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# Legal Review of the Status of Evidence Owned by Third Parties Who Do Not Action in Good Faith in Court in General Criminal Cases

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***Abstract.*** *Evidence plays a significant role in the criminal trial process, even though its status is not as evidence in court as defined in Article 184 of the Criminal Procedure Code (KUHAP). However, evidence is always presented and questioned by the judge to both the defendant and witnesses during the trial. This is intended to ensure the judge is convinced to declare the defendant guilty of committing a crime or otherwise. This is also expressly stated in Article 183 of the Criminal Procedure Code (KUHAP) that a judge may not sentence a person unless at least two pieces of evidence are presented along with the judge's conviction. Therefore, the acquisition of evidence is carried out procedurally as stipulated in the Criminal Procedure Code (KUHAP). After it has been used in evidence, the judge in his decision is obliged to determine the status of the evidence, which becomes a problem when the third party who is the owner of the evidence is not present at the trial, so that if the evidence is stated by the defendant to be his property which has been used in a criminal act, the judge will declare that the evidence is confiscated for the state or destroyed, while the third party who is actually the legal owner because he was never present to provide information, has no way of resisting the determination of the status of the evidence.*

***Keywords:*** *Criminal; Evidence; Procedure.*

## 1. Introduction

Law enforcement officers (APH) starting from investigators, public prosecutors, judges at every level of examination starting from investigation, prosecution, to trial examination in court in conducting the process of examining criminal cases cannot be separated from the evidence to be examined. Evidence or corpus delicti in criminal law is not clearly defined. Evidence in criminal cases is evidence

regarding where the crime was committed (the object of the crime) and the goods with which the crime was committed (the tools used to commit the crime), including also goods that are the result of a crime.[1]Even though the regulations in the Criminal Code do not provide a definition of evidence, we can refer to the provisions contained in Article 39 paragraph (1) of the Criminal Code regarding the matters that can be confiscated, namely:[2]

a. Objects or bills of a suspect or defendant which are suspected of being obtained in whole or in part from criminal acts or as a result of criminal acts;

b. Objects that have been used directly to commit a crime or to prepare for it;

c. Objects used to obstruct criminal investigations;

d. Objects specifically made or intended to commit crimes;

e. Other objects that have a direct relationship with the crime committed.

Referring to the formulation of the article above, it can be concluded that objects that can be confiscated can be called evidence.

Evidence has a vital role in the process of providing evidence in court, therefore the taking of evidence must also be done according to procedure, namely if the evidence...evidence to be presented in court must be subject to search procedures[3]and confiscation[4]First, the confiscated evidence will be tested against other evidence during the trial. This aims to prove the charges brought by the Public Prosecutor. Based on the legal facts revealed at trial, the judge, based on at least two pieces of evidence and their belief, can determine the defendant's guilt.

An equally important thing that a judge does when examining and trying a criminal case is determining the status of the evidence that will be mentioned in the

[1]Andi Hamzah, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, 2002, p. 119.
[2]Article 39 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law, promulgated in State Gazette Number 76 of 1981 and Supplement to State Gazette Number 3209.
[3]Based on the text of Article 1 number 17 of Law Number 8 of 1981 concerning Criminal Procedure Law, a house search is an action by an investigator to enter a residential house and other closed places to carry out inspection and/or confiscation and/or arrest in the case and according to the method regulated in this law and the text of Article 1 number 18 of Law Number 8 of 1981 concerning Criminal Procedure Law, a body search is an action by an investigator to conduct an inspection of the body and/or clothing of a suspect to look for objects that are strongly suspected of being on his/her body or being carried and to be confiscated.
[4]Based on the text of Article 1 number 16 of Law Number 8 of 1981 concerning Criminal Procedure Law, Confiscation is a series of actions by investigators 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.

verdict. If we look at the rules in Article 194 paragraph (1) of the Criminal Procedure Code, it states that:[5]

"In the case of a criminal decision or acquittal or release from all legal charges, the court shall determine that the confiscated evidence be handed over to the party most entitled to receive it back whose name is listed in the decision unless according to the provisions of the law the evidence must be confiscated for the benefit of the state or destroyed or damaged so that it cannot be used again."

Furthermore, Article 215 of the Criminal Procedure Code states:

"The return of confiscated objects is carried out unconditionally to the most entitled party, immediately after the verdict is issued if the convict has fulfilled the contents of the verdict."

Based on the provisions of the rules above, this means that evidence will be tested in court, and the judge will determine who has the most rights to the evidence. Evidence that has been confiscated from someone is not necessarily the owner; it could be a borrower or user. For example, if a car is confiscated from someone, it turns out that the person is only the driver, not the owner. Is the driver considered the most entitled person?[6].

