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Analyzing the Legality of Confiscating Third Party Property in Cases of Corruption

Nur Jannah[1] ✉, M. Khoidin[2], Slamet Suhartono[3]

[123] Master of Law Program,
Faculty of Law, Universitas Wiraraja Sumenep

✉*njannah20061996@gmail.com*

ABSTRACT

This article examines the legal confiscation of third-party property in cases of corruption. The research method used is normative or doctrinal, which involves analyzing legal concepts and principles found in court decisions, laws, and statutory regulations. The focus of the research is to examine the legal aspects of confiscating third-party property in corruption cases. The findings reveal that, legally, a third party can submit an objection within a maximum period of 2 months. However, an objection lawsuit can only be filed after the court decision attains permanent legal force, indicating that the court has restricted or diminished the rights of third parties to enjoy or utilize their assets.

Keywords: *Confiscation; Third Party Property; Corruption Cases*

INTRODUCTION

In general, criminal law regulates actions that are contrary to positive law[1]. The presence of criminal law in society is intended to provide a sense of security to individuals and groups in society in carrying out their daily activities. The sense of security that is meant in this case is a state of calm, without any fear of threats or actions that can harm individuals in society. Article 10 of the Criminal Code (KUHP) states that the types of punishment that can be imposed on criminal defendants consist of principal crimes and additional crimes[2]. Principal punishments include death penalty, imprisonment, confinement, fines and imprisonment. While additional punishment includes revocation of certain rights, confiscation of certain items and announcement of judge's decision.

The mechanism of deprivation without criminal prosecution which is considered a breakthrough contains a very crucial point, namely, related to human rights as set forth in Article 28-H paragraph (4) of the 1945 Constitution which reads: "Every person has the right to have private property and Such property rights may not be taken over arbitrarily by anyone. One of the characteristics of a rule of law is that the state must provide protection for a person's assets from arbitrariness. Thus, it is important to examine the extent to which the defendant's confiscation of assets does not violate the principles of a person's constitutional rights.

An interesting legal issue in the provisions of Article 10 of the Criminal Code above, namely regarding additional punishment. In Indonesian law, additional punishment can only be imposed on certain crimes, for example terrorism, narcotics, corruption and the like (which includes organized crime). Additional punishment in the form of confiscation of corruption assets, as a result of state losses that

[1] Sudarto, *Hukum Pidana IA*, (Malang : Fakultas Hukum dan Pengetahuan Masyarakat,1974),pp. 6.

[2] Moeljatno, *Asas-asas Hukum Pidana*, (Jakarta: Bina Aksara, 1987) pp. 37

must be borne by the corruptors. In this confiscation, it is possible that the property of a third party or other parties may also be confiscated. In this case, we will discuss the confiscation of certain items.

Article 39 paragraph (3) of Law Number 31 of 1999 concerning the eradication of non-criminal corruption, stipulates that confiscation can be carried out against guilty persons who have been handed over to the government, but only for goods that have been confiscated. It becomes a legal question later if there are items that are confiscated by investigators, either Polri investigators, the Attorney General's Office or the Corruption Eradication Commission in cases specifically of criminal acts of corruption against goods that do not belong to the suspect.

Based on Article 19 paragraph (1) of Law Number 31 of 1999 concerning the eradication of Corruption (hereinafter referred to as Law No. 31 of 1999) if it harms the rights of third parties who have good intentions, then the court's decision regarding goods that are not belonging to the defendant must be set aside or returned to the third party, and if the decision to confiscate the goods of a third party in good faith is dropped (also confiscated), then the third party can submit an objection letter in the form of an application to the court concerned.

Third parties with good intentions receive legal protection in relation to evidence seized for the state in corruption cases as emphasized in Article 19 Law number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. In essence, the provision stipulates that the confiscation of goods not belonging to the defendant is not imposed. If the rights of a third party with good intentions are harmed, a third party with good intentions can submit an objection to the court.

