Annals of Justice and Humanity (AJH)
Vol 4, No 1, 2024, 35-50 https://doi.org/10.35912/ajh.v4i1.2878

Legal analysis of determination of the status of evidence in the criminal case of corruption of TWP AD in the Supreme Court's Cassation Decision Number 407-K/MIL/2023

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Article History
Received on 8 April 2025
1st Revision on 27 April 2025
Accepted on 5 May 2025

Abstract
Purpose: Corruption is a serious problem in various countries, including Indonesia. Determination of the status of evidence in corruption cases has great significance for all parties involved. The corruption case of TWP AD at the cassation level stipulates that certain evidence is confiscated for the state. While at the first level and appeal level decisions, the evidence is confiscated for the state C.q. TWP AD.
Research Methodology: This study uses a normative legal research type, namely legal research conducted by examining library materials or secondary data through library research.
Results: Changes in the determination of the status of evidence at the cassation level are based on Article 18 paragraph (1) letter a in conjunction with Article 38 B paragraph (2) of the Corruption Eradication Law without considering the provisions of Article 19 paragraph (1) and the real impact on the recovery of losses experienced by the Indonesian Army. The evidence should be returned to the rightful party, in this case the Indonesian Army through TWP AD considering that the source of funds for TWP AD comes from deductions from the salaries of Soldiers and Civil Servants in the Indonesian Army environment every month. In addition, additional criminal penalties in the form of replacement money should also be deposited to the state C.q. TWP AD, because both the evidence and the replacement money are the result of corruption. Minister of Finance Regulation No. 145 / PMK.06 / 2021 regulates that the parties authorized to submit proposals for the management of confiscated state goods to the Minister of Finance are the Prosecutor's Office, the Corruption Eradication Committee, and the Auditorate. Bureaucratic procedures and processes are obstacles to the effective implementation of the Minister of Finance Regulation.
Keywords: *Determination of Evidence Status, Corruption Crimes, TWP AD*
How to Cite: Harianto, M. (2024). Legal analysis of determination of the status of evidence in the criminal case of corruption of TWP AD in the Supreme Court's Cassation Decision Number 407-K/MIL/2023. *Annals of Justice and Humanity*, 4(1), 35-50.

1. Introduction

Army Housing Compulsory Savings, hereinafter referred to as TWP AD, is an extra-structural organization of the Indonesian National Army (TNI AD) which is directly under the Chief of Staff of the Army, which was formed with the intent and purpose of improving the welfare of Soldiers and Civil Servants (PNS) within the TNI AD, especially to fulfill the need for non-service housing units. The source of funds for TWP AD comes from deductions from the basic salary of Soldiers and Civil Servants

within the TNI AD every month, which was originally an index of Rp50,000.00 (fifty thousand rupiah) per person per month changed to Rp150,000.00 (one hundred and fifty thousand rupiah) per person per month for all ranks and classes for every Soldier and Civil Servant serving within the TNI AD.

The corruption case of the Army's Mandatory Housing Savings fund for the 2013-2020 period with Defendant I Brigadier General (Brigjen) TNI (Ret.) with the initials YAK as the Director of Finance of the Army TWP since March 2019-2020, and Defendant II NPP as the President Director of PT Griya Sari Harta (GSH) has gone through a trial process with connectivity at the Jakarta II High Military Court to the cassation level at the Supreme Court of the Republic of Indonesia. Both were charged with Article 2 paragraph (1) subsidiary Article 3 and Article 8 in conjunction with Article 18 of the Corruption Eradication Law in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code (KUHP).

This case is a connection case because the crime was committed together by parties who are subject to different justiciables, namely general courts and military courts. This case is examined and tried by a court in the general court environment, unless based on a decision by the Minister of Defense and Security with the approval of the Minister of Justice, the case must be examined and tried by a court in the military court environment. The investigation was carried out by a connection investigation team from the Deputy Attorney General for Military Crimes (Jampidmil), the Indonesian Army Military Police Center (Puspomad), and the Jakarta II High Military Auditorate. This connection case was examined and tried by the Jakarta II High Military Court based on the Decree of the Chief Justice of the Republic of Indonesia Number 45/KMA/SK/II/2022 concerning the Appointment of the Jakarta II High Military Court as the court that examines and tries this connection case. As the prosecutor and executor of execution, namely the Military Auditor at the Jakarta II High Military Auditorate. This is based on the emphasis of the loss on the interests of the soldiers, and Law Number 31 of 1997 concerning Military Justice (Military Justice Law) more specifically regulates absolute authority, namely the formal subject of law (Suartama & Dewi, 2023; Zailani, Idham, & Erniyanti, 2023).

The Supreme Court, which examined and tried the military criminal case at the cassation level in decision Number 407-K/Mil/2023 dated December 7, 2023, rejected the cassation application I from Defendant I and Defendant II, as well as the cassation application II from the High Military Auditorate II Jakarta/Public Prosecutor. This decision, in addition to rejecting the cassation application from the defendants and the High Military Auditorate II Jakarta/Public Prosecutor, also determined the status of evidence in the form of items numbered 1 (one), numbered 6 (six) to numbered 9 (nine) and numbered 11 (eleven) to numbered 57 (fifty-seven) confiscated from the defendants were confiscated for the state. Meanwhile, the Jakarta High Military Court II which examined the criminal case of connectivity at the first level and the Main Military Court which examined the case at the appeal level, in their verdicts determined that the evidence was confiscated for the state Cq. TWP AD.

The TWP AD Fund is a fund sourced from state finances allocated in the TNI AD DIPA (APBN) which is deducted automatically from the salaries of TNI AD Soldiers and Civil Servants within the TNI AD as previously explained, so that in this case the loss occurred to the state in this case the TNI AD through the TWP AD. Based on this, shouldn't the determination of the status of evidence in this corruption case be appropriate as in the first level and appeal decisions considering the importance of these funds for the interests of Soldiers and Civil Servants within the TNI AD?

Based on the description of the background, the author is interested in conducting research in the form of a thesis entitled **"Legal Analysis of the Determination of the Status of Evidence in the Criminal Case of TWP AD Corruption in the Supreme Court's Cassation Decision Number 407-K/Mil/2023".**

1.1. Problem Formulation

Based on the background description above, the main problems of this research are as follows:

1. What is the basis for the Supreme Court's legal considerations regarding the determination of the status of evidence in the cassation decision Number 407 K/Mil/2023?
2. How is the system for determining the status of evidence for confiscated assets?