Another problem that arises is when the evidence presented in this trial based on the legal facts revealed in the trial is evidence belonging to a third party who was not present in court to provide information regarding the ownership of the item even though he had been legally and properly summoned to the trial and there was also no supporting evidence that provided information regarding the evidence.

When examining, deciding, and adjudicating a criminal case, a judge must adhere to the legal facts revealed during the trial. The resulting decision must satisfy a sense of justice. This also aligns with the objectives of law, as argued by legal philosopher Gustav Radrbruch, who stated that there are three objectives of law: utility, certainty, and justice.

The current nomenclature regulates evidence from third parties acting in good faith, as stated in Supreme Court Regulation Number 2 of 20222 concerning Procedures for Resolving Objections from Third Parties in Good Faith Against Decisions to Confiscate Goods Not Belonging to the Defendant in Corruption Cases. This is intended to ensure the unity and accuracy of the application of the law for resolving objections to decisions to confiscate goods not belonging to the

[5]Article 194 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law, promulgated in State Gazette Number 76 of 1981 and Supplement to State Gazette Number 3209.
[6]M. Yahya Harahap, Discussion of Problems and Application of the Criminal Procedure Code: Court Hearing Examination, Appeal, Cassation, and Judicial Review, Second Edition, Sinar Grafika, Jakarta, 2012, p. 366.

defendant in corruption cases in order to provide legal protection and for legal certainty, so that it is necessary to regulate procedures for resolving objections from third parties in good faith against decisions to confiscate goods not belonging to the defendant in corruption cases.[7]

In general criminal cases, there are no regulations regarding the procedures for resolving objections to evidence belonging to third parties who do not act in good faith to come to court to provide explanations or statements regarding the evidence presented in court. This will give rise to new legal issues, because if the evidence presented in court does not belong to the defendant, while only a statement from the defendant is obtained stating that the evidence belongs to another person, so the Panel of Judges needs to hear witnesses or examine letters that support the defendant's statement. This is because the defendant's statement is independent, which means that the defendant's statement can only be used for himself, therefore it must be accompanied by other evidence.[8]Therefore, this paper aims to understand the regulations and the steps that can be taken by third parties who are not acting in good faith in court to have their property confiscated for the state. What measures can be taken?

## 2. Research Methods

This research uses normative juridical legal research, which is legal research conducted by examining library materials or secondary data as basic material for research by conducting searches of related regulations and literature.[9] The research specifications used are descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations, which are then collected and processed and arranged according to existing theories to obtain problem solving in accordance with applicable provisions.[10] The method used in this research is a literature study, including legal documents, decisions, books and scientific works relevant to the object of this research. This research uses qualitative data analysis methods. Qualitative data analysis is the process of describing, classifying, and interconnecting phenomena with the researcher's concepts. According to Imam Gunawan, qualitative research is a type of research whose findings are not

[7]See Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2022 concerning Procedures for Resolving Objections from Third Parties in Good Faith Against Decisions on Confiscation of Goods Not Belonging to the Defendant in Corruption Cases, promulgated in the 2022 State Gazette Number 534.
[8]Article 189 paragraph (3) and paragraph (4) of Law Number 8 of 1981 concerning Criminal Procedure Law, was promulgated in State Gazette Number 76 of 1981 and Supplement to State Gazette Number 3209.
[9]Soerjono Soekanto and Sri Mamudji, Normative Legal Research, A Brief Review, Rajawali Press: Jakarta, 2005, pp. 13-14.
[10]Sri Sumawarni, A Series of Legal Research Methods, UPT Undip Press: Semarang, 2012, p. 6.

obtained through statistical procedures or other forms of calculation.[11]Qualitative data analysis methods are methods used to process or manipulate non-numerical data which is then called qualitative data.

## 3. Results and Discussion

### 3.1. How are the arrangements regarding the process of taking evidence until With Submission in Court Reviewed in Current Positive Law

The trial process in criminal cases is of course inseparable from the presentation of evidence by the Public Prosecutor before the court, this is intended for the process of providing evidence in court, for this reason it is necessary to carry out a confiscation stage so that the evidence can be submitted to the court.

1) Evidence Confiscation Process

Confiscation is regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), which means that based on Article 1 number 16 of the law:[12]

"A series of actions by investigators to take over and/or keep under their control movable or immovable, tangible or intangible objects for the purposes of providing evidence in investigations, prosecutions and trials."

