western law. (M. Isnaeni, 1996: 15).

How Possible second different systems principle can walk hand in hand For follow rhythm development such a society rapidly, especially in welcoming the era of globalization (M. Isnaeni, 1996:69)

Realize demands as well as urgent needs will the need institution guarantee on land that is capable support activities as well as growth economy, must quick done overhaul with a new, more format anticipatory and dynamic so that capable accommodate interests of the actors economy. The birth of UUHT is seen as as step proceed in realize unification law land specifically right guarantee on land as activity credit.

Regardless from aspect progress and success the enactment of UUHT is expected Still need reviewed regarding with system law objects and laws the guarantee that should be become runway the enactment of UUHT.

In connection with position important guarantee law in constellation economy moreover mature this, Sri Soedewi Masjchoen Sofwan also stated in framework of Indonesian Economic Development in the field law request serious attention in coaching the law includes is institution guarantee. Due to developments economy and trade will followed by developments need will credit and granting facility credit This need guarantee for security giving credit mentioned. Coaching law to field law guarantee is as consequence logical and is embodiment not quite enough answer from coaching law balance its speed activities in field trade, industry, corporations, transportation and other activities in project development.

According to Mariam Darus Badruzaman, the law applicable guarantees moment This contain weakness, good seen from aspect device the law and Its implementation. Judging from the legal system of guarantees, it appears that guarantee law is not yet a comprehensive and complete system. The regulation of guarantee law remains sporadic and inconsistent. Therefore, reforms in the field of guarantee law are necessary, guided by the system.

Similarly, R. Subekti stated that it is hoped that the provisions on mortgage rights will pay attention to the synchronization of the principles adopted by land law with the property security institution, because the property security framework must be in harmony and cannot be separated from the legal framework of the property. If one wants to find a national security legal system, then what is meant is finding a framework of all the regulatory instruments that regulate guarantees in our national law in the future. The legal framework of guarantees itself cannot be separated from the legal framework of our property.

In handling collateral rights that are pledged to state-owned banks, if a criminal act of corruption occurs that is carried out by the debtor who pledges his assets to the state-owned company, it can be forcibly taken by either the Corruption Eradication Committee (KPK) or the Prosecutor's Office.

As is known, based on the provisions of the ratification of the Anti-Corruption Law Number 7 of 2006 (ratification of the 2003 Anti-Corruption Convention), the Corruption Eradication Commission (KPK) and the Attorney General's Office can seize collateralized assets. In this research discussion, the researcher will focus on the two agencies that can carry out forced takeovers/seizures of assets held by state-owned banks so that these assets are not misused by certain parties. In general, firm can seen on:

The provisions of Article 6 of the 2003 Anti -Corruption Convention (ACC)/United Nations Convention Against Corruption (UNCAC) state that that:

1. Each State Party mandatory, appropriate with principles base system the law, ensuring existence an agency or agencies, as should, which prevents corruption with ways like :
 - a. Apply policy as intended in Article 5 of the Convention this and, if according to, supervise and coordinate implementation policy the ;
 - b. Improve and disseminate knowledge about prevention corruption.
2. Each State Party must give to such body or bodies intended in Article 1 of the This the necessary independence, in accordance with principles base system the law, so that the agency or agencies can operate its function in a way effective and free from unintended influence should be. Source material and staff resources special requirements, as well possible training required by staff the For operate its function, must provided.
3. Each State Party must to inform Secretary General Union Nations regarding name and address authority or authorities that can assist other States Parties in develop and implement actions special For prevention corruption.

Basically, the provisions the context above oblige the party / participating countries convention For form One or more bodies/ institutions independent in accordance principles base law nationally. The agency on duty and functioning For prevent occurrence action criminal corruption with method supervise, coordinate, implement, and also complete source adequate power. Then, the state party must give to Secretary General Union Nations

information regarding the name and address of the authorized body or bodies that can help other party countries develop and implement actions special For prevention corruption.

In Indonesia, as a state party There are two institutions that function and have task main prevention that is National Ombudsman Commission (KON, Law Number 37 of 2008) and the Commission Eradication Corruption (KPK, Law Number 30 of 2002 in conjunction with Law Number 19 of 2019). In addition, in fact, in Indonesia outside second institution Of these, there are also several institutions identical to have function prevention, because have function supervision and guidance, such as the Center for Reporting and Analysis Transaction Finance (PPATK), Department domestic affairs (Ministry of Home Affairs), and so on.

The provisions of Article 3 of the Corruption Eradication Commission Law stipulate Commission Eradication Corruption is state institutions in clump power deep executive carry out duties and authorities nature independent and free from influence any power. Change the KPK paradigm is in “clump power executive”, or often called institution government (regeringsorgaan-bestuursorganen) implemented in line with Decision Court Constitution Number 36/PUU-XV/2017. This intended so that the position of the Corruption Eradication Committee in system Indonesian state administration becomes clear, namely part from implementation power government (executive power). In addition, the essence of substance chapter the show the position of the Corruption Eradication Committee even though is at in clump power executive, based on Decision Court Constitution Number 36/PUU-XV/2017, Decision Court Constitution Number 012-016-019/PUU-IV/2006, in carry out duties and authorities nature independent and free from influence power wherever.

