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**LEGAL PROTECTION OF PROPERTY RIGHTS THIRD PARTIES  
ARE GOOD IN LAW NO. 18 OF 2013 CONCERNING PREVENTION  
AND ERADICATION OF FOREST DESTRUCTION**

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**Abstract**

*Third parties who own property in criminal cases often lack legal protection in recovering their property related to illegal logging This research discusses the legal protection for third parties in the recovery of their stolen property in a criminal act. This encourages this research to be conducted to find out whether there is legal protection for third parties for their property confiscated by the state in the criminal act of illegal logging and how the legislative policy on legal protection for property rights of third parties who have good faith in Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction in the future. This study uses a normative legal research approach or literature law research, namely research conducted by examining library materials or secondary data alone. The results of the study concluded that the legal protection in Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction against third parties whose property has been confiscated by the state does not yet exist, resulting in a legal vacuum because normatively there is no legal protection for the property rights of third parties in good faith who become a victim of their property that is confiscated by the state in not criminal illegal logging.*

**Keywords:** *Legal Protection, Third Party in good faith, Law No.18 of 2013*



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**INTRODUCTION**

Illegal logging is one of the critical issues, and national problems in the forestry sector that have been identified. Some of the factors causing the community to encroach on the forest include educational factors, economic factors, and limited supervisors. There are parties who commit and enjoy the proceeds of crime in real-time that the activity is an act that can be subject to criminal sanctions, but there are also many parties who do not even know that the activity is a criminal act, such as a third party at work transportation means whose means of transportation are used by parties who are not responsible for the crime of forest encroachment.

The state through its legislative body has ratified a legal product, namely Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, which of course has various criminal provisions including imprisonment, fines and additional penalties. However, Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, almost no legal provisions are found that are assisted by Legal Protection for third parties with good faith. This can be seen in the explanation of Article 16 of Law Number 18 Year 2013 concerning Prevention and Eradication of Forest

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Destruction, which are called:

"If part or all of the forest products have been transported or moved to another place in the vehicle, it is declared that the vehicle has transported the forest products. The definition of transportation includes the following processes: starting from loading forest products, importing forest products or transferring. The process of importing forest products into the means of transporting and transporting forest products to their destination and unloading from the forest, unloading or transferring forest products transportation means except forest products that do not have a forest product legality certificate, transportation means, land and air used to transport forest products have been confiscated to the state. This is so that the person in charge of transporting / transporter is also responsible for the legality of the transportation of forest products" (Law Number 18, 2013)

The elucidation of this article does not list in detail the position of the owner of the transport / carrier who is obliged to take responsibility for the criminal act of illegal logging because it is unfair for a third party who owns a vehicle to rent another party because the state has confiscated the vehicle. Because the third party only rents out the means of transportation to other people without being noticed by the person who refuses the criminal act. And what are the procedures or studies to carry out an examination of the disagreement of a third party with good intentions? The law does not help him.

Often in explaining statutory regulations, legislators are quite clear. The legal provision which later became "quite unclear", that from a systematic perspective, the 2013 Law on the Prevention and Elimination of Forest Destruction was passed in Article 18 which discusses Article 16 concerning goods seized by the state. The auction of evidence items is included in Article 45, and Article 40 and Article 41 proving the process of issuing an auction license for confiscation of evidence. If we examine carefully the systemic expressions of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction above, there are several expressions of vague legal expressions or norms: Article 16 clearly shows that the state has confiscated transportation means, land and water used to transport forest products.

When laws / regulations are at a technical level, firstly in their application they feel unable to function as an instrument for carrying out political and legal transformation, then the judge's decision becomes the last door in the process justice expected. The existence of language and the subjectivity of the meaning of words, especially those used in statutory regulations, are one of the reasons for the need for legal discovery by judges, both in the form of interpretation and construction.