Confiscation is carried out on objects related to the crime, whether belonging to the suspect or a third party. Except in cases of arrest in the act, confiscation is carried out based on a confiscation warrant issued by the investigator.[13]

Referring to the provisions of Article 38 of the Criminal Procedure Code, it states that:

"Article (1) confiscation may only be carried out by investigators with a permit from the head of the local district court";

"Article (2) in very necessary and urgent circumstances when the investigator must act immediately and it is not possible to obtain a permit first, without reducing the provisions of paragraph (1) the investigator may only confiscate movable property and for this purpose must immediately report to the head of the local district court to obtain his approval."[14]

[11]Imam Gunawan, Qualitative Research Methods, Theory and Practice, Bumi Aksara: Jakarta, 2013, p. 80.
[12]See Article 1 number 16 of Law Number 8 of 1981 concerning Criminal Procedure Law
[13]DY Witanto, Pretrial Procedural Law in Theory and Practice, Imaji Cipta Karya, Jakarta, 2019, p. 239
[14]See Article 38 of the Criminal Procedure Code

Regarding what objects can be confiscated, we can see from the provisions contained in Article 39.[15], which reads:

Paragraph (1) which can be subject to confiscation is:

a. Objects or bills of a suspect or defendant which are suspected of being obtained in whole or in part from a criminal act or as a result of a criminal act;

b. objects that have been used directly to commit a crime or to prepare for it;

c. Objects used to obstruct the investigation of a crime;

d. objects specifically made or intended to commit crimes;

e. other objects that have a direct relationship with the crime committed.

Article (2) Objects that are in confiscation due to civil cases or bankruptcy can also be confiscated for the purposes of investigation, prosecution and trying criminal cases, as long as they fulfill the provisions of paragraph (1).

Furthermore, the second part regarding Investigations in the Criminal Procedure Code regulates the procedures for confiscation that will be carried out by investigators, namely:

a. When carrying out a confiscation, investigators are required to show their identification.[16];

b. The investigator shows the object to be confiscated to the person from whom the object was confiscated or to his family.[17];

c. The confiscation was witnessed by the village head or neighborhood head with two witnesses.[18];

d. After the object is confiscated, the investigator makes a confiscation report which is first read to the person from whom the object was confiscated or his/her family, with the date and signature of the investigator, family and/or village head/neighborhood head with two witnesses.[19];

e. If the person from whom the object was confiscated or his family does not want to sign the confiscation report, the investigator will record this in the report stating the reason, then a copy of the report will be submitted by the investigator

[15]See Article 39 of the Criminal Procedure Code
[16]See Article 128 of the Criminal Procedure Code
[17]See Article 129 paragraph (1) of the Criminal Procedure Code
[18]Ibid
[19]See Article 129 paragraph (2) of the Criminal Procedure Code

to his superior, the person from whom the object was confiscated or his family and the village head.[20];

f. Confiscated objects are wrapped and sealed, with the weight, quantity by type of each object, characteristics and properties, place, day, date, and identity of the person from whom the object was confiscated recorded. If wrapping is not possible, a label is made for the object which will then be attached to and/or attached to the object.[21];

g. Confiscation can also be carried out on letters, books, registers and so on.[22]

Based on the provisions of the description above, every object obtained in connection with a criminal act, in order to be legally valid for submission to court, must first be confiscated after obtaining permission from the Chief Justice, except in cases of being caught red-handed.[23]Each confiscated object will be stored in the state confiscated object storage house at each level of examination in the judicial process, and later, when the case has been decided, the status of the confiscated object will be stated.

2) Examination of Evidence in Trial

In the process of providing evidence in court, the judge must use at least two valid pieces of evidence. Valid pieces of evidence based on Article 184 of the Criminal Procedure Code are (a) witness statements, (b) expert statements, (c) letters, (d) instructions, (e) statements from the defendant. Evidence is not referred to as evidence the position of the evidence itself can be reviewed from the provisions of Article 181 paragraph (1) and paragraph (2) of the Criminal Procedure Code which reads as follows:[24]:

Article (1) The Chief Judge of the trial shows the defendant all the evidence and asks him whether he knows the object, taking into account the provisions as referred to in Article 45 of this law;

Paragraph (2) if necessary, the object will also be shown by the Presiding Judge of the trial to the witness.

Based on the description of the several articles above, it can be concluded that evidence can be used to connect the statements of witnesses and defendants with

[20]See Article 129 paragraphs (3) and (4) of the Criminal Procedure Code
[21]See Article 130 of the Criminal Procedure Code
[22]See Article 131 of the Criminal Procedure Code
[23]Based on Article 1 number 19 of the Criminal Procedure Code, being caught in the act is when a person is caught while committing a crime, or immediately after the crime has been committed, or shortly after being called out by the public as the person who did it, or if shortly afterward an object is found on him which is strongly suspected of having been used to commit the crime which indicates that he is the perpetrator or participated in or helped to commit the crime.
[24]See Article 181 of the Criminal Procedure Code

the items used or related to the criminal act used by the defendant. Evidence can be used by the judge in building clues, because even though evidence cannot be used as a basis for forming clues on the grounds that the Criminal Procedure Code has set a limit that clues can only be taken from witness statements, letters, and statements from the defendant, however, the existence of evidence can provide the judge with confidence in the defendant's guilt.[25]