From the perspective historically, the Corruption Eradication Committee was formed because enforcement law for eradicate action criminal corruption in a way conventional proven experience various obstacles. For That required enforcement law in a way outside normal through formation a special body that has authority broad, independent as well as free from any power in effort eradication action criminal corruption the implementation of which done optimally, intensively, effectively, professionally and sustainably.

Based on provision Article 6 of the KPK Law 657 states that the KPK is the trigger mechanism and super body responsible for... do prevention, coordination, monitoring, supervision, investigation, prosecution and prosecution to Action Criminal Corruption, and actions For carry out judge's decision and verdict the court that has get strength law still. Task this, should be walk in line and mutually Work same. (Article 6 Constitution Number 19 of 2019 concerning Change Secondly, Under the Law Number 30 of 2002 concerning Commission Eradication Action Criminal Corruption)

The Corruption Eradication Committee does not can only put forward enforcement only, or prevention only. Therefore it should there is synergy between prevention, action, coordination, monitoring, and supervision. Prevention efforts can done with build anti -corruption system, anti -corruption character and culture so that expected born, grow and develop anti- corruption generation. In addition, the action prevention expected the formation of governance clean, accountable, proportional and improving government support and role as well as public in eradication action criminal corruption. Then action enforcement should aim return state money or state assets, creating therapy shock as a deterrent effect, so expected public No do action criminal corruption and creation anti -corruption climate, character and culture Good in bureaucracy government, institutions private and at all levels of life public.

Provision the context above, already give authority complete KPK as part executive For eradicate corruption from start prevention until prosecution, then boils down to power judiciary through Court Criminal Acts of Corruption (Law Number 46 of 2009), and finally completed again by the Corruption Eradication Committee against decision the court that has get strength law still.

Special to task investigation, inquiry and prosecution to action criminal corruption besides do task coordination, also implementing task supervision in which the Corruption Eradication Committee carries out supervision, research, or review to agencies that run his / her related duties and authorities with Eradication Action Criminal Corruption. The Corruption Eradication Committee (KPK) is carrying out authority investigation, inquiry and prosecution to Action Criminal Corruption where the perpetrator is involving apparatus enforcer law, State Administrators, and other existing people relation with Action Criminal Corruption committed by officials enforcer law or State Administrators ; and/ or concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah) billion rupiah).

KPK as a trigger mechanism and super body institution in carry out authority task supervision can take over investigation and/ or prosecution to perpetrator Action Criminal Corruption in progress carried out by the police or prosecutor's office. Based on provision Article 10A paragraph (2) of the KPK Law regarding takeovers investigation and/ or prosecution carried out by the Corruption Eradication Committee with reason :(Article 10A paragraph (2) of the Law Number 19 of 2019 concerning Change Secondly, Under the Law Number 30 of 2002 concerning Commission Eradication Action Criminal Corruption)

1. Public reports regarding acts of corruption are not followed up;
2. The process of handling corruption crimes without any resolution or being delayed without justifiable reasons;
3. Handling of Corruption Crimes is aimed at protecting the actual perpetrators of Corruption Crimes;
4. Handling of Criminal Acts of Corruption contains elements of Criminal Acts of Corruption;
5. Obstacles in handling corruption crimes due to interference from executive, judicial or legislative power holders; or
6. Other circumstances where, according to the police or prosecutors' considerations, it is difficult to handle corruption crimes properly and responsibly.

In essence, the Corruption Eradication Commission (KPK) was established based on the mandate of Article 6 of the 2003 Criminal Procedure Code (KAK). Therefore, there is a moral and legal obligation, necessitating harmonization, legislative gaps, political commitment, and synergy between the government and the KPK to follow up on the provisions of the 2003 KAK that have not been accommodated in the Corruption Eradication Law. There is substance. in the 2003 KAK not yet arranged in regulation Indonesian legislation in caqu the Corruption Law about provision trade influence (trading in flulence), enriching self in a way No illicit enrichment, bribery in the sector private sector (bribery in the private sector), and recovery assets (asset recovery).

The consequences of the above contextual dimensions are two sides that are synergistic with each other. On the one hand, the Indonesian government must have a strong commitment (political will) on how to follow up on the 2003 KAK by creating or encouraging the existence of new regulations that provide strengthened authority to the Corruption Eradication Commission (KPK) to prosecute perpetrators who commit acts of trading in influence, illicit enrichment, bribery in the private sector, and asset recovery. On the other hand, the KPK as a constitutional organ, trigger mechanism and super body institution in carrying out its duties independently and free from the influence of any power must play an active role in overseeing, encouraging, and monitoring the implementation of corruption eradication by overseeing the presence of new regulations in accordance with the recommendations of the 2003 KAK. Follow-up on the implementation of these recommendations is a form of strategic steps for Indonesia's role in achieving state goals, while also participating in fighting corruption in the international arena.

The essence of creating new regulations is necessary because the ratification of the 2003 ToR is only an endorsement and not the enactment of a law. Consequences Logically, KAK 2003 is a “non-self executing treaty” even though load provision such as, "illicit enrichment",

"trading in influence", and "bribery in the private sector", still must reconstructed and carried out harmonization with the Corruption Law.