2. Literature Review

2.1. Criminal Acts

2.1.1. General Criminal Offences

In the Criminal Code (KUHP), criminal acts are known as Strafbaarfeit. Criminal acts have an abstract definition from concrete events in the practice of criminal law, so it is necessary to provide a scientific and clear definition of the definition of criminal acts to distinguish it from everyday terms used in society (Ilyas, 2012). According to R. Soesilo, a criminal act is an act that is prohibited or required by law and if it is done or ignored, the person who does or ignores it is threatened with criminal punishment (Edla et al., 2025; Soesilo, 1982).

This study uses the term criminal act whose definition is based on the opinion of S.R. Sianturi that what is meant by a criminal act is an action carried out at a certain time, place and condition, which is prohibited or required and is threatened with criminal punishment by law, is unlawful accompanied by an error made by someone who is able to take responsibility (Pratiwi, Dewi, Widnyani, & Rahayu, 2023).

2.1.2. Military Crimes

Military criminal law is part of the positive law that applies to the justiciable military courts, which determines the basis and regulations on prohibited or required actions, and against violators are threatened with criminal penalties (criminal x), also determines when and in what cases the perpetrator can be held accountable for his actions (criminal responsibility), and also determines the method of investigation, prosecution, sentencing, up to the implementation of the sentence in order to achieve justice and legal order (criminal procedure) (Harefa, Idham, & Erniyanti, 2023; Sianturi, 2010).

Article 1 and Article 2 of the Military Criminal Code (KUHPM) are bridging articles for the application of laws outside the KUHPM for the military, one of which is the Criminal Code. General rules in the Criminal Code also apply in the KUHPM which are not specifically regulated in the KUHPM. Military crimes are crimes that are not regulated in general criminal law provisions, but are regulated in the KUHPM. Military crimes in the Criminal Code are generally divided into 2 (two) categories, namely pure military crimes (zuiver militaire delict) and mixed military crimes (gemengde militaire delict).

2.2. Criminal Acts of Corruption

The literal definition of corruption is interpreted as an act related to the public interest or the wider community for the benefit of a particular individual and/or group. Specifically, there are three phenomena included in the term corruption, namely bribery, extortion, and nepotism (Alatas, 1982). The Corruption Eradication Law does not explicitly state the definition of corruption. Article 2 paragraph (1) states:

Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000 (two hundred million rupiah) and a maximum of 1,000,000,000,- (one billion rupiah).

Based on the description above, it can be concluded that corruption is a criminal act that harms state finances or damages a country's economy which occurs when a person or group of people use the authority, power, opportunity and means or position of trust attached to their position to obtain personal, other people's or corporate benefits or wealth, either in the form of material or other forms of benefits by violating the law.

2.3. Connectivity

Connectivity justice is a system applied to handle criminal acts involving participation or cooperation (deelneming or mede dader) between civilians and the military (Sagala, 2018). This system regulates judicial jurisdiction that includes both general and military courts. In this context, connectivity justice is always related to the crime of participation between civilians and the military, as regulated in Articles 55 and 56 of the Criminal Code (Hamzah, 2008). Based on Article 89 paragraph (1) of the Criminal

Procedure Code in conjunction with Article 198 paragraph (1) of the Military Court Law, the definition of connectivity refers to criminal acts committed jointly by individuals who are under the jurisdiction of general and military courts. The examination and trial of criminal acts involving both parties are carried out jointly in one judicial system, called connectivity examination and trial (Harahap, 2007).

The legal basis for connectivity is currently found in Article 16 of the Basic Law on Judicial Power. The provisions in the Criminal Procedure Code and the Military Court Law are its implementation. In this study, because corruption cases are examined and tried by courts within the military justice system, the Military Justice Law is used.

2.5 Confiscation

The definition of "confiscation is a series of actions by investigators carried out to take over and/or store under their control an object, whether movable or immovable, tangible or intangible, for the purposes of the evidence process at the level of investigation, prosecution, and court hearings". Confiscation in the Criminal Procedure Code is listed separately in two places, most of which are regulated in chapter V, part four, starting from article 38 to article 46, while a small part is found in chapter XIV, part two of the Criminal Procedure Code found in articles 128 to 130 (Harahap, 2007; Pratiwi et al., 2023).

The purpose of confiscation is slightly different from a search. The purpose of a search is intended for the purposes of an investigative examination, unlike confiscation. Confiscation is intended for the purposes of evidence, especially as evidence in court. Without evidence, a case cannot be brought to court. Therefore, investigators carry out confiscation so that the case is equipped with the evidence needed in the investigation, prosecution and examination in court (Harahap, 2007).

2.6 Confiscated Items

The definition of confiscated objects is closely related to evidence because confiscated objects are evidence from a criminal case that is confiscated by authorized law enforcement officers for the purpose of providing evidence in court (Satriya & Anwar, 2024). According to SM. Amin, "evidence in this case is goods that are needed as evidence, especially evidence as stated in witness statements or defendant statements".

Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code Article 1 number 4 defines "Confiscated objects are objects confiscated by the state for the purposes of the judicial process". So, there are many types of confiscated objects, both tangible or intangible, movable or immovable from the results of a crime. Objects that have no connection or involvement with a crime cannot be confiscated (Harahap, 2007).

2.7 Military Justice

The law enforcement process in Military Courts is different from general courts, both in terms of officials and the law enforcement process. Military personnel who commit crimes and from the results of the investigator's investigation that the military is suspected of committing a crime and has been named a suspect, an investigation will be carried out by investigators in this case the Military Police, for the purposes of the investigation, the suspect can be detained with a decision letter from Ankum for a maximum of 20 days and if it is deemed insufficient, it can be extended by Papera with its decision letter every 30 days and a maximum of 6 extensions so that the maximum is 180 days. Detention can be carried out if the suspect is strongly suspected of having committed a crime based on sufficient evidence, there is a situation that raises concerns that the suspect will flee, remove or damage evidence or repeat the crime, or create chaos.

2.8 Army Housing Compulsory Savings

Army Mandatory Housing Savings, hereinafter referred to as TWP AD, is an extra-structural organization of the Indonesian National Army which is directly under the Chief of Staff of the Army, which was formed with the intent and purpose of improving the welfare of Soldiers and Civil Servants (PNS) within the TNI AD, especially to fulfill the need for non-service housing units. The main task of

TWP is to assist the Chief of Staff of the Army in the management of Army mandatory housing savings funds in the housing sector in order to support the main tasks of the TNI AD.