The research method used in writing this article is normative or doctrinal law. Doctrinal legal research is research on legal concepts and principles in court decisions, laws and statutory regulations other than statutes. Doctrinal research deals with the analysis of legal

doctrines and how those doctrines are developed and applied[3]. This type of normative research tends to lead to the norm in a broad sense. This means an attempt to find out whether a rule of law is in accordance with legal norms, in conformity with principles, or community actions are in accordance with legal norms or legal principles[4].

The statutory approach (statute approach) is an approach through statutory regulations which in this writing will be related to several statutory regulations, the statutory approach (statute approach) is usually used to examine statutory regulations which in their norms there are still deficiencies or even foster deviation practices both at the technical level or in their implementation in the field. This approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and laws, or between one law and another law[5].

Corruption in terminology comes from the Latin word *corruptio* or *corruptus*. Then *corruptio* comes from the word *corrumpere*, whereas in English corruption, corrupt. Corruption in Dutch is *corruptie*. Literally the meaning of all these words is rottenness, dishonesty, bribery, immorality. In the Big Indonesian Dictionary, regarding corruption is a bad act such as embezzlement of money, bribes, and so on.[6]

The criminal act of corruption is defined as an act of giving, surrendering to someone to do or not do something for the benefit of

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[3] A'an Efendi Dkk, Penelitian Hukum Doktrinal, (Yogyakarta: LaksBang Justitia, 2019), pp. 50.

[4] Vidya Prahassacitta, "Penelitian Hukum Normatif dan Penelitian Hukum Yuridis", dalam https://business-law.binus.ac.id/2019/08/25/penelitian-hukum-normatif-danpenelitian-hukum-yurudis/ , accessed 7 January 2022

[5] Law Office Saiful Anam & Partners Advocates & Legal Consultants, *Pendekatan Perundang-Undangan (Statute Approach) Dalam Penelitian Hukum*., Office Suites A529, Kuningan – Jakarta Selatan 12940. Accessed tanggal 17 April 2022

[6] Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Nasional dan International*, (Jakarta, PT Raja Grafindo Persada. 2005), pp..4-5

the giver, which in turn also benefits the recipient. According to Treisman Daniel, the definition of corruption is "Immoral conduct or practices harmfull or offensive to society or a sinking to a state of low moral standards and behavior (the corruption of the upper classes eventually to the fall of the Roman Empire". In Black's Law Dictionary regarding The definition of a criminal act of corruption is an act which, when carried out, uses the intent, namely to provide an unfair advantage with an official obligation from a certain party, by abusing one's position or authority in order to benefit oneself or others[7].

The elements of corruption are inseparable from the laws and regulations on corruption that have been formulated and enforced in Indonesia. According to Firman Wijaya, the elements include everyone, unlawfully, acts of enriching themselves and other people or corporations, and can be detrimental to the country's finances or economy. The element used is more to look at the elements listed in the formulation of the article offense regulated in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

Thus, it can be said that a criminal act of corruption if it fulfills the elements with the aim of benefiting oneself or another person or corporation, abuse of authority, opportunity or means because of position or position, and then can cause financial or economic losses to the country[8].

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[7] Kristian dan Yopi Gunawan, Tindak Pidana Korupsi Kajian Terhadap Harmonisasi Antara Hukum Nasional dan The United Nations Convention Against Corruption (UNCAC), Bandung, Refika Aditama. 2015, pp. 20-21

[8] Modul Materi Tindak Pidana Korupsi, dalam https://aclc.kpk.go.id/wpcontent/ uploads/ 2019/07/Modul-tindak-pidana-korupsi-aclc-KPK.pdf, accessed tanggal 16 Maret 2022

CONFISCATION OF GOODS AND ITS PROCEDURES IN CORRUPTION CASES

Confiscation is a series of investigators' actions to take over and or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials (Article 1 number 16). Apart from being used as a tool for operationalizing investigations and prosecutions as well as trials, confiscation in the context of returning criminal assets is the most important part at the beginning of the process. law enforcement to eradicate corruption. As is well known, the modus operandi of corruption is so shrewd that it is easy to hide its assets from criminal acts of corruption. If law enforcement does not confiscate it quickly, there is a possibility that the assets will be taken somewhere or even transferred to another party.