From the systematic description of Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction and Supreme Court Circular (SEMA) Number 01 of 2008 concerning Guidelines for Handling Forest Crime Cases, (Supreme Court Circular (SEMA) Number 01, 2008) in which Judges throughout Indonesia must pay close attention to Article 78 (15), ( Law Number 41, 1999) therefore, bonafide third parties have absolutely no legal protection in returning property confiscated by the state. Legal protection from third parties for property confiscated by the judge / court in a criminal decision. This protection is not regulated in Law Number 18 of 2013, "Prevention 24 and Elimination of Forest Destruction", but only the aid or defendants of the People are protected from all possible human rights.

In theory and practice, there is relatively little attention to third parties, which leads to the abstraction of legal protection from these third parties. If court decisions are inconsistent with judicial justice, it is imperative to provide legal protection to third parties who are clear owners of the property confiscated, and in fact the third party itself cannot be found much to test court decisions. Clearly not responsible for liability to third parties in good faith, nor can it provide legal protection for confiscated.

Previously, (Sipayung, Pakpahan, Widiyani, & Devi, 2019) had conducted a research entitled Legal Protection Against Third Parties As Owners Of Heavy Equipment Used In Doing Criminal Actions Of Forest Change. In this research, the party that what a third party can do is through legal remedies with the consent of confiscation that is placed against objects or objects belonging to a third party as long as the case being challenged does not yet have a final legally binding decision. By taking legal action against a third party to accept back goods confiscated based on a decision that depends on evidence of an irrelevant criminal act so as to provide justice to the third party. This research is different from previous research, this study will focus more on legal certainty and legal protection obtained by third parties.

## RESEARCH METHODS

This research is normative legal research or literature law research, which is research conducted by examining library materials or secondary data alone.

The secondary data in this thesis include: Primary legal materials, which consist of statutory regulations in this case: Law no. 41 of 1999 concerning Forestry, Law no. 18 of 2013 concerning Prevention and Eradication of Forest Destruction, Law Number 48 of 2009 concerning the Principles of Judicial Power, Law no. 31 of 1999 Jo Law no. 20 of 2001 is about the status of evidence. Secondary legal materials, which explain primary legal materials, such as papers from legal circles, opinions of legal experts related to the content of this research. Tertiary legal materials, namely materials that provide guidance and explanation of primary and secondary legal materials, such as legal dictionaries. The collected legal materials are then processed and analyzed in a normative qualitative manner.

## RESULTS AND DISCUSSION

Regarding legal efforts for third parties to confiscate evidence of their criminal acts in court decisions, provisions regarding bonafide third party remedies are not regulated in the Forestry Law and the Law on Prevention and Elimination of Forest Destruction. Legal considerations in the decision of the Constitutional Court No. 021 / PUU-III / 2005 dated March 1, 2006 concerning judicial review of Article 78 (15) of Law Number 41 of 1999. (Constitutional Court Decision Number 021/PUU- III/2005, 2006)

"Considering, from the description above, it is clear that not every seizure of property rights is automatically contrary to the 1945 Constitution. Deprivation of property can be justified as long as it is carried out in accordance with the principles of due process of law, as a legal process that is fair and impartial, appropriate, and constitutes a legal process, a correct judicial process, which has gone through the existing mechanisms or procedures, so that substantive justice can be obtained. This is even more so for property rights born due to legal construction. However, regardless of the legality of confiscation of property rights as long as it is carried out in accordance with the above due process of law

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principles, the property rights of third parties with good faith (ter goeder trouw, good faith) must still be protected. "

In several examples of decisions regarding legal protection for third parties as owners of goods / tools for confiscation or return of goods / tools belonging to third parties with good intentions in judges' decisions on cases / criminal acts of illegal logging (illegal logging), it becomes interesting as a clash between legal certainty (legal justice) and justice (philosophical justice), there is even a difference of opinion between the judges on legal considerations in their decisions regarding the determination of the status of goods / equipment belonging to third parties in the crime.

