

## IBLAM LAW REVIEW

P-ISSN

2775-4146

E-ISSN

2775-3174

Volume 4, Nomor 1, 2024

### Authors

<sup>1</sup> Mubaroq Ilahi

<sup>2</sup> Frans Simangunsong

### Affiliation

<sup>1,2</sup> Universitas 17 Agustus Surabaya

### Email

m.ilahi039@gmail.com

### Date Submission

17 December 2023

### Date Accepted

30 January 2024

### Date Published

31 January 2024

### DOI

10.52249

## THE BASIS OF THE CORRUPTION ERADICATION COMMISSION'S AUTHORITY TO CARRY OUT CONFISCATION IN CORRUPTION CRIMES

### Abstract

*The issue is about the basis of the authority of the Corruption Eradication Commission to confiscate corruption crimes that have not been enforced by permanent law (inkrach) from the district court. This study aims to find out what is the basis for the authority of the Corruption Eradication Commission to confiscate in corruption crimes and how the legal position of seized goods in corruption crimes. By using normative research methods, it can be concluded that: 1. The basis of authority of the Corruption Eradication Commission is Law Number 30 of 2002 Article 47 paragraph 1 of Law Number 30 of 2002 concerning the Corruption Eradication Commission and Law Number 31 of 1999 concerning the eradication of corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption crimes. 2. The legal position of confiscated goods will certainly be used as evidence by the Corruption Eradication Commission as law enforcement. However, there are often obstacles in the management of confiscated goods. Then confiscated goods can also be auctioned even though there has been no permanent force legal decision (inkrach) from the district court.*

**Keywords :** *Authority of the Corruption Eradication Commission, Confiscation, Corruption Crimes*

### Abstrak

Permasalahannya adalah tentang dasar kewenangan Komisi Pemberantasan Korupsi untuk menyita tindak pidana korupsi yang belum mendapat kekuatan hukum tetap (inkrach) dari pengadilan negeri. Penelitian ini bertujuan untuk mengetahui apa yang menjadi dasar kewenangan Komisi Pemberantasan Korupsi dalam melakukan penyitaan tindak pidana korupsi dan bagaimana kedudukan hukum barang sitaan dalam tindak pidana korupsi. Dengan menggunakan metode penelitian normatif maka dapat disimpulkan bahwa: 1. Landasan kewenangan Komisi Pemberantasan Korupsi adalah Undang-Undang Nomor 30 Tahun 2002 Pasal 47 ayat 1 Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Korupsi dan Undang-Undang Nomor 31 Tahun 1999 tentang pemberantasan tindak pidana korupsi sebagaimana telah diubah dengan Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi. 2. Kedudukan hukum barang sitaan tentunya akan dijadikan alat bukti oleh Komisi Pemberantasan Korupsi sebagai penegak hukum. Namun seringkali terdapat kendala dalam pengelolaan barang sitaan.

Kemudian barang sitaan juga bisa dilelang meski belum ada putusan hukum berkekuatan tetap (inkrach) dari pengadilan negeri.

**Kata Kunci : Kewenangan Komisi Pemberantasan Korupsi, Penyitaan, Tindak Pidana Korupsi**

## INTRODUCTION

Criminal act is a term that contains a basic understanding in legal science, as the term *strafbaarfeit* has been translated in Indonesian as criminal act (Simangunsong, 2014). Criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined to be able to separate them from terms used every day in people's lives (Azis, 2019). There are many criminal cases, one of which is corruption. According to Monita et al., (2021) Corruption can be defined as a fraudulent act that is detrimental to state finances or misappropriation or embezzlement of state money for personal or other people's interests. This is reinforced by the statement by Rosandi and Astuti, (2016) that corruption is a criminal act because it violates Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law).