For criminal acts whose prohibition lies in the nature of the goods or objects, such as possession of narcotics, illegal firearms or illegal explosives, in general certainty and truth about these goods are required. Without test results, it will be difficult for the judge to reach a conviction regarding the defendant's guilt.[26]

3) The Status of Evidence in Trial is Determined by the Judge

The judge's authority in determining the status of evidence can be seen from the provisions of Article 46 paragraph (2) of the Criminal Procedure Code which reads:[27]:

"If the case has been decided, then the object subject to confiscation will be returned to the person or to those mentioned in the decision, unless according to the judge's decision the object is to be confiscated by the State, to be destroyed or destroyed until it can no longer be used or if the object is still needed as evidence in another case."

Apart from that, Article 194 paragraph (1) of the Criminal Procedure Code also states the following:

"In the case of a criminal decision or acquittal or release from all legal charges, the court shall determine that the confiscated evidence be handed over to the party most entitled to receive it back, whose name is listed in the decision, unless according to the provisions of the law the evidence must be confiscated for the benefit of the State or destroyed or damaged so that it cannot be used again."

This means that from the provisions as contained in the article above, the judge's authority granted by law is absolute in determining the status of evidence that has been submitted in court.

### 3.2. How is the formulation in the Draft Law on the Criminal Procedure Code (RUU KUHAP)

Currently, the law that applies as formal criminal law in Indonesia is Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP). Formal criminal law itself

[25]HMSyarifuddin, Procedures for Handling Assets Produced from Non-Crime, Imaji Cipta Karya, Jakarta, 2020, p. 166
[26]ibid
[27]See Article 46 paragraph (2) of the Criminal Procedure Code

means the legal regulations related to how material criminal law is enforced, meaning it regulates the methods and processes necessary for a crime to be carried out. The implementation of the KUHAP itself has been in place for more than four decades, of course, it has lagged behind many patterns of change and developments over time. The Indonesian government has carried out a comprehensive reform of criminal law with the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP), which will come into effect on January 1, 2026. Meanwhile, the KUHAP will still be discussed as stipulated in the 2026 National Legislation Program (Prolegnas).[28]

The latest draft of the Criminal Procedure Code was uploaded to the National Legal Development Agency website and can be accessed on the website page. https://bphn.go.id/data/documents/draft_ruu_kuhp_final.pdf [29]The final draft, uploaded on March 20, 2025, was used as a reference for the development of criminal procedure law in Indonesia by following developments in Indonesian criminal law. This research only concerns the regulation of evidence as stipulated in the draft or Draft Criminal Procedure Code (RKUHAP) on March 20, 2025.

Evidence in the RKUHAP plays a vital role, namely being recognized as valid evidence. Based on Article 222 RKUHAP paragraph (1)[30]reads:

(1) The evidence consists of:

a. Witness Statement;

b. Expert Statement;

c. Letter;

d. Defendant's statement;

e. Evidence;

f. Electronic evidence; and

g. Anything that can be used for the purposes of evidence in a court hearing as long as it is obtained in a legal manner.

The definition of evidence itself based on the explanation of Article 222 letter (e) means goods or tools that are directly or indirectly used to commit a crime (real

[28]See Attachment number 4 of the Decree of the People's Representative Council of the Republic of Indonesia Number 24/DPR RI/2025-2026 concerning the National Legislation Program for Priority Bills for 2026

[29]Draft Criminal Procedure Code on the website pagehttps://bphn.go.id/data/documents/draft_ruu_kuhp_final.pdfaccessed on September 1, 2025

[30]See Article 222 of the Criminal Procedure Code Draft Bill dated March 20, 2025

evidence or physical evidence) or the results of a crime. The RKUHAP has regulated what is meant by evidence, namely as stated in Article 227 of the RKUHAP, namely:

The evidence as referred to in Article 222 paragraph (1) letter e[31]includes:

a. Tools or means for committing a crime;

b. Tools or means that are the object of a criminal act; and/or

c. Assets that are the result of criminal acts.

Apart from the tools and assets referred to in the article above, the author also links this to the provisions contained in Article 113 paragraph (1) of the Criminal Procedure Code which reads:[32]:

Items that can be confiscated are:

a. Objects or bills of the Suspect or Defendant which are suspected to have been obtained in whole or in part from a criminal act or as a result of a criminal act;

b. Objects that have been used directly to commit a crime or to prepare for it;

c. Objects used to obstruct the investigation of criminal acts;

d. Objects specifically made or intended to commit crimes; and/or

e. Objects created from a criminal act.