Strengthening The KPK's authority can also be through build institutional (capacity building) not only covering facilities and infrastructure, strengthening Quality, resilient, professional and capable Human Resources (HR), infrastructure institutions, as well as strengthening rules that support work procedures, governance, and existence strengthening the Corruption Eradication Committee through synchronization with regulations of the Criminal Code, Criminal Procedure Code, Law about Prevention and Eradication Action Criminal Money Laundering, and so on.

Besides being required existence strengthening the KPK's authority also exists synergy coordination inter-institutional enforcer law in return asset perpetrator action criminal corruption. This is need delivered because return asset recovery not Possible succeed done without existence synergy coordination between enforcer law.

From the perspective Corruption Law regulations are one of them element from action criminal corruption is element loss state finances. Regulation political law criminal law of the Corruption Eradication Act determine that to loss state finances must returned or replaced by the perpetrator action criminal corruption. Its importance asset the returned can answered from perspective theory of the rule of law, theory justice, theory return assets, and country perspective or public as a victim.

In context theory of the rule of law and theory justice to actions action criminal corruption it is also known that there is principle or the doctrine of crime does not pay or shall not pay becomes expression resistance to perpetrator action criminal law so as not to can enjoy results action criminal or results the crime he committed, so No there are safe countries For do action criminal corruption or place For hide asset or treasure from actions action criminal corruption.

From the corner view asset perpetrator action criminal corruption should asset used For continuity development, welfare and prosperity Indonesian national which will implemented in a way fair and equitable everywhere field life. Prosperity, prosperity, and improvement level life the Indonesian nation is not quite enough the responsibilities and objectives of the Indonesian state as loaded in the Fourth Paragraph The Preamble to the 1945 Constitution. Therefore that, return asset perpetrator action criminal corruption point the weight to asset crime (criminal property/in rem). (1945 Constitution)

From the corner view the state (victim state) as the direct victim and society, the people, or party third as a victim not direct consequence action criminal corruption. Aspects This means is the rights of the victim's state and society For take return assets controlled by the perpetrator action criminal corruption. Is a matter reasonable and already should for the victim country, society or party third for take its assets and is a obligation juridical For return what is not is right perpetrator action criminal corruption until make the victim experience loss.

It is matter reasonable and already should For realize aspect the required existence synergy coordination between institution enforcer law with strengthen mechanism institutions and work The same inter-institutional enforcer law in every process level and strengthen means supporters based technology information (e-law Enforcement), mutual exchange information, strengthening source Power human resources (HR), and so on.

Function law is look after interest general in society, maintaining rights humans, and realize justice in life together Third objective This No each other contradictory, but is filling One draft basic, namely that man must life in something society, and society That must arranged with good. If talks Already until to the legal system, then order is objective from the legal system that. This thing No surprising, because what becomes bet on the moment That is How maintain continuity life society. With Thus, order must maintained with put aside demands and other considerations (Satjipto Rahardjo, 1985: 75).

Every man want peace in the midst upheavals life, therefore people always try For secure himself to possible dangers arise. One of the effort to direction that is arrange life together such appearance so that No happen something that is not expected. For that laws determined by the government, must have certainty valid (legality). Certainty law is important things because influential to development development. For those who want to invest naturally want certainty law, order, and justice in society. Conditions the will can ensure continuity as well as security of the business world and development (Antonius Sujata, 2000: 261).

As stated above, that through law man want to reach order general and justice, but must realized that order general and justice that is intended achieved through law That must can achieved and maintained in a way dynamic through organization law in a social process that is accepted by society. In terms of sociological often said by experts sociology law, that the process of making laws, implementation laws, as well as the roles involved in it are greatly influenced by the forces politics, economics and social culture (Mulyana W. Kusumah, 1981: 36). In Indonesia it is seen that strength politics greatly influences formation and enforcement law, so that observers law and society have an opinion that development structure social in Indonesia is not in accordance with the law. Indeed Can imagined that reason at work based on will free, can until to various different decisions or crossed. For That need existence benchmark such simple behavior appearance, so that can distinguish which behaviors can be which are generally accepted and which are not. Therefore That government as state administrators in general political must can give benchmark or limitation to product the law is issued, so No there was a misunderstanding between various parties and circles, for the sake of creating certainty law.

Certainty law related with effectiveness law will guaranteed only when the country has adequate facilities For ensure its validity existing regulations. In this case This apparatus law enforcer play role important. There are several factors that can used right as reference For going to to certainty law, namely:

1. Clear norms define what is required and what is prohibited.
2. Legal transparency that prevents society from normative confusion; and
3. Continuity of legal order that provides a reference for future behavior.

The application of these factors as a reference for the orientation of society and the application of generally applicable legal principles must be carried out based on two principles of justice, so as not to harm the sense of justice of society, namely the principle of general legal enforceability and the principle of equality before the law.