The source of funds for the Army TWP comes from deductions from the basic salary of Soldiers and Civil Servants in the Army every month, which is determined based on the Army Chief of Staff Telegram Letter Number ST/3855/2016 dated December 31, 2016 regarding changes to the Army Mandatory Housing Savings index, which was originally an index of Rp50,000.00 (fifty thousand rupiah) per person per month, changing to Rp150,000.00 (one hundred and fifty thousand rupiah) per person per month for all ranks and groups for every Soldier and Civil Servant serving in the active ranks of the Army. The salary deductions are carried out by autodebit from the salaries of Soldiers and Civil Servants in the Army, the management of which is handed over to the Army TWP.

3. Research methodology

3.1 Type of Research

The type of research used in writing this thesis is the normative legal method, namely legal research conducted by examining library materials or secondary data. This research method is focused on implementing legal inventory, and vertical and horizontal synchronization (Soekanto, 1990) by examining various formal legal provisions, such as laws and theoretical literature (Marzuki, 2005).

3.2 Nature of Research

This research is a descriptive analytical research, namely to obtain an overview of the existing research objects, which are then analyzed according to the relevant statutory provisions and legal theories.

3.3 Legal materials

1) The 1945 Constitution of the Republic of Indonesia;
2) Law of the Republic of Indonesia Number 1 of 1946 concerning the Criminal Code;
3) Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure;
4) Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and amended again by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court;
5) Law of the Republic of Indonesia Number 31 of 1997 concerning Military Justice;
6) Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption;
7) Law of the Republic of Indonesia Number 17 of 2003 concerning state finances;
8) Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army;
9) Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power;
10) Decree of the Chief of Staff of the Army Number Kep/181/III/2018 dated March 12, 2012 concerning Guidelines for the Implementation of the Management of Mandatory Housing Savings and Procurement of Non-Service Housing for Army Personnel Through Self-Managed KPR;
11) Decree of the Chief of Army Staff Number Kep/74/XII/2004 dated 30 December 2004 as amended by Decree of the Chief of Army Staff Number Kep/60/XI/2014 dated 5 November 2014 concerning the Organization and Duties of the Army TWP; and
12) Supreme Court Cassation Decision Number 407-K/Mil/2023.

3.4 Data Collection

Data collection techniques were obtained through library research, by visiting the National Library and the Military Law College Library in the form of legal materials related to the problems being researched.

3.5 Data Analysis

This research uses a qualitative data analysis method, namely data that is described using terms that are separated based on classification to reach conclusions, by concluding concrete knowledge regarding the correct and appropriate rules to be applied in solving a problem.

3.6 Drawing Conclusions

Drawing conclusions is done by using deductive logic, namely by drawing specific conclusions from questions or propositions that are general in nature (Sunggono, 2005).

4. Results and discussions

4.1. Research Results on Legal Considerations

4.1.1. Position Case

Examining the military criminal case at the cassation level requested by the Defendants and the High Military Auditor at the High Military Auditor II Jakarta/Public Prosecutor, has decided the defendants' cases:

Defendant-1 got to know defendant-2 around April 2019 at the TWP AD office on Jl. S. Parman Kav. 97 Slipi, Jati Pulo, Palmerah District, West Jakarta City. During the introduction, defendant-2 offered investment cooperation in the construction of TNI AD Soldier housing according to the TWP AD program which was followed up with several meetings.

Previously, defendant-2 had applied for credit to Bank BNI Pusat Dukuh Atas for working capital for the procurement of TNI AD soldier housing, but was rejected by the Bank because it was not eligible for credit facilities, then BNI suggested to defendant-2 to jointly apply for the credit facility with TWP AD.

In May at the TWP AD office, defendant 2 met defendant 1 again, bringing along witness 22 as the head of the BNI Bank sub-branch at the Ministry of Defense in Jakarta to offer defendant 1 the matter of depositing TWP AD funds from BRI Bank to BNI Bank in the name of defendant 1. On May 24, 2019, defendant 1 agreed to witness 22's offer with the follow-up action of transferring TWP AD funds in BRI Bank with account number 001801002211307 to several personal accounts in the name of defendant 1 at BNI Bank and as a credit guarantee in the form of Cash Collateral Credit Facilities.

Defendant 2 as the Director of PT GSH has submitted a Cash Collateral Credit guarantee 3 (three) times at the BNI Jakarta Sudirman Medium Credit Center. The Cash Collateral Credit guarantee submitted by defendant 2 all came from funds managed by TWP AD, which were transferred by defendant 1 as the Finance Director of TWP AD from the TWP AD account to a personal account in the name of defendant 1. Defendant 2 then disbursed funds amounting to Rp. 62,000,000,000.00 (sixty two billion rupiah) to pay off the credit, which was carried out in 3 (three) stages.

State financial losses due to alleged corruption in the management of TWP AD funds from 2019 to 2020 based on the results of the audit report of the BPKP Representative Office of DKI Jakarta Province if presented in the form of a table as follows:

Table 1. State financial losses due to alleged corruption in the management of TWP AD funds from 2019 to 2020.

	Description	Amount (IDR)
1	Used as collateral for credit submitted by PT. GSH and then disbursed to pay off the credit	62.000.000.000,-
2	Disbursement of funds from the TWP AD account to the personal account of Defendant-2	65.000.000.000,-
3	Disbursement of TWP AD funds used to pay off PT. GSH loans	6.000.000.000,-
4	Disbursement of TWP AD funds used for provision costs for Stand By Letter of Credit (SBLC) TWP AD and other costs to PT. GSH	763.305.600.,-
5	State Financial Losses (1+2+3+4)	133.763.305.600,-

Regarding the expenditure of TWP AD funds used to pay off PT. GSH's loan amounting to Rp6,000,000,000.00 (six billion rupiah) and the expenditure of TWP AD funds used for the provision

fee for Stand By Letter of Credit (SBLC) TWP AD and other costs to PT. GSH amounting to Rp763,305,600.00 (seven hundred sixty three million three hundred five thousand six hundred rupiah), before the investigation process by the connectivity investigation team, the return has been made and entered into the TWP AD Cash.

The real losses that are the responsibility of the defendants total Rp127,000,000,000.00 (one hundred twenty seven billion rupiah). The actions of defendant-1 and defendant-2 as described above, were carried out in conflict with a number of provisions and without any approval or order from the Army Chief of Staff and without being supported by legitimate administration. Meanwhile, the defendants have issued and used TWP AD funds not in accordance with their intended use, namely to obtain additional value and benefits for TWP AD and for the benefit of soldiers and civil servants within the TNI AD in the form of home ownership.