This confiscation action is one of the forced efforts (dwang middelen) owned by the Investigator. As part of a coercive effort, its existence is very sensitive and has the potential to be misused or excessive in its use, causing disruption to the human rights of the suspect or defendant. Therefore, the Criminal Procedure Code determines that confiscation is only carried out by investigators with a permit from the Head of the local District Court (Article 38 paragraph (1). In very necessary and urgent circumstances when the Investigator must act immediately and it is not possible to obtain a permit in advance, the Investigator can carry out confiscation is only on movable objects and for this purpose it is obligatory to immediately report to the Head of the local District Court in order to obtain his approval (Article 38 paragraph (2)).

The Criminal Procedure Code details the items that can be subject to confiscation including: First, objects or claims by the suspect or defendant which are wholly or allegedly obtained from a crime or part of the proceeds from a crime; Second, objects that have been used directly to commit a crime or to prepare it; Third, objects used to

obstruct criminal investigations; Fourth, objects specifically made or intended to commit criminal acts; and Fifth, other objects that have a direct relationship with the crime committed. Objects that are confiscated due to civil cases or due to bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of criminal cases as long as the five existing conditions are met (Article 39).

Objects subject to confiscation shall be returned to the person or to those from whom the object was confiscated, or to the person or to those who are most entitled if: First, the interests of the investigation and prosecution are no longer required; Second, the case was not prosecuted because there was insufficient evidence or it turned out that it was not a crime; and Third, the case is set aside in the public interest or the case is closed for the sake of law, unless the object is obtained from a crime or used to commit a crime.

Furthermore, if the case has been decided, then the object subject to confiscation is returned to the person or to those named in the decision, unless according to the judge's decision the object is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or, if the object is still required as evidence in other cases (Article 46 of the Criminal Procedure Code). However, if the court decision also stipulates that the seized evidence is for the state (other than the exceptions as stipulated in Article 46), the Prosecutor authorizes the said object to the state auction office to be sold at auction, the proceeds of which are put into the state treasury for and on behalf of the Prosecutor[9].

Confiscation of certain goods is one of the additional penalties as stated in Article 10 letter b number 2 of the Criminal Code, Article 39 of the Criminal Code states:

[9] Pasal 273 ayat (3) KUHAP.

a. Items belonging to the convict which were obtained from the crime or which were intentionally used to commit the crime may be confiscated;
b. In the case of punishment for a crime that was not committed intentionally or because of a violation, a decision of confiscation can also be imposed based on matters specified in the law;
c. Confiscation can be carried out against a guilty person who is handed over to the Government, but only for goods that have been confiscated.

The court decision regarding confiscation of evidence for the benefit of the state as stipulated in Article 194 of the Criminal Procedure Code is linked to the provisions of Article 19 of Law No. 31 of 1999, Article 10 letter b of the Criminal Code, Article 39 of the Criminal Code. if the court decision stipulates that the confiscated evidence is confiscated for the state, then from the perspective of evidence in a criminal case as stipulated in Article 184 of the Criminal Procedure Code, the Judge views that the Public Prosecutor can prove his indictment that the confiscated evidence was obtained from the proceeds of corruption, supported by evidence lawful and has strong and decisive evidentiary value.

In that context, if the court determines that the confiscated evidence was confiscated for the state, then based on the provisions of Article 19 paragraph 2 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, a third party can submit an objection letter to the court within 2 months after the court's decision is pronounced in a hearing that is open to the public. The objection here is a new facility in the Indonesian Criminal Procedure Code which is specifically regulated in Articles 19 and 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.[10]

[10] Muhamad Nur Ibrahim, *Perlindungan Hukum Pihak Ketiga Terhadap Keberatan Atas Putusan Pengadilan Dalam Perkara Korupsi*, Program Studi Magister Ilmu Hukum Pascasarjana Universitas Tadulako.