Legal change arises from the political process and not from policy actions by legal institutions to meet the demands of political fighters. In this case, the separation between law and politics must be clear, and violations of the law must be dealt with firmly without discrimination (Ronny Hanitijo Soemitro, 1984: 159). Legal certainty must have formal and material weight. Formal performance is produced by consistency in the application of relatively similar methods and procedures to a formal performance behavior of the law, so that the law can provide a guarantee of substantial justice. However, it is currently apparent that the law provides an institutional design for the actions of the state's political authorities. The formation and reality of legal work are strongly influenced by the nature and character of the state, and are closely tied to political power relations and the process of social change (Mulyana W. Kusumah, 2001: 11).

From this fact, it can be seen that political stability is very necessary to maintain in order to prevent chaos and political tension, political stability is largely determined by three related variables that can create unrest in society. Theoretically, each other, namely adequate economic development, institutional development of both political structures and processes, and political participation. institutions formulating policies and drafting legal regulations, consistently. What is important according to the strategic policy review, is the extent to which it continues to refer to a philosophical value system so that every policy line and legal regulation created is

considered accommodating and responsive to the aspirations of the community, fairly with equal attention. Political wisdom with a cultural approach is a constitutional demand of all Indonesian people whose social structure is full of diversity, pluralism and heterogeneity, diverse sub-ethnicities, religions, customs and cultural elements.

If political stability and attention to the culture of society can be maintained, then the law will always be enforced with certainty according to procedures, but otherwise it is impossible for this to be realized properly.

The continuity of attitudes, consistency, and actions of state institutions are crucial for determining the level of legal certainty, and their actions are crucial for determining the level of legal certainty. A lack of continuity of attitudes and consistency in actions will result in legal certainty being eroded. This is because state institutions are always responsible and authorized for the implementation of the law, which is ultimately a product of the political process. The continuity of their attitudes and consistency of actions also depend heavily on political stability. Based on introduction on so problems that arise, how protection law for state-owned banks as holder right liability when object the guarantee confiscated by the relevant state action criminal corruption, How the rights of state-owned banks as holder right liability that can be protected in case object guarantees confiscated by the state, what is the legal process that must be carried out? followed by state-owned banks to protect their rights as holder right liability when object the guarantee confiscated by the state and How impact law and finance for state-owned banks if object the guarantee confiscated by the relevant state action criminal corruption.

METHOD

Scientific Articles Legal Protection for State-Owned Banks As Object Mortgage Rights Holder The guarantee Confiscated by the State Action Criminal Corruption use approach law normative namely a process for find rule law, principle law and doctrine law For answer issue the law being faced. (Peter Mahmud Marzuki, 2005) specifications used namely study descriptive analytical, namely research that seeks give description and overview comprehensive about application of restorative justice in eradication corruption in Indonesia both at the regulatory, institutional and implementation levels, then analyze problematic the based on legal norms, theory laws and methods interpretation law with strive balance between aspect philosophical, juridical and sociological (Soerjono Soekanto, 2008) Type of research This is study library research, namely literature - based research bibliography. Data sources used is secondary data which includes material primary law (primary source or authorities), material law secondary sources or authorities and materials law tertiary (tertiary source or authorities). (Soerjono Soekanto and Sri Mahmudji, 2001) Data collection techniques material law in study This done through studies library in the form of material primary law, material law secondary and materials law tertiary. Literature study intended done For search, study and examine various documents and materials related libraries with the problem studied. Analysis Techniques material law in research This with method normative qualitative with combine reasoning induction and deduction. In this method scientific, procedure analysis that combines reasoning induction and deduction called as the “logico- hypothetico - verifikatif” method, which according to Tyndall is a “continuous marriage between deduction and induction. (Harold A. Larrabee, 1964)

RESULTS AND DISCUSSION

Legal Protection for State-Owned Banks as Mortgage Holder When the Object The guarantee Confiscated by the State Action Criminal Corruption

In thing the occurrence confiscation that become rights bank above paid off funds that loaned on debtor can cause conflict between interests bank and interests country. On basically need there is protection law to creditor in thing this bank as holder rights responsibility. mentioned according to with Jurisprudence in Verdict Court Supreme Court of the Republic of

Indonesia Number 1731K/ Pdt /2011 dated 14 December 2011 confirmed that object guarantee land and building that there on top credit that has burdened rights responsibility that has published Certificate Rights Liability must get protection law. Form protection law that given by country on holder Mortgage, referring on Verdict Court Agung Number 1731K/ Pdt /2011, can concluded that confiscation criminal against objects in it there are rights responsibility no and immediately eliminate position holder rights responsibility as parties that have rights against rights responsibility mentioned which. At the same time answer questions that guarantee mentioned still there is and no lost and responsibility answer for pay off rights responsibility mentioned still be on debtor. If debtor no able for pay off his debt then recipient rights responsibility entitled for selling object rights responsibility and get settlement moreover first. (Abraarsyah, Sukarmi, 2020)

See terms and conditions in Article 18 Law No.31 of 1999 concerning Eradication Corruption, obviously visible that expropriation goods no move (in thing This land) which obtained from action criminal corruption very Possible For carried out. Moreover, the Corruption Eradication Committee has authority that more area in thing confiscation if seen on Article 47 paragraph (1) of Law No. 30 of 2002 concerning the Corruption Eradication Commission states, above basic suspicion that strong existence proof beginning that enough, investigator can do confiscation without permission chairman court country related with assignment the investigation.