Judges' verdicts seizing evidence related to forestry crimes, for example in the decision of the Supreme Court of the Republic of Indonesia at the cassation level of criminal case register number 2317 K / PID.SUS / 2015 dated 18 November 2015 with a panel of Supreme Court Justices chaired by DR. Artidjo Alkostar stated that the vehicles used for illegal logging crimes were confiscated for the state (regardless of who the legal owner of the vehicle was), even though the judge's decision at the first level or at the district court or high court decided not to confiscate or return evidence belonging to a third party related to the act. criminal even though the law orders to seize it.(Putusan Mahkamah Agung RI, 2015)

There are differences in the judges' thinking regarding the determination of the status of evidence belonging to a third party in their decision, both confiscating and returning it, so it is preferable that in every statutory regulation in general and particularly in the forestry law, so that it can function effectively and efficiently, The law must comply with three principles, namely juridical, sociological and philosophical principles.(Sutedi, 2020) If these three principles are not fulfilled, this is where the judge's personal judgment (discretion) plays an important role in implementing a rule. Discretionary decision-making power that is not strictly limited by law (law), where personal judgment also plays a role.(Yulikhsan, 2016)

With the existence of laws and regulations regarding the right to oppose or confiscate a court decision regarding the confiscation of evidence. In fact, the implementing regulations do not regulate the procedure for a third party to file an objection, because legal certainty is not achieved during the implementation process. For example, according to Law Number 18 of 2013, the authority of investigators even though the case is illegal. logging, forest destruction which is also entitled to go through auction procedures has not yet been determined by judicial judges.

As a result, the third party cannot use the confiscated property as evidence in court, thereby causing the third party to lose their right to recover their property. When a third party opposes a court decision in a criminal case relating to evidence, if that party recognizes and can prove it properly and can persuade others to automatically change the confiscated evidence, then the country's position will change. (Makausi, 2019) The judge considered that the property was his legal property and obtained evidence that the evidence was indeed in the case and it was decided to be confiscated by the state, the identity must be issued as an item outside the case.

Taking into account material rights that must be protected by law, then as a form of protection for third parties who are harmed in the process of executing evidence in a criminal case, it is necessary to formulate laws and regulations against enforcement of evidence third party. (Usanti, 2012) Whereas in the field of substantive criminal law, certain criminal acts are regulated in statutory laws concerning the right to oppose court decisions to confiscate evidence, such as the Corruption Law, the Narcotics Law, the Fisheries Law and the Forestry Law. And other written laws. However, this still requires

formal legal provisions, because as a legal tool for a third party with good intentions, the third party believes that by determining the status of evidence of a criminal act its ownership has been hacked.

The concept of legal protection for third parties who feel their rights and interests have been impaired by determining the status of evidence of a crime is to form a legal policy by creating a separate (special) procedure / mechanism to guide the use of the third party *derden verzet* Special remedy for third parties as a formal legal tool used by third parties to challenge court decisions regarding confiscation of evidence of a criminal act. (Priscila, 2019)

Compared to ordinary civil litigation, the use of legal remedies for third party defense (*derden verzet*) is considered a form of legal protection for third parties to recover confiscated assets. The object is a court decision that has permanent legal force.

**a. Legislative policy on illegal logging crime and the implementation of criminal sanctions in the future.**

Seen from the perspective of criminal law, efforts to combat criminal acts can be seen from various aspects, including aspects of criminalization policy and aspects of criminal liability (mistakes) and aspects of punishment.

Based on the three main issues of criminal law, namely criminal litigation, criminal liability or negligence and the aforementioned sanctions, the following matters need to be considered in the laws and regulations and illegal logging policy. (Barda Nawawi Arief, 2018)

1. Criminalization Policy Issues.

a) Must be clearly regulated in the provisions concerning criminal acts in the forestry sector.(Lutham, 1999). A description of a criminal offense in the forestry department should be in the form of: "A series of actions or activities carried out by an individual or company that may result in forest destruction without the permission of the competent official".

b) The scope of actions that can be punished are actions or activities that can cause forest destruction.

c) Subjects of Illegal Logging Crime

2. Problem Subjects of Crime

The subjects of illegal logging crime are individuals and legal entities or business entities / companies. By making companies the subject of a criminal act, the criminal system must also be directed at the company. The meaning must be:

1) when it was said that the corporation had committed a criminal act;

2) who can be accounted for;

3) in terms of how the corporation can be accounted for; and

4) what types of sanctions can be imposed on corporations

Legal subjects are individuals and companies, although the criminal acts of the two legal subjects are defined in the same clause, they have the same criminal threat, however, the criminal acts of individuals and companies must be separated.