The phenomenon of corruption in Indonesia has existed since Indonesia was not independent. One piece of evidence that shows that corruption already existed in Indonesian society during the colonial era was the tradition of giving tribute by several groups of society to local authorities (Simangunsong, 2014). The development of the problem of corruption in Indonesia is currently so serious and has become an extraordinary problem because it has spread and spread to all levels of society, even ironically, some say that corruption has become a culture that is ingrained within us. So it is no surprise that so many public officials are caught in corruption cases. However, not only among officials, corruption can also occur in political parties, private institutions, companies and so on. This has brought huge losses to state finances. Apart from that, it can endanger the stability and security of society, endanger social, economic and political development, and even damage the democratic values and morality of a country (Pesik, 2014).

*Transparency International* is an organization from Berlin, Germany which has released an index of countries free from corruption worldwide. Since it was first launched in 1995, Indonesia is one of the countries whose corruption situation is regularly monitored. According to Wawan Suyatmiko as Deputy Secretary General of *Transparency International* Indonesia, "In the 2022 Corruption Perception Index (CPI) which was released on January 31 2023, Indonesia was ranked 110th as a corruption-free country in the world out of 180 countries surveyed with a score of 34/100. "This score fell 4 points from 2021, or is the most drastic decline since 1995 (ti.or.id, 2023)." With this result, Indonesia was only able to increase its CPI score by 2 points from a score of 32 over the last decade since 2012. This situation shows that the response to corrupt practices still tends to be slow and even continues to get worse due to the lack of real support from stakeholders. As Thontowi (2008) argues, it is impossible to find a solution to the complexity of corruption crimes with just a partial approach. In international law, apart from corruption, it is an extraordinary crime due to abuse of power which has shaken the foundations of state life. Corruption crimes are also very difficult to eradicate because their main source lies in law enforcement institutions. Thus, the Indonesian government considers criminal acts of corruption as *extra ordinary crimes* or extraordinary

criminal acts. Because various countermeasures have been made, but have not shown significant success, instead they are growing as if they have lost a way to stop it.

The criminal act of corruption in Indonesia is a Special Criminal Law because the material law of corruption is specifically made, namely the Corruption Law. The formal law for criminal acts of corruption is also special because it is regulated in Law Number 46 of 2009 concerning Corruption Crime Courts. Corruption crimes in Indonesia are increasing, so that in 2002 Law Number 30 of 2002 concerning the Corruption Eradication Commission was issued (hereinafter referred to as the Corruption Eradication Committee Law). In Article 3 and Article 4 it states that "The Corruption Eradication Commission is a State Institution which in carrying out its duties and authority is independent and free from the influence of general power" in Article 4 "The Corruption Eradication Commission was formed with the aim of increasing the efficiency and effectiveness of efforts to eradicate acts corruption crime" (Jawade Hafidz, 2018) . Thus, it is clear that the aim of establishing an independent State Institution called the Corruption Eradication Commission is oriented towards increasing the efficiency and effectiveness of efforts to eradicate criminal acts of corruption.

Regarding the breadth of authority that the Corruption Eradication Commission has, the Corruption Eradication Commission has the authority to carry out investigations into Corruption Crimes, this can be seen in the provisions of Article 26 Paragraph (2) which determines the field of prosecution regulated in Article 26 paragraph (4) which discusses Investigation, Investigation and Prosecution. . The Corruption Eradication Commission does not have the authority to issue an order to stop investigations and prosecutions in Corruption Crime cases in accordance with Article 40 of Law No. 30 of 2002 (Rimbawa, 2021) . Regarding the source of action in criminal justice, preliminary action must be taken, namely: investigative action, investigative action, and prosecution.

An investigation is carried out to find out whether an incident is a legal event or not, then it can be determined whether there are elements of a criminal act or not, so that an investigation can be carried out immediately based on the source of the action as explained above. If the investigation process has been carried out, then the next process is the process of investigating the criminal act that occurred. Welda (2015) in his research said that there are several actions that must be carried out by investigators, namely: Summoning suspects and witnesses, arrest (if necessary), detention (if necessary), search and confiscation, all of which must be based on a warrant and must an official report is made regarding these actions. Thus, the investigation is considered complete and continues with prosecution if the investigator considers that there is sufficient initial evidence to carry out legal charges against the perpetrator of corruption.