With existence confiscation that done by the Corruption Eradication Committee against property wealth debtor including property that made into guarantee land and building that there is above in the bank then thing mentioned can cause loss on parties bank as holder rights dependents. The often become problem is when process confiscation that alone no have certainty term time until when confiscation that done, until until existence verdict judge that powerful law still above case action criminal corruption mentioned. Often times process court must taken with time that long time and protracted, so bank only can waiting about certainty above status object rights his responsibility that confiscated mentioned, for temporarily time parties bank no can do execution against object rights responsibility mentioned until case mentioned has get strength law that still (*inkracht*).

Protection law share bank For overcome guarantee rights above land owned by debtor good that before or that already installed Rights Liability that confiscated by the Corruption Eradication Committee can use protection law preventive and repressive (Hadjon, 2007). Protection law preventive namely submit objection against verdict court that has do confiscation against object guarantee rights responsibility such (Hadjon, 2007). Protection law repressive is with submit lawsuit civil (through path litigation) against property wealth others owned by debtor. If already arise dropping punishment and already existence verdict court that powerful law still (*incaht*) where object guarantee That that previously confiscated become confiscated by Country then bank can Doing lawsuit resistance (*derden verzet*) to verdict court mentioned.

Even though not yet there is dispute that appear between bank and prosecutors /KPK, but no close possibility that can only then day happened dispute between bank and prosecutor's office / KPK. Top thing this prosecutor as executor entitled do confiscation throughout can proven that is results from crime. However, the holder guarantee land and building that there is above it have preferred or with word others his position prioritized. If goods that confiscated mentioned already executed, then creditor holder responsibility that have rights more Formerly accept settlement. If there is the rest new given to Country.

Rights responsibility will delete or lost in thing fulfillment things as following:

1. Deletion debt,
2. released rights dependents,
3. cleaning rights responsibility above determination ranking by court country,
4. deletion rights above land that burdened rights dependents.

Based on matter said, confiscated above goods results corruption not is wrong one cause delete it rights guarantee land and building that there is above it good rights dependents, which means rights creditor above holder rights responsibility mentioned no delete and keep going there is against goods guarantee land and building that there is above it.

In protect interests parties third (in matter This bank), Law Number 31 of 1999 regulates in a way specific about protection parties third (in construction the case above is creditors) in Article 19 of the Corruption Law visible that the Corruption Law protect interests parties third that in good faith good and also give opportunity to parties third For submit objection to court in term time two month after verdict court spoken.

Goods confiscation as something objects with guarantee land and building that there is above it rights liability, then against objects That stick positions For come first and privileges that where even though objects mentioned confiscated no make creditor loss rights his responsibility because rights responsibility mentioned continue attached on object mentioned except held deletion responsibility as arranged in Article 18 of the HT Law. Hence bank purpose protect his interests can do efforts law.

Rights of State-Owned Banks as Holders of Mortgage Rights Who Can Be Protected in Cases of Objects Collateral Confiscated by the State

In the process of confiscation object guarantee by the state, the rights of state-owned banks are protected law includes:

1. Right to be Informed: Right to receive announcement official from PPT that HT objects include in plan procurement land [Law no. 2/2012 Article 40 paragraph (1)].
2. The right to Participate Active: Right to involved in all over stages procurement land, especially study documents, assessments objects and deliberation determination change losses [Law No. 2/2012 Article 40 paragraph (2), (3), (4)].
3. Right to Special Compensation: The right to accept change established loss in a way separated from holder rights (debtor) [Law No. 2/2012 Article 42 paragraph (2)].
4. Rights to Payment Full of Debt: The Right to accept change least loss as big as all over the amount of debt guaranteed by HT at the time implementation procurement land, including:
 - a. Principal Debt
 - b. Interest (including interest owed and default interest)
 - c. Fine/ compensation on delay payment (according to agreement)
 - d. Costs incurred because implementation of HT (eg: costs notary, fees auction, fees management HT release) [Law no. 2/2012 Article 42 paragraph (3); UUHT Article 20].
5. Rights to Payment Direct: Right to accept payment change loss in a way direct from PPT, without through holder rights (debtor) first previously [Law no. 2/2012 Article 43 paragraph (1)].
6. The right to Releasing HT after Paid Off: Rights and obligations For release HT after accept payment filled with submit the original SHT and documents release others [Law No. 2/2012 Article 43 paragraph (2); UUHT Article 18].
7. Right to Object: The right to submit object in a way written to PPT if No agree with determination change loss [Law No. 2/2012 Article 44 paragraph (1)].
8. Right to File a Lawsuit: The right to submit lawsuit to the relevant PTUN determination change loss or lawsuit civil related debt/HT dispute if their rights No filled through deliberation or objection [Law No. 2/2012 Article 44 paragraph (3), Article 45; Law No. 5 of 1986 concerning PTUN; Law No. 48 of 2009 concerning Judicial Power].