If the text of this article is juxtaposed with Article 222 paragraph (1) letter e of the RKUHAP, it stipulates that objects that become evidence must first be confiscated according to the procedures regulated in this RKHUAP. This is in accordance with the text of Article 232 of the RKHUAP.[33]the following:

(1) In the case of a decision in the form of a judge's pardon, acquittal or release from all legal charges, the court shall determine that the confiscated evidence be handed over to the party most entitled to receive it back whose name is listed in the decision, unless according to the provisions of statutory regulations the evidence must be confiscated for the benefit of the state or destroyed or damaged so that it can no longer be used;

(2) In the case of confiscated evidence being handed over to the most entitled party, the court shall determine that the evidence be handed over immediately after the trial is completed;

[31]See Article 222 paragraph (1) of the Criminal Procedure Code Draft Bill dated March 20, 2025
[32]See Article 113 paragraph (1) of the Criminal Procedure Code Draft dated March 20, 2025
[33]See Article 232 of the Criminal Procedure Code Draft Bill dated March 20, 2025

(3) The order to hand over evidence is carried out without any conditions, except in cases where the court decision does not yet have permanent legal force.

Based on the provisions above, it can be concluded that:

a. Evidence submitted to trial must be confiscated first;

b. The evidence is returned to the party most entitled to it, or;

c. Evidence is confiscated for the benefit of the State, or;

d. Evidence is destroyed, or;

e. The evidence was destroyed so that it could no longer be used.

However, a common issue is determining the status of evidence to be returned to the rightful party. What is the procedure? It is easier for the judge if the evidence's origin and intended use in relation to the crime are clear. If the procedure for obtaining it is not in accordance with the law and cannot be explained by witnesses, or even if the person who owns the item is not present to explain, a comprehensive determination is required, taking into account the legal facts arising from the trial.

### 3.3. What Efforts Are Undertaken by Third Parties Who Do Not Act in Good Faith Against Their Own Evidence (Regulatory Reconstruction Based on Justice Values)

The examination of evidence concerns the process of proving evidence in court. The process of proving or establishing evidence involves the intention and effort to establish the truth of an event, thereby making it acceptable to reason.[34]The law of evidence is part of criminal procedural law which contains rules regarding the types of evidence which are valid according to law, the system of evidence, the conditions and procedures for submitting evidence, which ultimately leaves the judge with the authority to accept, reject and assess evidence.[35]

Based on the provisions of Article 183 of the Criminal Procedure Code, a judge in imposing a sentence must have at least two valid pieces of evidence to be convinced that the crime actually occurred. This is known as the negative legal system of proof (negative wettelijk). Therefore, in imposing a sentence on a defendant, there must be at least two valid pieces of evidence to reach the minimum limit of proof to prove the defendant's guilt and accompanied by the judge's belief that from the evidence there is a criminal event for which the defendant can be held criminally responsible.

[34]Martiman Prodjohamidjojo, Commentary on the Criminal Procedure Code: Criminal Procedure Code, Pradnya Paramitha, Jakarta, 1984 p. 11
[35]Hari Sasangka and Lily Rosita, Law of Evidence in Criminal Cases, Mandar Maju, Bandung, 2003, p. 10

The evidentiary process also includes the examination of witnesses, the examination of the defendant, and the examination of evidence. Once the evidentiary process is declared complete by the judge, it is time for the judge to render a decision.[36]

In the process of examining evidence based on Article 181 paragraph (1) and paragraph (2) of the Criminal Procedure Code which reads as follows:[37]:

Article (1) The Chief Judge of the trial shows the defendant all the evidence and asks him whether he knows the object, taking into account the provisions as referred to in Article 45 of this law;

Paragraph (2) if necessary, the object will also be shown by the Presiding Judge of the trial to the witness.

This means that the evidence presented in court is shown to the Defendant and Witnesses. This is used so that the evidence can connect events and confirm the truth. To assess the truth of the statements given by witnesses and the defendant, the following will be explained: 1. Assessing witness statements

Witness statements that have value based on Article 1 number 27 of the Criminal Procedure Code are:

a. Witness heard it himself;

b. Witness saw it for himself;

c. Natural witness himself;

d. State the reasons for this knowledge;

That a witness who hears it directly, it is almost certain that a witness is only limited to hearing the event that is suspected to be a criminal event. As for a witness who sees the alleged crime directly, a witness is only limited to seeing the alleged event that is a suspected criminal event, while experiencing it directly, it could be that the witness is a victim of the alleged criminal event or he is related to the event.[38]

Furthermore, the Criminal Procedure Code has regulated how judges assess witness statements as stated in Article 185 of the Criminal Procedure Code.[39]which reads:

[36]H. Rusli Muhammad, Contemporary Criminal Procedure Law, Citra Aditya Bakti, Bandung, 2007, p. 199
[37]See Article 181 of the Criminal Procedure Code
[38]Hartono, Investigation and Enforcement of Criminal Law Through a Progressive Legal Approach, Sinar Grafika, Jakarta, 2010, p. 51
[39]See Article 185 of the Criminal Procedure Code

(1) Witness testimony as evidence is what the witness states in court;

(2) The testimony of one witness alone is not enough to prove that the defendant is guilty of the act with which he is accused.