4.2. Research Results on Determining the Status of Evidence

4.2.1. Legal Facts

That based on the relevant legal facts in the trial it is known:

a. Defendant I, YAK served as the Director of Finance of the Army Mandatory Housing Savings (TWP AD). This institution was formed to handle the fulfillment of non-service housing whose structure is under the Army Chief of Staff (Kasad) and is a unit of the Indonesian Army based on the Decree of the Army Chief of Staff Number KEP/74/XII/2004 dated December 30, 2004 concerning the Organization and Duties of the Army Mandatory Housing Savings Management Agency (Orgas BP TWP AD) as amended by the Decree of the Army Chief of Staff Number 60 of 2014 dated November 5, 2014 concerning the Organization and Duties of the Army Mandatory Housing Savings (Orgas TWP AD). The management of the Army Mandatory Housing Savings is regulated by Perkasad/3/II/2009 dated February 12, 2009. Meanwhile, Defendant II, NPP is the President Director of PT Griya Sari Harta (PT GSH) based on the Deed of Establishment of PT GSH.
b. TWP AD has a special task and is given facilities in the form of authority to collect part of the income of TNI AD personnel and PNS within the TNI AD environment, then managed as institutional income and then developed according to the direction and policies that have been determined. Therefore, according to the Army Chief of Staff Telegram Letter Number ST/3855/2016 dated December 31, 2016 concerning Changes to the Army Housing Compulsory Savings Index, TWP AD funds come from the salaries of TNI AD soldiers and PNS allocated in the TNI AD DIPA (APBN) deducted through a banking mechanism of Rp150,000.00 (one hundred and fifty thousand rupiah) per soldier each month, then its management is handed over to TWP AD which is an Extra Structural organization of TNI AD intended to improve the welfare of TNI Soldiers and PNS especially for the construction of housing for TNI AD Soldiers and PNS.
c. The mechanism for disbursing TWP AD funds should be implemented as follows:
   1) The Director of Housing submits an official memo regarding the list of the number and names of soldiers and/or civil servants of the Indonesian Army who will be given the Self-Managed Housing KPR facility to the President Director to obtain approval;
   2) Furthermore, the approval of the President Director is forwarded to the Director of Biakorkom to issue a Payment Order (SPP) and addressed to the Director of Finance;
   3) Based on the SPP, the Director of Finance makes a payment to the developer as a partner of TWP AD;
d. To make it easier for Defendant II as Director of PT GSH to obtain credit facilities from Bank BNI for the procurement of housing for TNI AD soldiers and civil servants, then the TWP AD money is deposited by Defendant I in the name of Defendant I as collateral for PT GSH's debt.
e. Defendant II obtained loans/credits from Bank BNI several times totaling Rp127,000,000,000.00 (one hundred and twenty seven billion) with the guarantee of Defendant I's deposit amounting to Rp127,000,000,000.00 (one hundred and twenty seven billion) which came from TWP AD money in the form of Cash Collateral Credit.
f. It turned out that the Rp127,000,000,000.00 (one hundred and twenty seven billion) was not used to procure housing for TNI AD Soldiers and Civil Servants but was used for the personal needs of Defendant I and Defendant II.

g. As a result of the actions of Defendant I and Defendant II, irregularities were found which resulted in a total state financial loss of Rp133,763,305,600.00 (one hundred thirty three billion seven hundred sixty three million three hundred five thousand six hundred rupiah) as per the Audit Result Report of the Jakarta Province BPKP Number SR-1098/D5/12/2001 dated December 28, 2021 in the context of calculating State Financial losses due to alleged criminal acts of corruption in the management of the Army Housing Compulsory Savings Fund (TWP AD) for 2019 to 2020.
h. Regarding the expenditure of TWP AD funds used to pay off PT. GSH's loan amounting to Rp6,000,000,000.00 (six billion rupiah) and the expenditure of TWP AD funds used for the provision fee for Stand By Letter of Credit (SBLC) TWP AD and other costs to PT. GSH amounting to Rp763,305,600.00 (seven hundred sixty three million three hundred five thousand six hundred rupiah) before the investigation process by the Koneksitas Investigation Team has been returned and entered into the TWP AD Cash so that the real state financial loss is Rp127,000,000,000.00 (one hundred twenty seven billion rupiah) which was enjoyed by Defendant I amounting to Rp34,375,756,533.00 (thirty four billion three hundred seventy five million seven hundred fifty six thousand five hundred thirty three rupiah) while that enjoyed by Defendant II amounting to Rp80,333,490,434.00 (eighty billion three hundred thirty three million four hundred ninety thousand four hundred thirty four rupiah).
i. The money enjoyed by defendant I amounting to Rp34,375,756,533.00 (thirty four billion three hundred seventy five million seven hundred fifty six thousand five hundred thirty three rupiah) has been used by defendant I to buy shares of PT. Otomas Multifinance 2 (two) times, namely Rp20,500,000,000.00 (twenty billion five hundred million rupiah) and Rp1,800,000,000.00 (one billion eight hundred million rupiah) so that the total amount is Rp22,300,000,000.00 (twenty two billion three hundred million rupiah) while the money enjoyed by defendant II amounting to 80,333,490,434.00 (eighty billion three hundred thirty three million four hundred ninety thousand four hundred thirty four rupiah), was used by defendant II, among others, to transfer to Sugito to buy shares in PT. Otomas Multifinance in the amount of Rp20,240,000,000.00 (twenty billion two hundred and forty million rupiah), transferred to PT GSH, Budiman, Colonel Umar Ariandin, Denyco, administration of vehicle BPKB, operational costs of PT. GSH, purchase of land in Bali, Ciwidey, Gianyar, Lombok, Kupang, Palembang and Singkawang.