According to Lilik Mulyadi, if specified, additional punishments can be imposed by judges in their capacity which are correlated with returning assets through this criminal procedure which can be in the form of:

a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed, as well as the prices of the goods that replace these goods. (Article 18 paragraph (1) letter a Corruption Law); Payment of replacement money in the maximum amount equal to the assets obtained from criminal acts of corruption. If the convict does not pay compensation as referred to in paragraph (1);
b. At the latest within 1 (one) month after the decision has obtained permanent legal force, the property can be confiscated by the prosecutor and auctioned off to cover the replacement money. In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be sentenced to imprisonment for a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law, the duration of the sentence has been determined in a court decision. (Article 18 paragraph (1) letter b, paragraph (2), (3) of the Corruption Law);
c. Fines where this aspect in the Corruption Crime Eradication Law uses the formulation of criminal sanctions (*strafsoort*) which are cumulative (prison sentences and or criminal fines), cumulative-alternative (prison sentences and/or criminal fines) and the formulation of the duration of criminal sanctions (*strafmaat*) is determinate sentences and indefinite sentences;
d. Determination of confiscation of goods that have been confiscated in the event that the defendant dies (trial

in absentia) before the verdict is handed down and there is sufficiently strong evidence that the perpetrator has committed a criminal act of corruption. The judge's stipulation on confiscation cannot be appealed and any party concerned can submit an objection to the court that has rendered the stipulation within 30 (thirty) days from the date of the announcement. (Article 38 paragraph (5), (6), (7) of the Corruption Law);

e. Decision on confiscation of property for the state in the event that the defendant cannot prove that the property was not obtained due to a criminal act of corruption demanded by the Public Prosecutor when reading out the charges in the main case. (Article 38B paragraph (2), (3) of the Corruption Law). In practice, the act of deprivation which is carried out based on a criminal justice decision can encounter several obstacles and even termination in the framework of the deprivation. Among these things.

Regulation of the Central War Authority Number: PRT/PEPERPU/013/1958 concerning Investigation, Prosecution and Examination of Corruption Acts and Ownership of Property, which is the first provision to use the term corruption, there is a regulation that gives power to property owners to confiscate one's property or an entity if after carrying out a thorough investigation based on certain circumstances and other evidence it obtains a strong allegation, that the assets are included in assets that can be confiscated and confiscated.

Government Regulation in Lieu of Law Number 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes stipulates that all property obtained from corruption is confiscated, and the accused may also be required to pay replacement money in the same amount as the property obtained from corruption. Law Number 3 of 1971 concerning the Eradication of Corruption Crimes, gives authority to judges to confiscate assets

from someone who has died, before there is an irreversible decision in their case, has committed a criminal act of corruption, then the judge against the demands of the prosecution General, with a court decision can decide the confiscation of goods that have been confiscated[11].

CONFISCATION OF THIRD-PARTY PROPERTY IN CORRUPTION CRIMES FROM A LEGAL PERSPECTIVE

If referring to Article 19 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 paragraph 2 concerning the Eradication of Corruption Crimes, it emphasizes that in terms of the court decision as referred to in paragraph (1) also includes goods from third parties who have good faith, so the third party can submit an objection letter to the court concerned no later than 2 (two) months after the court's decision is pronounced in a hearing open to the public.

Confiscation of goods belonging to third parties with good intentions suspected of originating from criminal acts of corruption has the potential to cause harm to certain parties if the goods are used as evidence in court proceedings, especially when confiscation is carried out in order to recover state losses. This is because third parties cannot use and/or utilize their goods because they are confiscated, confiscated and frozen for the purposes of proof at trial, based on a court decision.

Based on the provisions above, a third party who has good faith in having his goods confiscated can submit an objection to the court.

[11] Suprabowo, *Perampasan dan Pengembalian Aset Hasil Tindak Pidana Korupsi Dalam Sistem Hukum Indonesia Sebagai Upaya Pencegahan dan Pemberantasan Tindak Korupsi*. Pp..4-5

Likewise in Article 3 Paragraph 1, Supreme Court Regulation Number 2 of 2022 Concerning Procedures for Settlement of Objections by Good Faith Third Parties Against Decisions on Confiscation of Goods Not Belonging to the Defendant in Corruption Cases, it is stated that; Goods or companies that are declared confiscated become the property of the state or to be destroyed can be objected in writing by a Good Faithful Third Party.