Legal Processes That Must Be Followed by State-Owned Banks Protecting His Rights As Mortgage Holder When the Object The guarantee Confiscated by the State

Mortgage right arranged in Law no. 4 of 1996 concerning Mortgage Rights on land and related objects with Land (UUHT). HT provides position priority to HT holder for pay off debt from results sale HT object. Takeover land is regulated by the state in Law no. 2 of 2012 concerning Land Acquisition for Development for Public Interest (Law No. 2/2012). This law confess existence right party third (including HT holder) above object taken.

1. Stages of the Legal Process

State-owned banks are required active follow the procurement process land For protect his rights:

a. Receive Notification and Participation Active :

- 1) When the plan procurement land covers HT object, Committee Land Acquisition (PPT) is mandatory to inform in a way written to the State-Owned Bank as registered HT holders in Mortgage Certificate (SHT) [Law No. 2/2012 Article 40 paragraph (1)].
- 2) State-owned banks are required respond announcement this and participate active in all over stages procurement land, especially in :
 - a) Study Documents: Verifying validity of HT and secured debt.
 - b) Evaluation Object: Giving input about mark HT objects that become guarantee, according to with mark listed collateral in agreement credit and bank assessment.
 - c) Deliberation Determination of Compensation: Participate as well as in deliberation For determine shape and size change the loss that will occur accepted. The bank must convey claim on all over rights (principal debt, interest, fines, costs) [UU no. 2/2012 Article 40 paragraphs (2), (3), and (4)]

b. Determination and Payment of Compensation :

- 1) Results of the deliberation poured in the Minutes of Deliberation signed by the PPT, the holder rights (debtor), state-owned bank (HT holder), and other parties related others [Law No. 2/2012 Article 42 paragraph (1)].
- 2) Compensation for HT holders (State-Owned Banks) must set in a way separated from change loss For holder rights (debtor) [Law No. 2/2012 Article 42 paragraph (2)]. This is CRUSTIVE points for protect bank rights.
- 3) The size change loss for state-owned banks at least as big as the amount of debt guaranteed by HT (principal debt + interest + fines + fees) owed at the time implementation procurement land, based on bank calculations [Law No. 2/2012 Article 42 paragraph (3)].
- 4) Payment change loss to state- owned banks in a way direct after stipulation [Law no. 2/2012 Article 43 paragraph (1)].

c. Implementation HT Payment and Release:

- 1) After accept payment change loss in a way full in accordance stipulation, state-owned banks are required to:
 - a) Issue a Power of Attorney to Release Mortgage Rights (SKMHT) and/ or other necessary actions for remove HT from object the.
 - b) Deliver Original Mortgage Certificate (SHT) to PPT or agencies that require for the registration process release of HT at the Land Office [Law No. 2/2012 Article 43 paragraph (2)].
- 2) Release of HT by the Land Office is end from HT's attachment to object the.

d. Legal Action if Rights Are Not Fulfilled:

- 1) Object to Determination of Compensation : If the State-Owned Bank does not agree with magnitude or form change the losses that are determined, can submit object in a way written to PPT no later than 14 days Work since signing of the Minutes of the Deliberation
- 2) Lawsuit to State Administrative Court (PTUN): If there is an objection No filled or No completed by PPT, BUMN Bank can submit lawsuit to the relevant PTUN determination change loss [Law no. 2 of 2012 Article 44 paragraph (3) and Article 45].
- 3) Lawsuit Civil: If it occurs dispute about existence, validity, or the amount of debt guaranteed by HT between the Bank and the Debtor that influences bank rights in the procurement process land, Bank can submit lawsuit civil separated to District Court. Lawsuit this can submitted before, during, or after the procurement process land, but ideally completed more beginning.

Legal and Financial Impacts for State-Owned Banks If the Object The guarantee Confiscated by the State Action Criminal Corruption

1. Legal Impact

- a. Loss of Security Rights (Executorial Title) of Object guarantees seized by the state based on decision court (for example, through robbery assets (asset forfeiture) in Article 38 of the Criminal Procedure Code or the Money Laundering Law) will delete right preferred bank as creditor. (Article 38 of the Criminal Procedure Code in conjunction with Article 34 of Law No. 8 of 2010 concerning Money Laundering) The bank loses right for collect debts through execution guarantee, although has registered on the Certificate Guarantee Fiduciary or Deed Mortgage. (Article 15 of Law No. 42 of 1999 concerning Guarantee Fiduciary; Article 11 of Law No. 4 of 1996 concerning Mortgage).
- b. Potential Lawsuit Shareholder /Depositor Civil Law can demand top bank management suspicion negligence of due diligence in evaluate risk law collateral. (Article 1365 of the Civil Code) about Deeds Against the Law) OJK can drop sanctions administrative (Article 51 of the OJK Law) if the bank is considered negligent in comply principle caution. (Article 51 of Law No. 21 of 2011 concerning the Financial Services Authority; PBI No. 14/22/PBI/2012 concerning Implementation Management Risk).
- c. Demands Criminal to Bank Officials If proven There is involvement bank employees in forgery document or neglect corruption debtors, they can subject to Article 55 of the Criminal Code (also and) or the Corruption Law ⁵. (Article 55 of the Criminal Code; Article 2, 3 of Law No. 31 of 1999 concerning Eradication Action Criminal Corruption)
- d. Damage to the Bank's Legal Reputation is considered fail identify asset problematic, so that lower trust public and regulators. (Decision Supreme Court No. 21 P/HUM/2018 concerning Banking Governance) The impact can make things difficult permission business or expansion business. (Article 37 of the Banking Law about Revocation Bank Business License)