4.3. Analysis of the Supreme Court's Legal Considerations in Determining the Status of Evidence

This process ensures that decisions taken are not only based on rigid laws, but also pay attention to the broader context and impacts, so as to achieve true justice. In this study, the author will only limit the legal considerations of the Supreme Court in the cassation decision number 407-K/Mil/2023, as follows:

1. The actions of the defendants have fulfilled all the elements in Article 2 paragraph (1) in conjunction with Article 18 of the Corruption Eradication Law in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code in the First Primary indictment.
2. The decision of the judex facti/Main Military Court which changed the sentences imposed on the defendants is in accordance with the range of imprisonment and fines as stipulated in Supreme Court Regulation Number 1 of 2020 concerning the Sentencing Guidelines for Article 2 and Article 3 of the Corruption Eradication Law, does not exceed its authority and has sufficiently considered all the circumstances surrounding the defendants' actions, both aggravating and mitigating circumstances and the nature of the acts committed..
3. However, regarding the decision of the judex facti regarding the determination of the status of evidence for goods in the form of serial numbers 1 (one), serial numbers 6 (six) to serial numbers 9 (nine) and serial numbers 11 (eleven) to serial numbers 57 (fifty seven) which were determined to be confiscated for the State C.q. TWP AD, it needs to be revised by considering that the determination of the status of evidence stating that it was confiscated for the State C.q. TWP AD is not quite right because it is in conflict with the provisions of Article 18 Paragraph (1) letter a in conjunction with Article 38 B Paragraph (2) of the Corruption Eradication Law.
4. That the reasons for the second cassation applicant/High Military Auditor/Public Prosecutor are still related to PT Otomas Multifinance which has returned Rp25,004,300,000.00 (twenty five billion four million three hundred thousand rupiah) so that the evidence in the form of items number 1, namely shares in PT. Otomas Multifinance amounting to 40.53% (forty point five three percent)

with an equivalent of Rp.40,525,250,000.00 (forty billion five hundred twenty five million two hundred and fifty thousand rupiah) must be returned to PT. Otomas Multifinance, not confiscated for the State C.q. The TWP AD cannot be justified because the money deposited by Erick Dermawansyah amounting to Rp5,000,000,000.00 (five billion rupiah) namely in the evidence in the form of items serial number 53 and money amounting to Rp7,000,000,000.00 (seven billion rupiah) as evidence in the form of items serial number 54 has been compensated/calculated with the money enjoyed by Defendant II so that the money enjoyed by Defendant II becomes Rp80,333,490,434.00 (eighty billion three hundred thirty-three million four hundred ninety thousand four hundred thirty-four rupiah). Regarding the land area of 240 m² and the building as evidence in the form of items serial number 56 obtained by Defendant II by purchasing with funds sourced from TWP AD money has been considered, the status of which will be determined in this verdict. Meanwhile, regarding the land entrusted by Erick Dermawansyah before the case was decided by the Jakarta II High Military Court in the form of 62 m² of land with SHGB Number 151, 166 m² of land with SHGB Number 5084 and 50 m² of land with SHGB Number 4814, it was not confiscated, was not used as evidence and was not prosecuted by the High Military Auditor/Public Prosecutor in his criminal charges, so it cannot be taken into account/considered by the Panel of Judges.

5. Although the decision on the status of the evidence was confiscated for the state because the defendants were proven to have committed a criminal act of corruption, according to the legal facts in the trial where the defendants' assets were obtained from the money of the TNI-AD Soldiers managed by the TNI-AD through the TWP AD, then after the a quo case has permanent legal force, the Chief of Staff of the Army (Kasad) as the highest leader of the TNI AD can submit an application to the Minister of Finance of the Republic of Indonesia as the State Treasurer to formally approve that the evidence according to the verdict remains with the TNI-AD as the rightful owner.

In the decision regarding evidence serial number 1 (one), serial number 6 (six) to serial number 9 (nine) and serial number 11 (eleven) to serial number 57 (fifty-seven) which in the first level and appeal decisions were determined to be confiscated for the state C.q. TWP AD, then changed by the Supreme Court to be confiscated for the state.

The author believes that there is a significant change regarding the determination of the status of evidence that was previously determined in the first instance and appeal decisions. Evidence with serial numbers 1 (one), serial numbers 6 (six) to serial numbers 9 (nine), and serial numbers 11 (eleven) to serial numbers 57 (fifty-seven) which were initially confiscated for the state C.q. TWP AD, were changed by the Supreme Court in its cassation decision to confiscated for the state. This change shows a different interpretation regarding the determination of the status of the evidence. The legal considerations of the Supreme Court in this decision are based on Article 18 paragraph (1) letter a in conjunction with Article 38 B Paragraph (2) of the Corruption Eradication Law. This article gives the judge the authority to decide on the confiscation of evidence, both movable and immovable, tangible or intangible or other goods used for or obtained from corruption, including the defendant's company where the corruption was committed, as well as the value of the goods replacing the goods confiscated for the state. Before the author gives another opinion, in a limited interview, Dr. Agustinus Purnomo Hadi, S.H., M.H. gave some explanations by giving general examples. First, in the case of corruption that causes losses to the State Budget (APBN). The evidence confiscated during the investigation process and has been examined in court, shows that the evidence is the result of corruption (Yusuf, 2013). After going through the trial process and a court decision that has permanent legal force, it is determined that the assets or wealth that are confiscated become evidence confiscated for the state. Furthermore, the evidence confiscated for the state can be auctioned. The proceeds from this auction are used to cover the replacement money needed to return the losses experienced by the state due to the corruption.

Second, another different example is where the money that is corrupted comes from the Village Bank funds. In this situation, evidence in the form of replacement money or assets confiscated during the investigation process and examined in court, shows that the evidence is the result of corruption, then in the court decision the evidence is confiscated for the state and returned to the Village Bank. Considering

that the funds that were corrupted came from the Village Bank which directly affected the public interest, especially the village community who were customers of the Village Bank, the replacement money or evidence must be prioritized for the recovery of losses experienced by the Village Bank or returned to the Village Bank. This return is not only intended to restore the financial condition of the Village Bank, but also to restore public trust in the banking institution. The Village Bank, as a financial institution that serves the village community, has an important role in supporting local economic development.

Reflecting on the two examples above, in the author's opinion, if we look again, it is clear that the source of funds for the Army TWP comes from deductions from the basic salary of Soldiers and Civil Servants in the Army every month, as stipulated in the Army Chief of Staff Telegram Letter Number ST/3855/2016 dated December 31, 2016 concerning changes to the Army Compulsory Housing Savings index, which was originally an index of Rp50,000.00 (fifty thousand rupiah) per person per month changed to Rp150,000.00 (one hundred and fifty thousand rupiah) per person per month for all ranks and groups for every Soldier and Civil Servant serving in the ranks of the active Indonesian Army. The salary deductions were carried out by autodebit from the salaries of TNI Soldiers whose management was handed over to the Army TWP, so in this case the party that was actually harmed was the Army.

Based on the above, the author is of the opinion that the Supreme Court's cassation decision Number 407-K/Mil/2023 merely regarding the determination of the status of evidence is not quite right, according to the author, the court decisions at the first level and the appeal level are correct by determining the status of the evidence to be confiscated for the state and returned to the Indonesian Army through the Indonesian Army TWP. This cassation decision only confirms the status of the evidence without considering the real impact on the recovery of state losses in this case experienced by the Indonesian Army. In fact, evidence confiscated by the state should be returned to the rightful party, in this case the Indonesian Army through the Indonesian Army TWP, to restore the financial conditions affected by the criminal act of corruption.