(3) The provisions referred to in paragraph (2) do not apply if accompanied by other valid evidence.

(4) The statements of several independent witnesses about an event or situation can be used as valid evidence if the witnesses' statements are related to each other in such a way that they can confirm the existence of a particular event or situation.

(5) Neither opinions nor conjectures, which are obtained from mere thought, constitute witness testimony.

(6) In assessing the truth of a witness's statement, the judge must seriously consider:

a. correspondence between one witness's statement and another;

b. correspondence between witness statements and other evidence;

c. reasons that may be used by a witness to give certain information;

d. the witness's lifestyle and morals and everything that can generally influence whether or not the information can be believed.

e. Statements from witnesses who are not sworn in, even if they are consistent with each other, do not constitute evidence, however, if the statement is consistent with the statement from a sworn witness, it can be used as additional valid evidence.

So, the provisions above are linked to the provisions of Article 185 paragraph (7) of the Criminal Procedure Code.[40]and Article 161 paragraph (2) of the Criminal Procedure Code[41], Article 169 paragraph (2) of the Criminal Procedure Code[42]and

[40]Article 185 paragraph (7) of the Criminal Procedure Code states: Statements from witnesses who are not sworn in, even if they are in accordance with each other, do not constitute evidence, however, if the statement is in accordance with the statement from a sworn in witness, it can be used as additional valid evidence.
[41]Article 161 paragraph (2) of the Criminal Procedure Code states: If the time limit for the hostage-taking has passed and the witness or expert still does not want to be sworn in or make a promise, then the information that has been given is information that can strengthen the judge's conviction.
[42]Article 169 paragraph (2) of the Criminal Procedure Code states: Without the approval referred to in paragraph (1), they are permitted to provide information without an oath.

explanation of Article 171 of the Criminal Procedure Code[43]can be concluded as follows[44]:

1) All witness statements given without oath are considered "not valid evidence". Even though the information given without oath agrees with each other, it still "does not constitute evidence".

2) It has no evidentiary value, but can be used as additional valid evidence. This information can be used to enhance the evidentiary value of valid evidence:

a. Can "strengthen the judge's conviction" as stated in Article 16 paragraph (2) of the Criminal Procedure Code;

b. Can be used "as a guide" as stated in the explanation of Article 171 of the Criminal Procedure Code.

In addition to the above explanation of the value of unsworn witness testimony, it is necessary to further explain the evidentiary value of sworn witness testimony. There are several requirements stipulated by law, namely:

3) The witness must take an oath or promise that he will tell the truth and nothing other than the truth;

4) The information provided must relate to a criminal incident that the witness personally heard, saw, or experienced, clearly stating the source of their knowledge. Testimonium de auditu, or witness testimony that is a repetition of another person's story, has no value as evidence. Likewise, opinions or conjectures obtained by the witness from their own thoughts cannot be considered as evidence.

5) Witness testimony must be presented in court. Statements made outside of court have no value as valid evidence.

6) The statement of a witness alone is not valid evidence therefore the minimum limit of proof stipulated in Article 183 of the Criminal Procedure Code must be met.[45]

[43]Article 171 of the Criminal Procedure Code states: Considering that children who are under fifteen years old, as well as people who are mentally ill, mentally ill, insane even if only occasionally, who in the science of mental illness are called psychopaths, they cannot be held fully responsible in criminal law, therefore they cannot be sworn in or made a promise to give information, therefore their information is only used as a guide.
[44]Yahya Harahap, Discussion of Problems and Implementation of the Criminal Procedure Code (Court Hearing Examination, Appeal, Cassation, and Judicial Review), Sinar Grafika, Jakarta, 2019, p. 293
[45]M. Yahya Harahap, Op.Cit.,294.

Based on the testimony given in court, the judge is not bound to use the witness's testimony, meaning the judge has the freedom to evaluate the witness's testimony.

2. Assess the Defendant's Statement

The definition of the defendant's statement has a broader meaning compared to the defendant's confession because the defendant's statement means that what the defendant explained, even if the statement is in the form of a denial, will still be valid evidence. Thus, the process and procedure for proving a criminal case according to the Criminal Procedure Code (KUHAP) does not require the defendant to confess.[46]

The examination of the accused in court is always carried out last after hearing testimony from witnesses and experts. Provisions regarding the accused's testimony are regulated in Article 189 of the Criminal Procedure Code.[47], which reads:

(1) The defendant's statement is what the defendant stated in court about the actions he committed or that he knew about himself or experienced himself.