This is further emphasized in Article 3 Paragraph 2 which reads; Third parties who can submit objections as referred to in paragraph (1) are the owner, trustee, guardian of the owner of the Goods, or curator in a bankruptcy case of a Goods, either wholly or partly being confiscated.

In Article 4 Paragraph 1, Supreme Court Regulation Number 2 of 2022 it is stated that; Objections must be filed no later than 2 (two) months after the court's decision on the Main Case is pronounced in a hearing that is open to the public. Then in Paragraph 2 it is stated that "In the event that the decision of the Main Case is an appeal or cassation decision, Objections are filed no later than 2 (two) months after the excerpt/copy of the decision is notified to the public prosecutor, the accused and/or announced on the court notice board and/or electronically.

However, the existence of Perma Number 2 of 2022 in terms of normative content is quite positive as a reference for similar legal cases in the future. But in the context of the legal issues which are the object of this research, the Perma cannot be used as an analytical basis for resolving these legal issues. Because theoretically, a law does not run backwards, but dynamically, the Perma can only be applied to future cases.

In the context of settling the objection case against confiscation of assets through the Court, the position of the 2022 Perma does not have legal certainty. Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty value will lose meaning because it can no longer be used as

a guideline for everyone's behavior. Certainty itself is referred to as one of the objectives of the law. Community order is closely related to certainty in law, because order is the essence of certainty itself. Order causes people to live with certainty so that they can carry out the activities needed in social life.

The context of understanding third parties according to Article 19 of Law No. 31 of 1999 Jo Law No. 20 of 2001 is the owner or entitled to an item legally confiscated according to law, where the party has no legal connection in the process of realizing an offense. Good faith has 2 (two) perspectives in the context according to Article 19 of the PTPK Law, namely:

a. In a subjective sense, it is an inner attitude that is manifested in the honesty of ownership of confiscated property which is one's own property and has nothing to do with the law in the process of realizing an offense;
b. In an objective sense, assets that are confiscated/confiscated are assets obtained by appropriate means/violating decency or goods resulting from criminal acts (*corpora delictie*) or goods related to criminal acts.

The regulation of objection efforts in Article 19 (2) of the PTPK Law is a manifestation of the State in its duties and obligations in order to protect the rights of citizens in the field of law enforcement. Objections to court decisions regarding confiscation of evidence are a new means for third parties to seek justice. The sentence in Article 19 (2) of the PTPK Law is "..., within a period of no later than 2 (two) months after the court decision was pronounced in a hearing open to the public". Having problems in implementation that can lead to injustice and legal certainty.

In the practice of the criminal justice system in Indonesia, there are 2 (two) models of justice, namely Judex factie (where the public can attend and witness the trial/reading of the decision) and judex Juris (where the community/the parties cannot be present at pronouncing the decision). The Judex Factie and Judex Juris decision

models mean that the outcome of the decision can be immediately known by the public/the parties (JF) and the decision cannot be known by the public/the parties (hidden) until it is notified by the court.

The legal implication if the decision is made in a Judex Juris (Supreme Court Decision)/an uttered decision where the public/parties witness, then in Article 19 (2) of the PTKP Law, the sentence "...the court pronounced in a trial open to the public" will be interpreted to the extent that the general public (or at least the parties) are notified of the decision.

Based on the sentence "... uttered in a hearing open to the public" will be interpreted until the general public (or at least the parties) are notified of the decision, then the expiration calculation is also calculated 2 (two) months from the day and date the parties were notified of the decision. This is in line with the opinion of Dr. Muzakir who stated that there are two theories for calculating expiration. First, criminal acts that are easily known to the public (open). Like killing, burning the house. Then the expiration is calculated from the actions that occurred at that time. Meanwhile, the second expiration date is for hidden (covert) crimes. So, the calculation since it was known that the crime was revealed. Since then, it is counted expired.