Not only that, according to the author, it should also be seen from the source of the corrupted funds, then the additional punishment imposed on the defendants in the form of replacement money for each defendant I in the amount of Rp. 34,375,756,533.00 (thirty-four billion three hundred seventy-five million seven hundred fifty-six thousand five hundred and thirty-three rupiah) and defendant II in the amount of Rp. 80,333,490,434.00 (eighty billion three hundred thirty-three million four hundred ninety thousand four hundred and thirty-four rupiah) deposited to the State C.q. TWP AD.

Article 18 Paragraph (1) letter b of the Corruption Eradication Law states that in addition to additional punishment as stipulated in the Criminal Code, other additional punishments are payment of replacement money in the amount of which is the maximum amount equal to the assets obtained from the criminal act of corruption. This replacement money functions as an effort to recover losses caused by the act of corruption and is part of the perpetrator's responsibility for state finances.

This is because based on the audit report of the Jakarta Province BPKP Number SR-1098/D5/12/2001 dated December 28, 2021 in the context of calculating State Financial losses due to alleged corruption in the management of the Army Housing Compulsory Savings Fund (TWP AD) from 2019 to 2020 where as a result of this case the state experienced financial losses totaling Rp. 133,763,305,600.00 (one hundred thirty-three billion seven hundred sixty-three million three hundred five thousand six hundred rupiah) minus the refund by the connectivity investigation team and entered into the TWP AD treasury in the amount of Rp. 6,763,305,600.00 (six billion seven hundred sixty-three million three hundred five thousand six hundred rupiah) so that the actual state financial loss is Rp. 127,000,000,000.00 (one hundred twenty-seven billion rupiah). While the additional penalty in the form of replacement money imposed on the defendants if the total is Rp.114,709,246,967.00 (one hundred and fourteen billion seven hundred nine million two hundred and forty six thousand rupiah), the rest based on relevant legal facts in the trial was used by the defendants to buy land and buildings in several areas that have been confiscated and become evidence. So both replacement money and evidence in this case should be

determined in the verdict to be confiscated for the state or deposited to the state C.q. TWP AD as the legitimate owner and as an effort to restore the losses of the TNI AD caused by corruption.

The author's opinion is not without reason, it is based on the interpretation of several examples of cases which according to the author are essentially the same as the corruption cases discussed. First, the decision of the Corruption Court at the Yogyakarta District Court Number 15 / Pid.Sus-TPK / 2021 / PN.Yyk in its decision stated that the defendant DW was legally and convincingly proven guilty of committing a criminal act of corruption which was carried out jointly using village funds originating from the APBDesa of Getas Village, Playen District, Gunungkidul Regency for the 2019 to 2020 Fiscal Year, resulting in state financial losses C.q. Gunungkidul Regency Government C.q. Getas Village for the management of Village Funds for 2019 to 2020 amounting to IDR 627,136,750.00 (six hundred twenty-seven million one hundred thirty-six thousand seven hundred and fifty rupiah). Imposing the principal sentence on the defendant with a prison sentence of 6 years and a fine of Rp. 300,000,000.00 (three hundred million rupiah). In addition, the judge also sentenced the defendant to pay compensation of Rp. 78,000,000.00 (seventy eight million rupiah) by being deposited to the State C.q. Getas Village Treasury. Determined that evidence in the form of written evidence be returned to the Gunung Kidul District Attorney's Investigator to be used for other case processes.

Second, the cassation decision of the Supreme Court of the Republic of Indonesia Number 4920 K/Pid.Sus/2023 in its decision stated that Declaring the defendant EK was proven legally and convincingly guilty of committing a criminal act of corruption committed jointly, namely the deviation of financial accountability at the Village-Owned Enterprise (BUMDes) Berjo, Ngargoyoso District, Karanganyar Regency in 2020 amounting to IDR 1,160,311,814.27 (one billion one hundred sixty million three hundred eleven thousand eight hundred fourteen rupiah point twenty seven cents) which was then reduced by the return on state financial losses amounting to IDR 109,000,000.00 (one hundred nine million rupiah) so that finally the amount of state financial losses was IDR 1,051,311,814.27 (one billion fifty one million three hundred eleven thousand eight hundred fourteen rupiah point twenty seven cents). Sentencing the defendant EK to imprisonment for 4 (four) years and a fine of Rp200,000,000.00 (two hundred million rupiah). Sentencing the defendant EK to pay compensation to the State c.q. BUMDes Berjo in the amount of Rp525,655,907.135 (five hundred twenty five million six hundred fifty five thousand nine hundred seven rupiah one point one hundred thirty five cents). Determining that the evidence in the form of written evidence be returned to the Karanganyar Regency Inspectorate and BUMDes Berjo.

From the two examples of decisions above, that in both decisions the additional penalty in the form of replacement money imposed on the defendant is for the first example deposited to the State C.q. Getas Village Treasury and the second example deposited to the State C.q. BUMDes Berjo. Meanwhile, for evidence only in the form of documentary evidence, there is no evidence in the form of assets, land or buildings from the proceeds of corruption.

If we look again at the Supreme Court cassation decision Number 407-K / Mil / 2023 which stipulates that evidence originating from the proceeds of corruption is determined to be confiscated for the state, then the consequence is that the evidence that has been confiscated in this case will be executed by the Attorney General / High Military Auditor II Jakarta, and the results will be included in the APBN as Non-Tax State Revenue (PNBP) through the Indonesian Ministry of Finance. In fact, these funds belong to the TWP AD which comes from deductions from the salaries of soldiers and civil servants of the TNI AD every month while they are on active duty. If these items are confiscated by the state, this has the potential to cause several significant losses, including the following:

1. State finances originating from TWP AD contributions of TNI AD Soldiers and Civil Servants managed by TWP AD cannot be replaced;
2. Failure to fulfill savings returns (Baltab) to TNI AD Soldiers and Civil Servants who have entered retirement;
3. TNI AD Soldiers and Civil Servants will lose the money they saved through TWP AD to buy non-service houses or ready-to-build plots; and

4. Obstruction of the provision of non-service houses and ready-to-build plots for TNI AD Soldiers and Civil Servants.

Thus, this cassation decision not only has the potential to harm TWP AD financially, but also has a negative impact on the welfare of TNI AD soldiers and civil servants who have contributed through their contributions.