3. Problem Formulation of Criminal Sanctions

Criminal sanctions should not be formulated explicitly, this is a rigid imperative, however, if the criminal sanctions are formulated in an alternative / optional way, it is better to deal with the problem from the perspective of the problem, so that it is lenient at the implementation stage. In addition, the formulation of criminal sanctions will provide options, namely based on the motive and purpose of the criminal being violated

imprisonment or a fine imposed on the main crime which will be considered by the judge for the sentence. (Juarsa, 2019)

Criminal sanctions are rigidly formulated and cumulative, and have the same priority as individuals or companies, so that if the convict "company" is fined, it becomes a problem. In this law, there are no specific provisions regarding unpaid fines other than fines. This means that the general provisions of the Criminal Code (Article 30) can be limited by alternative means. When applied to a company, this becomes a problem because the company cannot impose substitution restrictions.

#### 4. Corporate Criminal Liability Issues

By stating when or in what way the company has committed a criminal act and when it can be held accountable to the company, confirm the administrative action against the company's criminal liability system. (Krismen, 2014)

#### 5. The problem of goods seized by the state

Regarding confiscation of evidence related to illegal logging which is confiscated during the investigation stage, the auction process of evidence should be carried out after a judge's decision is transparent and final.

### **b. The implementation of illegal logging criminal sanctions in the future**

Please refer to the description of the development of illegal logging crimes and understand the possible impacts of illegal logging which are not only related to economic aspects, but also ecological, social and cultural aspects. (Bawono & Mashdurohaturun, 2021) Likewise, law enforcement against illegal logging is not only aimed at maintaining legal justice, but also at the same time maintaining social and economic justice. This means not only giving criminal sanctions / sanctions to the perpetrators ng the heaviest sanctions, but also make national losses due to the perpetrator's actions return to normal in a short time.

Pay attention to the systematic formulation of the 2013 Law on prevention and eradication of forest destruction. The law stipulates that at the investigation level, even if there is no illegal logging case, the investigator is still entitled to carry out auction procedures and has not yet entered the field of justice. Therefore, it is necessary to auction off evidence. System changes during the process can only be carried out through a judge's decision within the scope of authority Justice.

Weaknesses in the framework of criminal law reform must be added. Because talking about the criminal liability system from the perspective of criminal law policy means holding general elections to achieve the best results from criminal legislation, in the sense of meeting the requirements of justice and effectiveness, and must be based on the current situation and for future interests.

Through the above discussion, the concept of third party resistance (derden verzet) in the field of civil law must be used as a formal legal tool to resolve objections / against criminal decisions against confiscation or confiscation of criminal evidence to protect property rights third party. From the perspective of the systematic preparation of auction procedures at the investigation level in Article 40 paragraph 4 of Law Number 18 Year 2013, it is necessary to systematically modify the evidence which can only be carried out by the judicial authorities within the scope of the judiciary. Inclusive decisions. In addition to protecting bona fide third parties from law enforcement regarding the confiscation and confiscation of assets, confiscation and confiscation of assets deemed to cause large potential losses, it is better to evaluate the provisions of criminal law to suit the interests of all parties. Become a victim of a law enforcement process in good faith and indirectly

## CONCLUSION

Law Number 13 of 2013 concerning Prevention and Elimination of Forest Destruction has not provided legal protection for third parties who have not been seized by the state, resulting in a legal vacuum, due to the absence of legal protection for these assets. the rights of third parties in norms and they become victims in the good faith of the State who seize non-criminal property and illegal logging, because criminal sanctions are aimed more at criminals, and have not targeted victims or bona fide third parties.

In addition, victims who suffered material and non-material losses did not receive compensation from the perpetrators. In the "General Provisions of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction", there is no explanation for the owners of transportation services who are also responsible for the legality of transporting forest products. Prevention and Eradication of Forest Destruction Article 16 of Law no. 18/2013 does not explain who the owner of the transportation service is, regardless of whether the party is sincere or not.