Confiscation is part of the investigation regulated in the Criminal Procedure Code or what is usually called the Criminal Procedure Code, confiscation is regulated in article 1 point 16 of the Criminal Procedure Code, namely: "Confiscation is a series of actions by investigators to take over or keep under their control movable or immovable objects, tangible or intangible, for evidentiary purposes in prosecution and judicial investigations" (Welda, 2015) . Because confiscation is a coercive measure, according to the provisions stipulated in Article 38 paragraph 1 of the Criminal Procedure Code, confiscation can only be carried out by investigators after obtaining a permission letter from the Chairman of the District Court. In accordance with these provisions, before investigators carry out confiscation actions, they must first submit a letter requesting permission for confiscation to the District Court. For

practical purposes, generally requests for permission to confiscate are carried out at the same time as requests for permission to search. Except in urgent circumstances where it is impossible to first ask permission from the chairman of the district court. The Criminal Procedure Code regulates and gives authority to investigators to carry out confiscation of movable or immovable, tangible or intangible objects.

By looking at this provision, the implementation of authority possessed by state officials must be carried out consistently in accordance with applicable legal provisions, including the implementation of authority carried out by the Corruption Eradication Commission based on legal legality based on Law Number 30 of 2002 concerning the Corruption Eradication Commission. The Corruption Eradication Commission institution has the authority to carry out confiscations directly even though there has been no final decision from the chairman of the District Court. So what is the basis for the Corruption Eradication Committee's authority to confiscate crimes of corruption and what is the legal position of goods that must be confiscated in criminal acts of corruption? Authority, which contains rights and obligations, is the ability to carry out certain legal actions intended to give rise to legal consequences, and includes the emergence and disappearance of legal consequences. Rights contain the freedom to carry out or not carry out certain actions or require other parties to carry out certain actions, while obligations contain the obligation to carry out or not carry out certain actions (Pesik, 2014) .

Based on what has been described above, the author is interested in knowing the basis of the Corruption Eradication Commission's authority to confiscate criminal acts of corruption and to find out the legal position of goods confiscated in acts of corruption by conducting more in-depth research by taking the research title: "**The basis of the Corruption Eradication Commission's authority to carry out confiscations in Corruption Crimes**".

## **METHODS RESEARCH**

Method can be interpreted in terms of possibilities as a type of thinking used in research and assessment, a technique common to science, and a particular way of carrying out a procedure. The type of research used in this writing is normative legal research. This is because this research is normative research. According to Youvita (2018) Normative legal research is legal research that conceptualizes law as a norm including values, positive law and court decisions.

The type of data used is secondary data. Secondary data sources used include primary legal materials, secondary legal materials and tertiary legal materials. The data collection techniques used are library materials through literature books, statutory regulations, as well as data collection through electronic media related to the problem being studied. The data analysis technique is that all legal materials that have been collected and inventoried will then be processed and analyzed in depth by the author so that a logical ratio is obtained regarding the legal issues being studied

## **RESULTS AND DISCUSSION**

## **Basic Authority of the Corruption Eradication Commission to carry out Confiscation in Corruption Crimes**

The criminal act of corruption can be interpreted as a fraudulent act that is detrimental to state finances or misappropriation or embezzlement of state money for personal and other people's interests. In Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, letter (a) explains that criminal acts of corruption which have occurred so widely, have not only harmed state finances, but have also constituted violations of the social and economic rights of society at large, so that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner. Corruption has now become a frightening threat to the life of a country. The issue of corruption is not only a local discourse, but has become an international discourse for every country in the world. The consequences resulting from the growth and development of corruption concern the welfare of society as a whole (Ferdiyanto, 2017) .

Authority is formal power derived from legislative power (by law) or derived from administrative executive power. Authority is power over a field of government by a certain group of people. Then law as a collection of regulations or rules has general and normative legal content that cannot exist without the existence of institutions that formulate, implement and enforce them, namely the legislative, executive and judicial institutions (Azis, 2019) . In the state administrative law literature, there are three ways to obtain authority, namely attribution, delegation, and mandate (Yusuf, 2019). Formed based on Law Number 30 of 2002 concerning the Corruption Eradication Commission, the Corruption Eradication Commission (KPK) has the attribution of eradicating corruption in a professional, intensive and sustainable manner. By delegation, the Corruption Eradication Commission is an independent state institution, which in carrying out its duties and authority is free from any other power. The Corruption Eradication Commission was not formed to take over the mandate or take over the task of eradicating corruption from previous institutions. The explanation of the law mentions the role of the Corruption Eradication Commission as a *trigger mechanism* , which means encouraging or acting as a stimulus so that efforts to eradicate corruption by previously existing institutions become more effective and efficient.