The legal considerations in the Supreme Court's cassation decision regarding the determination of the status of evidence in the case of corruption of TWP AD funds also did not consider the provisions of Article 19 paragraph (1) of the Corruption Eradication Law. This article stipulates that a court decision regarding the confiscation of goods that do not belong to the defendant may not be made if this would be detrimental to the rights of a third party acting in good faith.

The evidence presented by the prosecutor in this case, turned out to belong to and be in the possession of a third party, not the defendant. It is clear that the source of funds for the Army TWP came from deductions from the basic salary of Soldiers and Civil Servants in the Army every month, as stipulated in the Army Chief of Staff Telegram Letter Number ST/3855/2016 dated December 31, 2016 concerning changes to the Army Compulsory Housing Savings index, which was originally an index of Rp50,000.00 (fifty thousand rupiah) per person per month changed to Rp150,000.00 (one hundred and fifty thousand rupiah) per person per month for all ranks and groups for every Soldier and Civil Servant serving in the ranks of the active Indonesian Army. The salary deductions were made by autodebit from the salaries of TNI soldiers whose management was handed over to the Army TWP, but the judge still decided to confiscate the evidence for the state.

The Supreme Court's legal considerations in this decision were based solely on Article 38 B Paragraph (2) of the Corruption Eradication Law. This article gives judges the authority to decide on the confiscation of property obtained from corruption for the state. This case reflects the inconsistency between the application of the law which should protect the rights of third parties who act in good faith and the act of confiscating evidence which is property belonging to third parties for the state.

The Supreme Court's decision in this case is not entirely in accordance with applicable legal provisions. Article 19 paragraph (1) of Law Number 31 of 1999 states that goods that do not belong to the defendant may not be confiscated if they harm a third party in good faith, but the judge's decision is contrary to this provision. When the evidence submitted by the prosecutor is proven to belong to a third party, the judge still decides to confiscate it for the state. This raises questions regarding the consistency of the application of the law and the protection of third party rights.

The legal considerations in this decision, if analyzed more deeply using the theory of legal certainty and legal protection. First, from the perspective of legal certainty, this Supreme Court decision shows that there is uncertainty in determining the status of evidence at the previous court level. The change from confiscated for the state C.q. TWP AD to confiscated for the state without the TWP AD label shows that there are differences in interpretation regarding the party entitled to the evidence. Legal certainty requires consistency and clarity in determining the status of evidence so as not to cause confusion for the parties involved.

Second, from the perspective of legal protection, this decision must also be seen in the context of protecting various existing interests. In this case, there is a state interest in securing evidence related to corruption, as well as the interests of other parties who may have rights to these items. Legal protection of third party rights is important to ensure that law enforcement does not harm parties who are not directly involved in the crime.

Regarding other legal considerations which state that although the decision on the status of the evidence was confiscated for the State because the defendants' actions were proven to have committed a criminal act of corruption, however, according to the legal facts in the trial where the defendants' assets were obtained from the money of the TNI-AD soldiers in the form of Compulsory Housing Allowances

(TWP) managed by the TNI-AD through the TWP AD, then after the a quo case has permanent legal force (BHT), the Chief of Staff of the Army (Kasad) as the highest leader of the TNI AD can submit an application to the Minister of Finance of the Republic of Indonesia as State Treasurer to formally approve that the evidence according to the verdict remains with the TNI-AD as the legal owner.

4.4. Analysis of the Evidence Status Determination System

In corruption cases, evidence can be in the form of documents, recordings of conversations, cash, or other items related to the corruption. These documents can be fake agreements, false financial reports, or other documents that indicate corruption. Recorded conversations can be conversations between perpetrators of corruption discussing ways to commit corruption. Cash or other items can be evidence of corrupt transactions that have been carried out.

Evidence can also reveal the modus operandi used by perpetrators of corruption. For example, fictitious agreement documents, secret bank accounts, or hidden assets can provide an overview of how corruption is carried out. In addition, evidence can also help identify parties involved in corruption. For example, recording of unusual financial transactions can indicate the involvement of certain officials in corruption. This is important to ensure that all parties involved can be tried and held accountable for their actions. The origin of the evidence will also be a consideration for the judge in his decision regarding the determination of the status of evidence.

In corruption cases, the reverse burden of proof method is known as an alternative legal means of proof which is now seen as a powerful "legal means" to pursue assets resulting from crime and return them to the state. However, the use of this model must have two functions, namely first, this model aims to facilitate the process of proving the origin of assets from a crime, but on the other hand, it cannot be used so that it conflicts with the basic rights of a suspect/defendant. Second, this model does not have a repressive purpose through the criminal process but must have a rehabilitative purpose and solely to recover assets resulting from certain crimes (recovery) (Latief, 2012). In the principle of reverse burden of proof, the Judge starts from the presumption that the defendant is guilty of committing a violation of the law or presumption of guilt. Then the defendant must prove that he is not guilty. However, the application of this reverse burden of proof is not purely only the Defendant who only proves the charges from the Public Prosecutor, but also from the Public Prosecutor who must also prove what has been charged to the Defendant, so that in the implementation of the principle of presumption of guilt is not carried out absolutely, the defendant is active only in proving the origin of the assets (Nasution 1998).

The verdict is the judge's crown. Every court decision, whether in the form of a sentence, acquittal, or release from all legal charges, must include a determination of the status of the evidence. This determination must be included unless in the case there is no relevant evidence. This shows the importance of clarity and justice in every legal decision. This provision emphasizes that the status of the evidence must be decided firmly, ensuring that there is no uncertainty regarding the fate of the evidence after the verdict. In each case, the judge is responsible for determining how the evidence will be managed, whether it will be returned, destroyed, or used for other purposes in accordance with the law.

Determining the status of evidence in the judicial process is a very important aspect, considering that evidence plays a crucial role in determining the validity and truth of a criminal case. In the general judicial system, the Criminal Procedure Code provides clear guidelines on how evidence should be treated, including the possibility of returning evidence to the rightful party or destroying it if it is considered dangerous or has no economic value. On the other hand, in Military Justice, similar rules are applied with adjustments according to the military context, as regulated in the Military Justice Law.

Determining the status of evidence in a court decision is guided by the provisions of Article 194 of the Criminal Procedure Code, while in the Military Justice environment it is guided by the provisions of Article 191 of the Military Justice Law. From these provisions, there are several alternatives that can be applied by the court according to the circumstances and types of evidence confiscated.