Therefore, it is necessary to include instructions regarding transportation service owners in general regulations. Law Number 18 concerning Prevention and Eradication of Forest Destruction was enacted in 2013. Article 45 is included in the third part of investigation, prosecution and court review, namely in the first paragraph of investigation and prosecution, therefore it is clear here that the "auction" in Article 45 is an auction of evidence at the stage of investigation and is not a provision regarding auction in the realm of a judge's decision or in the realm of the judiciary. In accordance with the verdict of illegal logging criminal cases, legal protection of third party civil rights seized by the state must be carried out, and legal remedies (*derden verzet*) are submitted before evidence is executed.

Decisions in third party defense cases (*derden verzet*) against decisions in criminal cases only have the nature of improving the status of evidence items which are the subject of criminal decisions, especially in cases that are detrimental to third parties. To protect material, the concept of third party resistance (*derden verzet*) in the field of civil law must be used as a formal legal tool to resolve disputes / against criminal decisions related to confiscation or confiscation of criminal evidence. Rights of third parties.

Based on the above conclusions, the authors hope to evaluate the legal provisions of the criminal justice system to suit the interests of well-meaning parties who indirectly become victims of the law enforcement process. Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction requires a systematic modification of auction procedures to prove that only decisions made by judicial authorities have a juridical effect, and only in decisions that are binding and financial in nature can the judicial authority be able to review this. Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction has been compiled systematic. Article 45 is included in the third part of investigation, prosecution and court review, namely the first paragraph of investigation and prosecution, so that it is clearly understood here. "auction" in article 45 is an auction of evidence at the stage of investigation and is not a provision regarding auction in the realm of a judge's decision or in the realm of the judiciary

## REFERENCES

- Barda Nawawi Arief, S. H. (2018). Issues of law enforcement and criminal law policies in crime prevention. Prenada Media.
- Bawono, Bambang Tri, & Mashdurohaturun, Anis. (2021). Criminal Law Enforcement in

- the Field of Illegal Logging for Environmental Conservation and Efforts to Overcome it. *Journal of Law*, 26 (2), 590–611.
- Juarsa, Eka. (2019). Analysis of the Formulation of Criminal Fines in the Criminal Code. *Al-Adl: Journal of Law*, 11 (1), 1–14.
- Christian, Yudi. (2014). Corporate Criminal Liability in Economic Crimes. *Journal of Law Studies*, 5 (1), 61–70.
- Lutham, Salman. (1999). Criminalization Policy in Criminal Law Reform. *Legal Journal of Ius Quia Iustum*, 6 (11), 1–13.
- Makausi, Christian Israel. (2019). Role Of Evidence In Criminal Procedures. *Lex Crimen*, 8 (6).
- Priscila, Yohana. (2019). Legal protection for third parties who suffer losses due to the dissolution of operational cooperation business entities. Brawijaya University.
- Supreme Court decision of the Republic of Indonesia. the level of cassation register of criminal cases number 2317 K / PID.SUS / 2015. , (2015).
- Constitutional Court Decision Number 021 / PUU-III / 2005. judicial review of Article 78 paragraph (15) of Law Number 41 Year 1999, (2006).
- Sipayung, Erlita, Pakpahan, Kartina, Widiyani, Heni, & Devi, Nelly Sri. (2019). Legal Protection for Third Parties as Owners of Heavy Equipment Used in Committing Forest Encroachment Crimes. *Strait Journal*, 6 (2), 172–183.
- Supreme Court Circular (SEMA) Number 01. Guidelines for Handling Forestry Crime Cases. , (2008).
- Sutedi, Adrian. (2020). Implementation of the principle of public interest in land acquisition for development. *Sinar Grafika*.
- Law Number 18. Prevention and Eradication of Forest Destruction. , Pub. L. No. Number 18 of 2013 (2013).
- Law Number 41. Forestry. , (1999).
- Usanti, Trisadini Prasastinah. (2012). Birth of Material Rights. *Perspectives*, 17 (1), 44–53.
- Yulikhsan, Eri. (2016). *Discretionary Decisions in Government Dynamics (Applications in PTUN)*. Deepublish.