(2) The defendant's statement given outside the trial can be used to help find evidence in the trial, as long as the statement is supported by valid evidence as long as it concerns the matter for which he is accused.

(3) The defendant's statement can only be used against himself.

(4) The defendant's statement alone is not enough to prove that he is guilty of the act he is accused of, but must be accompanied by other evidence.

From the formulation of the article, to be used as evidence, the defendant's statement must be based on, among other things:

a. The defendant's statement was stated at the trial

The statement or information submitted by the defendant in court is not only a confession from the defendant but also the defendant's denial, including the denial given by the defendant during the examination by the investigator. The defendant's statement outside the court has no evidentiary value, however, looking at the contents of Article 189 paragraph (2) of the Criminal Procedure Code, it states that the statement can be used as long as it is supported by other valid evidence and the statement is as long as it concerns the matter that is being accused of him.

[46]Lilik Mulyadi, "Criminal Procedure Law: Normative, Theoretical, Practical and Problematic", PT. Alumni, Bandung, 2007, p. 189
[47]See Article 189 of the Criminal Procedure Code

Often during trials, defendants retract statements previously given to investigators. Even during trials, defendants have the right to not answer or refuse to answer questions, as stipulated in Article 175 of the Criminal Procedure Code.

"If the defendant does not want to answer or refuses to answer the questions put to him, the presiding judge will recommend that he answer and after that the examination will continue."

The problem that then arises from the withdrawal of the defendant's statement before the investigator is how the judge responds to and assesses the defendant's withdrawn statement.?. The law does not limit the defendant's right to withdraw a statement, as long as the withdrawal has a logical and substantive basis. If the judge can accept the reason for the withdrawal, it means:

7) The information contained in the investigation report is considered "incorrect", and

8) This statement cannot be used as a basis for finding evidence in court. Conversely, if the reason for the revocation cannot be justified because the defendant's reasons for the revocation lack a sound and logical basis, the confession contained in the investigation report will still be considered true. The judge can use it as a tool to find evidence in court.[48]

b. The defendant's statement must be supported by other evidence.

The defendant's statement has independent evidentiary value, meaning that the judge is not bound by the strength of the defendant's statement. The judge is free to assess its content. If the judge intends to use the defendant's statement as one of the grounds for proving his guilt, the judge must have argumentative reasons and provide support, and link it to other evidence. Based on the provisions of Article 189 paragraph (4) of the Criminal Procedure Code, which reads:

"The defendant's statement alone is not enough to prove that he is guilty of the act he is accused of, but must be accompanied by other evidence."

This is in line with and emphasizes the minimum limit of proof, but must still be accompanied by the judge's belief that the defendant committed the crime of which he is accused.[49]

After an assessment of the witness and defendant's statements has been carried out and the judge has connected it with other evidence and evidence presented in court, the judge obtains legal facts regarding the status of the evidence,

[48]M. Yahya Harahap, Op.Cit.,326.
[49]M. Yahya Harahap, Op.Cit.,332.

whether it will be returned to the rightful party, confiscated for the state, or destroyed.

The problem that arises is if the person who has the right to the evidence, but the evidence based on the court decision is not returned to him, meaning the evidence can be confiscated for the state or destroyed. This can occur because the Judge in determining the status of the evidence is not confident enough because the party who should be heard as the person who owns it, in this case can be called as a witness, but never appears in court even though they have been notified or summoned legally and properly to clarify the status of the evidence. The party who feels they have the right to the evidence must be cooperative from the beginning and aware that the evidence presented in court is theirs, not the property of the defendant. If in a decision that has permanent legal force the status of the goods is not returned to the rightful party, then no legal action can be filed by the person who owns the goods, except in cases of money laundering or corruption.

The existing nomenclature already regulates the procedures for settling assets as contained in Supreme Court Regulation (PERMA) Number 1 of 2013 concerning Procedures for Settling Applications for Handling Assets in Money Laundering Crimes or Other Crimes.[50]However, if we examine Chapter I regarding the scope of this PERMA further, there are conditions that must be met, namely that the request for handling of assets can only be submitted by investigators in cases where the alleged perpetrator of the crime has not been found.

In addition to the aforementioned regulations, the Supreme Court also issued Supreme Court Regulation (PERMA) Number 2 of 2022 concerning Procedures for Resolving Objections from Third Parties Who Disregard Good Faith Against Decisions to Confiscate Property Not Belonging to the Defendant in Corruption Cases. This means that there are specific requirements regarding the mechanism for submitting such objections.[51], including:

9) Submitted by the owner, custodian, guardian of the owner of the goods, or curator;

10) Application for confiscation of goods only in cases of corruption;

11) The goods that are the object of the application do not belong to the defendant.