According to the author, when the court decides that the confiscated evidence is confiscated for the state in accordance with Article 191 of the Military Court, in connection with Article 19 paragraph (1) of the Corruption Eradication Law, Article 10 letter b and Article 39 of the Criminal Code, then from the perspective of proof in criminal cases, in accordance with Article 172 of the Military Court Law, the Judge considers that the Prosecutor is able to prove his charges. The confiscated evidence was obtained from the proceeds of corruption, supported by valid evidence that has strong and decisive evidentiary value.

5. Conclusions

5.1 Conclusion

Based on the discussion in the previous chapter and the research results obtained by the author, the following conclusions can be drawn:

1. There was a significant change in the Supreme Court cassation decision Number 407-K/Mil/2023 regarding the determination of the status of evidence that was previously determined to be confiscated for the state C.q. TWP AD, changed to confiscated for the state. The Supreme Court based its considerations on Article 18 paragraph (1) letter a in conjunction with Article 38 B Paragraph (2) of the Corruption Eradication Law which gives judges the authority to confiscate some or all of the property used for or obtained from corruption.

Meanwhile, the source of funds for TWP AD comes from deductions from the basic salary of Soldiers and Civil Servants in the TNI AD environment every month. This cassation decision does not consider the provisions of Article 19 paragraph (1) which stipulates that a court decision regarding the confiscation of goods that do not belong to the defendant may not be imposed if this harms the rights of a third party in good faith.

This change shows a difference in interpretation regarding the party entitled to the evidence. This cassation decision does not consider the real impact on the recovery of losses experienced by the Indonesian Army. In addition, this cassation decision not only has the potential to harm the Indonesian Army TWP financially, but also has a negative impact on the welfare of Indonesian Army Soldiers and Civil Servants who have contributed through their contributions. The evidence confiscated by the state, including additional criminal penalties in the form of replacement money imposed on the defendants, should be returned to the entitled party, in this case the Indonesian Army through the Indonesian Army TWP, to restore the financial condition affected by the criminal act of corruption.

Regarding other legal considerations stating that the Chief of Staff of the Army can submit an application to the Minister of Finance of the Republic of Indonesia to formally approve the evidence to remain with the Indonesian Army as the legal owner, this is not in line with Permenkeu No. 145/PMK.06/2021. This regulation clearly states that those authorized to propose the management of confiscated state goods to the Minister of Finance are the Prosecutor's Office, the Corruption Eradication Commission (KPK), and the Audit Board. The Army Chief of Staff is not included in these provisions to submit an application directly.

In addition, although the Regulation of the Minister of Finance Number 145/PMK.06/2021 provides clear guidance, the complex, long and multi-layered bureaucratic process, as well as the potential for conflicts of interest between law enforcement institutions and the Minister of Finance can be obstacles to the effective implementation of this regulation. The bureaucratic process involves various stages of verification and in-depth research to ensure the completeness and accuracy of documents and the conformity of the data submitted. The potential for this conflict of interest can affect the objectivity in determining the status of the use of confiscated goods.

The system for determining the status of evidence for confiscated assets begins with the occurrence of a criminal act. Items that can be categorized as evidence include objects of criminal acts, products of criminal acts, tools for carrying out criminal acts, and tools related to the criminal act. In the case of connectivity, when a crime occurs, the connectivity investigator has the authority to conduct a search or confiscate evidence.

After the investigation case file is complete, the investigator will submit the files and confiscated evidence to the Oditur as the prosecutor and executor of execution. If the case file has met the formal and material requirements, the investigator will then submit the suspect along with the confiscated evidence to the Oditur. The confiscated evidence will then be stored and prepared for use in the trial process. During the trial, evidence plays an important role in proving the case before the Judge.

After the Judge decides the case, the Oditur is tasked with executing the evidence in accordance with the court decision that has permanent legal force. Execution of evidence is carried out based on the contents of the decision, including:

a. Evidence is returned to those entitled to it, as regulated in Article 95 in conjunction with Article 191 of the Military Justice Law, which states that confiscated evidence must be returned to the person or persons who are most entitled to it.
b. Confiscated for the benefit of the state or destroyed or damaged, as regulated in Article 191 of the Military Justice Law in conjunction with Article 38 B Paragraph (2) of the Corruption Eradication Law in conjunction with Article 39 of the Criminal Code, which in essence regulates that according to the provisions of laws and regulations, evidence in the form of goods deemed to have been obtained from corruption is confiscated for the benefit of the state or destroyed or damaged.
c. Remains within the authority of the prosecutor's office. If evidence is still needed in another case, then the court decision regarding the evidence states that the evidence is still in the possession of the Prosecutor, because it is still needed in another case/the evidence is returned to the Prosecutor as the Public Prosecutor to be used in the context of proving another case.

Based on the description of the evidence status determination system above, it can be understood that the principle of determining evidence, both according to the Military Justice Law, the Corruption Eradication Law, and the Criminal Code, is faced with the principle or theory of legal certainty which is one of the objectives of the law in determining whether evidence is returned to the rightful party, confiscated for the state or remains in the power of the prosecutor's office must have such relevance with the provisions that are the basis for determining the status of confiscated evidence, because good law is law that is able to implement legal certainty. Normative legal certainty is achieved when a statutory regulation is made and enacted with certainty, regulates clearly and logically, so that it does not cause doubt due to multiple interpretations and does not cause normative conflicts.

5.2. Suggestions

1. Refund the TWP AD funds for the benefit of the Soldiers and Civil Servants, because the return will not only restore the financial losses experienced by the TWP AD but will also increase the trust and morale of Soldiers and Civil Servants in contributing to welfare programs in the future. Decisions that consider the rights of third parties in good faith will reflect justice and wisdom in the application of the law.

2. Must pay more attention to the rights of third parties related to the determination of the status of evidence. Clear rules regarding the mechanism for filing objections and protecting the rights of third parties must be enforced to prevent undue losses.

If the court determines that the confiscated evidence is confiscated for the state and this harms the rights of a third party in good faith, then the third party may file an objection. This objection must be filed within two months after the court decision is pronounced in a public hearing. To avoid differences in interpretation and application of the procedures for handling objection applications, it is further regulated in Supreme Court Regulation Number 2 of 2022. This objection application is a new means in the Indonesian Criminal Procedure Law which is specifically regulated in the Perma.

Thus, the injured third party has a clear and structured legal mechanism to file an objection to the decision to confiscate goods that do not belong to the defendant. This regulation aims to ensure that the rights of third parties in good faith remain protected and are not harmed by court decisions in corruption

cases. Through this mechanism, it is hoped that legal certainty and justice will be created for all parties involved.

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