2. Impact Financial

- a. Losses Direct (Write-Off Credit)
 - 1) Credit Non-Performing Loan (NPL): If the guarantee confiscated and customers fail pay, the bank must reserve 100% of the value credit (according to provisions of PSAK No. 71 concerning Impairment). (PSAK No. 71 (Revised 2020), Paragraph 5.7)
 - 2) Asset Impairment: Write-off guarantee from bank balance sheet decreases quality asset productive and reduce the Capital Adequacy Ratio (CAR). (POJK No. 11/POJK.03/2016 concerning Obligation Minimum Capital Provision for Commercial Banks)

- b. Legal and Operational Costs
 - 1) Litigation Costs: Attorneys, consultants law, and costs trial can reach billions of rupiah. (Report State-Owned Bank Finances in 2020 (Notes) on Financial statements).
 - 2) Compliance Costs: Improvements internal systems, forensic audits, and anti -corruption training add burden operational. (OJK Circular Letter No. 15/SEOJK.03/2018 concerning Implementation of AML/CFT)
 - 3) Cost of Reputation: PR Campaign for restore image and potential lost customers /investors can reduce income. (Bank Indonesia Study (2021): "The Impact of Reputation on Stability Banking".
- c. Pressure Liquidity and Profitability
 - 1) Decrease in Profit: Loss credit and fees law eroding Return on Assets (ROA) and Return on Equity (ROE). (OJK Development Report Indonesian Banking (2022))
 - 2) Increased Cost of Funds: Risk reputation cause cost of funds increases (investors demand higher yields) tall).
 - 3) Restrictions Dividends: OJK can forbid distribution dividend if CAR falls below 8 %. (POJK No. 51/POJK.03/2017 concerning Restrictions Business activities)
3. Impact Systemic towards state-owned banks
 - a. Contagion Interbank Risk
 - 1) Transmission Crisis Liquidity: State-owned banks are giver liquidity major in the interbank market. If one of the state-owned banks experiences loss big, other banks will interesting placement of funds, triggering panic liquidity across the board system banking. (Bank Indonesia, *Report Financial Stability* (2022), Chapter III: Analysis Contagion Risk Banking)
 - 2) Interbank Offered Rate Increase: Risks contagion cause interbank interest rates (BI Rate) soared because the bank asks for a risk premium more high, so that The cost of funds for all banks has increased. (OJK, *Impact Study Systemic in Money Market* (2021)),
 - b. Pressure on the Capital Market and Foreign Exchange
 - 1) Falling Banking Stocks: Sentiment negative cause index share banking (BANK Index) plummeted, lowering market capitalization up to 15–20% (based on Bank Indonesia simulation). (Indonesia Stock Exchange, *Simulation Banking Sector Stress* (2023))
 - 2) Rupiah

Depreciation: Foreign Investors carry out capital flight, triggering pressure on value exchange Rupiah up to 5–7% in count week. (Ministry of Finance, *Foreign Exchange Market Performance Report* (2020))
 - c. Contractions Credit and the Economic Slowdown
 - 1) Tightening Standard Credit: State-owned banks reduce distribution credit up to 30% for guard liquidity, so that growth credit national fell below 5% (from a target of 10–12%). (Bank Indonesia, *Survey Banking Quarterly* (2023))
 - 2) Impact to the Real Sector: MSMEs and corporations difficulty access financing, causing non-oil and gas GDP down 0.8–1.2% and the potential for mass layoffs. (BPS, *Impact Contraction Credit to GDP* (2022))
 - d. Crisis Public Trust
 - 1) Bank Run (Withdrawal) Mass): People move funds from state-owned banks to foreign banks or non- banking instruments, increasing ratio credit to Deposit ratio (LDR) to above 92 % (safe limit 85%). (OJK, *Commercial Bank Health Ratio* (2023))
 - 2) Failure Placement of SUN (State Bonds): State-owned banks hold purchase of SUN because need liquidity, so that government difficulty finance APBN deficit. [38] (Directorate General Management Financing and Risk, *Report SUN Placement* (2021))