This means that in ordinary criminal cases there is no nomenclature that can be used as a basis for the mechanism for filing an objection in the event that the

[50]See Supreme Court Regulation (PERMA) Number 1 of 2013 concerning Procedures for Settling Applications for Handling of Assets in Money Laundering or Other Crimes
[51]See the issuance of Supreme Court Regulation (PERMA) Number 2 of 2022 concerning Procedures for Resolving Objections from Third Parties Who Do Not Act in Good Faith Against Decisions to Confiscate Goods Not Belonging to the Defendant in Corruption Cases.

owner of the goods does not come to court in good faith to explain the proof of ownership of the evidence. It is not a problem if the origin of the evidence submitted in court is clear proof of ownership, because the judge can obtain confidence in determining the status of the evidence, but if it is unclear, this will be considered that the evidence belongs to the defendant, which if the defendant uses or is used as a tool in the occurrence of a criminal event, the Judge will decide that the goods are destroyed or if they still have economic value, they are confiscated for the State.

This can also be seen in the format of the decision based on Supreme Court Decision Number 359/KMA/SK/XII/2022 concerning Templates and Guidelines for Writing Decisions/Determinations of First Instance and Appellate Courts in the Four Judicial Circuits Below the Supreme Court, which determines that[52]:

1) For evidence that has been used to commit a crime and is feared to be used to repeat the crime / is the result of a crime, it is necessary to determine that the evidence be destroyed or damaged so that it cannot be used again;

2) For evidence that has been used to commit a crime and/or is the result of a crime and has economic value, it is necessary to determine that the evidence be confiscated for the state;

So, at this time, awareness and cooperation are needed from third parties whose property has been confiscated and has been used by the defendant to commit a crime so that they can provide information in court as witnesses by bringing proof of ownership of the goods so that the judge in determining the status of the evidence can be sure that he is indeed the owner of the goods submitted as evidence in a general criminal case.

## 4. Conclusion

Evidence before being submitted to trial needs to be confiscated against the suspect's or third party's property. In carrying out the confiscation, a permit from the Head of the local District Court is required, except in cases of being caught red-handed, the confiscation is carried out based on a confiscation order issued by the investigator. In determining the status of evidence, the judge's authority is granted by law and is absolute in determining the status of evidence that has been submitted to trial. This is in accordance with the provisions of Article 46 paragraph (2) of the Criminal Procedure Code.[53]and Article 194 paragraph (1) of the Criminal

[52]Supreme Court Decision Number 359/KMA/SK/XII/2022 concerning Templates and Guidelines for Writing First-Instance and Appellate Court Decisions/Decisions in the Four Judicial Circuits Under the Supreme Court

[53]Article 46 paragraph (2) of the Criminal Procedure Code states: If a case has been decided, the object subject to confiscation will be returned to the person or to those named in the decision, unless according to the judge's decision the object is to be confiscated by the State, to be destroyed

Procedure Code[54]. The judge in determining the status of the evidence is not confident enough because the party who should be heard as the person who owns it in this case can be called as a witness, but never appeared in court even though they had been notified or summoned legally and properly to clarify the status of the evidence. The party who feels they have the right to the evidence from the beginning must be cooperative and aware that the evidence presented in court is theirs, not the property of the defendant. If in a decision that has permanent legal force the status of the goods is not returned to the rightful party, then there is no legal remedy that can be filed by the person who owns the goods, except in cases of money laundering or corruption. The existing nomenclature already regulates the procedures for settling assets as contained in Supreme Court Regulation (PERMA) Number 1 of 2013 concerning Procedures for Settling Applications for Handling Assets in Money Laundering Crimes or Other Crimes.[55]and Supreme Court Regulation (PERMA) Number 2 of 2022 concerning Procedures for Resolving Objections from Third Parties Who Do Not Act in Good Faith Against Decisions to Confiscate Goods Not Belonging to the Defendant in Corruption Cases[56]. For general criminal cases, there is no nomenclature that can be used as a basis for the mechanism for submitting objections if the owner of the goods does not act in good faith to come to court to explain proof of ownership of the evidence.

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or damaged until it can no longer be used or if the object is still needed as evidence in another case.

[54]Article 194 paragraph (1) states: In the case of a criminal decision or acquittal or release from all legal charges, the court shall determine that the confiscated evidence be handed over to the party most entitled to receive it back, whose name is listed in the decision, unless according to the provisions of the law the evidence must be confiscated for the benefit of the State or destroyed or damaged so that it can no longer be used.

[55]See Supreme Court Regulation (PERMA) Number 1 of 2013 concerning Procedures for Settling Applications for Handling of Assets in Money Laundering or Other Crimes

[56]See the issuance of Supreme Court Regulation (PERMA) Number 2 of 2022 concerning Procedures for Resolving Objections from Third Parties Who Do Not Act in Good Faith Against Decisions to Confiscate Goods Not Belonging to the Defendant in Corruption Cases.

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