Based on Law Number 49 of 2009 concerning General Courts article 52 A, "(1) The court is obliged to provide access to the public to obtain information relating to decisions and case fees in the trial process. (2) The court is obliged to deliver a copy of the decision to the parties within a period of no later than 14 (fourteen) working days after the decision is pronounced. (3) If the court does not implement the provisions referred to in paragraph (1) and paragraph (2), the head of the court shall be subject to sanctions as regulated in laws and regulations."

Referring to SEMA No. 01 of 2011 concerning Amendments to SEMA No. 02 of 2010 concerning Submission of Copies and Excerpts of Decisions, notification of court decisions to the parties, namely the

defendant or his legal counsel, public prosecutors use excerpts of decisions and copies of decisions.

A copy of the decision can be defined as a derivative of the decision issued by the court which contains the entire minutes of the trial starting from the reading of the indictment to the final decision. A copy of the decision also contains the judge's considerations explaining the judge's considerations so that the defendant must be punished. While excerpts of court decisions are excerpts or excerpts from court decisions whose contents only contain the verdict regarding the verdict handed down to the defendant.

It can be ensured that the copy of the decision contains more complete contents because each trial process is written in it. In addition, there is a judge's consideration which is the judge's argument before deciding the case. Therefore, with a copy of the legal adviser's decision, he can analyze the legal reasons why his client was convicted and confiscated assets were confiscated.

The implementation of the decision is clearly regulated in Article 270 of the Criminal Procedure Code which states that, "The implementation of a court decision that has obtained legal force is still carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him."

An excerpt of a decision is a valid letter but it has been clearly determined that what can be used as a basis for execution is a copy of the decision (Article 270 of the Criminal Procedure Code). This is reinforced by the existence of article 197 paragraph (3) of the Criminal Procedure Code (KUHAP) which states that the decision is carried out immediately according to the provisions of this law.

Based on the above arguments, it cannot be used as a basis for prosecutors to execute the assets of third parties who have good faith because they do not have executive powers. Article 19 (1) of the PTPK Law implies that the principle of criminal responsibility is based on an in personal mechanism (only against the person charged), so it is wrong if the judge in this decision also imposes a sentence on third

parties, especially on the assets (in rem) of third parties who have good intentions.

In addition, Article 19 (1) of the PTPK Law is a form of protection for third party assets in good faith so that they do not become direct victims in eradicating corruption. Especially when the assets/properties that were confiscated were the main and supporting assets of his life so that the welfare and survival of the third party was greatly affected.

CONCLUSION

Based on the description above, it can be concluded that legally confiscation of third-party goods in acts of corruption can be submitted and filed for objections to the court as long as it does not exceed the two-month limit. This is in accordance with Article 19 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 paragraph 2 concerning the Eradication of Corruption Crimes. Likewise in the Supreme Court Regulation No. 2 of 2022 Article 4 paragraph and 2. However, an objection lawsuit can only be filed if the case does not yet have permanent legal force or is willing. If the case has permanent legal force, then indirectly the court has usurped or reduced the rights of third parties to enjoy or use their assets.

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Muhamad Nur Ibrahim, *Perlindungan Hukum Pihak Ketiga Terhadap Keberatan Atas Putusan Pengadilan Dalam Perkara Korupsi* noeribra76@g.mail.com Mahasiswa Program Studi Magister Ilmu Hukum Pascasarjana Universitas Tadulako.

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Author Biography

Nur Jannah, S.H., M.H.
Nur Jannah is postgraduate student in Master of Law Program, Law Faculty, Universitas Wiraraja Sumenep, Indonesia

Prof. Dr. M. Khoidin S.H, M.Hum., C.N
Prof. Khoidin is a faculty member in Law Faculty, Universitas Wiraraja Sumenep, Indonesia.

Dr. Slamet Suhartono, S.H, M.H,
Dr. Slamet is a faculty member in Law Faculty, Universitas Wiraraja Sumenep, Indonesia.