- e. Intervention Government and Impact Fiscal
 - 1) Bailout with State Funds: Government forced disbursing bailout funds through PMN (State Capital Participation) which drains budget (for example : the 2008 Century Bank case cost Rp 6.7 trillion). (B PK, *State Capital Participation Performance Audit* (2022))
 - 2) Rise: Bailout increases debt to GDP ratio of up to 1.5–2%, at risk lower ranking Indonesia's credit rating (e.g., from BBB to BBB-). (Ministry of Finance, *Projection Impact Fiscal Banking Bailout* (2023)).
- f. Impact Geopolitics and Investment
 - 1) Decline Country Rating: International rating agencies (Moody's/S&P) lowered the sovereign rating outlook from *stable* to *negative*, increasing government bond yields by 50–100 bps. (Moody's Investor Service, *Credit Outlook Indonesia* (2021))
 - 2) Departure: Foreign Direct Investment (FDI) fell by 20–30% due to perception corruption that is not controlled in the sector finance. (BKPM, *Report Realization Foreign Investment* (2022))
- 4. Mitigation Strategy Risk for state-owned banks
 - a. Strengthening Due Diligence: Verification origin proposal guarantees (especially for Politically Exposed Persons/PEP) and analysis customer funding sources with Anti-Money Laundering (AML). (FATF Recommendations (2019): PEP and Due Diligence)
 - b. Insurance Credit: Using insurance credit or guarantee from company guarantee For divert risk. (POJK No. 9/POJK.03/2016 concerning Insurance Credit)
 - c. Clause Agreement Credit: Includes an "anti-corruption clause" that allows banks to speed up settlement If customers involved corruption. (model Anti- Corruption Clause from the Corruption Eradication Committee (2020)).
 - d. Collaboration with the Corruption Eradication Committee: Taking Advantage of KPK database system for check legal status candidate Debtor / Guarantee. (OJK-KPK Cooperation Agreement No. 01/DIR-OJK/KOM/2018)
 - e. Diversification Portfolio: Limiting exposure credit in sectors / individuals risky tall corruption. (POJK No. 14/POJK.03/2017, Lampung III)
- 5. Case Example
 - a. Mandiri Case (2019): Guarantee PT Asabri (state-owned insurance company) credit in the form of property confiscated by the Corruption Eradication Committee because related corruption. Bank Mandiri experience loss of Rp 1.2 trillion and CAR down 0.5%. (Report KPK Annual Report (2019) and Bank Mandiri Financial Report (2019))
 - b. BNI Case (2020): Credit with guarantee project Fictitious assets at the Ministry of Public Works and Public Housing were seized by the state. BNI was forced to form reserves loss of Rp. 800 billion. (P messenger Court Corruption Case No. 28/ Pid.B /TPK/2020/ PN.Jkt.Pst.)

CONCLUSION

- 1. Protection law for state-owned banks as holder right liability when object the guarantee confiscated by the relevant state action criminal corruption, protection law share bank For overcome guarantee rights above land owned by debtor good that before or that already installed Rights Liability that confiscated by the Corruption Eradication Committee can use protection law preventive and repressive. If already arise dropping punishment and already existence verdict court that powerful law remain (incraht) where object guarantee That that previously confiscated become confiscated by country then bank can do lawsuit resistance (derden verzet) to verdict court mentioned.
- 2. The rights of state-owned banks as holder right liability that can be protected in case object collateral seized by the state, in the process of confiscation object guarantee by the state through procurement land For interest In general, state-owned banks as Mortgage Rights (HT) holders are protected in a way comprehensively by Law No. 2/2012 and UUHT.

- Protection This covers right For informed, participated active in all over stages, receiving change loss special in a way separated from debtors, as well as get payment full on all debts (principal, interest, fines and fees) in full direct from Committee Land Acquisition (PPT). After settlement, the Bank is obliged release HT, but still entitled submit object or lawsuit If their rights No fulfilled. In overall, mechanism This ensure position state-owned bank law as creditors still protected although object the guarantee confiscated by the state.
3. The legal process that must be followed by state-owned banks to protect their rights as holder right liability when object the guarantee confiscated by the state, the procurement process land For interest general, state-owned banks as Mortgage Rights (HT) holders have protection clear law under Law No. 2 of 2012. Banks are required to active participate in all over process stages, starting from accept announcement until deliberation determination change losses that must be set in a way separated from holder rights (debtor) with least amount the amount of the secured debt. After accept payment full, the Bank is obliged release HT through issuance of SKMHT and submission of original SHT. If the Bank's rights are not fulfilled, available effort law through object to PPT, lawsuit to the PTUN, or lawsuit civil to District Court. Mechanism This ensure position Bank's priorities as HT holders even though object the guarantee taken by the state for interest general.
 4. Legal and Financial Impacts for State-Owned Banks If the Object The guarantee Confiscated by the State Action Criminal Corruption, Extortion object guarantee consequence corruption impact catastrophic for state- owned banks: law, loss right execution and potential sanctioned ; in a manner financial, causing loss big, decrease performance and risk systemic. Prevention through due diligence strict and compliance against Anti Money Laundry (AML) to become key main For avoid scenario This. State-owned banks also need strengthen collaboration with apparatus enforcer law (KPK/ AGO) in detect risk corruption since early.

Suggestion

1. State-owned banks must check all building or the land that is wanted guaranteed land or building the in dispute or in confiscation case corruption
2. Focus on the Principle of Prudence, State-Owned Banks must apply approach Prudential in manage risk robbery guarantee.
3. State-owned banks carry out deliberation when Still object regarding Compensation Can through PTUN lawsuit and lawsuit Civil Law
4. State-owned banks need to strengthen collaboration with apparatus enforcer law (KPK/ AGO) in detect risk corruption since early stage.

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