The above is reinforced by Article 3 and Article 4 which states that "The Corruption Eradication Commission is a State Institution which in carrying out its duties and authority is independent and free from the influence of general power" in Article 4 "The Corruption Eradication Commission was established with the aim of increasing its efficiency and effectiveness towards efforts to eradicate criminal acts of corruption" (Jawade Hafidz, 2018) . Thus, it is clear that the aim of establishing an independent State Institution called the Corruption Eradication Commission is oriented towards increasing the efficiency and effectiveness of efforts to eradicate criminal acts of corruption.

### **Basic Authority of the Corruption Eradication Commission**

Basically, the formation of the KPK is aimed at increasing the efficiency and effectiveness of efforts to eradicate criminal acts of corruption. The Corruption Eradication Commission can be categorized as a special ( *ad hoc* ) body which was formed with the main aim of handling certain corruption cases. In Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission. The Corruption Eradication Commission is a special body that has broad, independent authority and is free from any power to eradicate

corruption. The Corruption Eradication Commission was formed because the Police, Prosecutor's Office or other institutions that were supposed to prevent corruption could not work well in eradicating corruption in Indonesia. The way to deal with corruption must be in an extraordinary way. For this reason, the Corruption Eradication Commission was formed which has extraordinary authority, so it is not surprising that the Corruption Eradication Commission is called a super body. Furthermore, the authority of the Corruption Eradication Commission as mandated in Articles 7, 8, 9, 10, 11, 12, 13 and 14 of Law Number 30 of 2002, is to support the implementation of the duties as intended in Article 6 of Law Number 30 In 2002, the Corruption Eradication Commission.

- a. Duties of the Corruption Eradication Commission.
  - a) Coordinate with agencies authorized to eradicate Corruption Crimes.
  - b) Supervision of agencies authorized to eradicate Corruption Crimes.
  - c) Carrying out inquiries, investigations and prosecutions of Corruption Crimes.
  - d) Carry out measures to prevent Corruption Crimes.
  - e) Monitoring the administration of state government (Article 6 of Law Number 30 of 2002).
- b. Authority of the Corruption Eradication Commission
  - a) Coordinate the investigation, investigation and prosecution of criminal acts of corruption.
  - b) Establish a reporting system in activities to eradicate criminal acts of corruption.
  - c) Request information about activities to eradicate Corruption Crimes from related agencies.
  - d) Carrying out hearings or meetings with agencies authorized to eradicate Corruption Crimes.
  - e) Request a report from the relevant agency regarding the prevention of Corruption Crimes (Article 7 of Law Number 30 of 2002).
  - f) Other authorities can be seen in articles 12, 13 and 14 of Law Number 30 of 2002.
  - g) Position of the Corruption Eradication Commission. The Corruption Eradication Commission is located in the capital of the Republic of Indonesia and its working area covers the entire territory of the Republic of Indonesia. The Corruption Eradication Commission can form representatives in provincial areas. The Corruption Eradication Commission consists of:
    - a. Leadership of the Corruption Eradication Commission which consists of five members of the Corruption Eradication Commission.
    - b. The advisory team consists of four members.
    - c. Corruption Eradication Commission employees as executors of duties (Article 21 paragraph 1 of Law Number 30 of 2002).

The authority of the Corruption Eradication Commission in conducting inquiries, investigations and prosecutions of Corruption Crimes includes Corruption Crimes which:

- 1) Involving law enforcement officials, state officials and other people who are related to criminal acts of corruption committed by law enforcement officials or state officials.
- 2) Receiving disturbing attention from the public.
- 3) Concerning state losses of at least IDR 1,000,000,000.00 ( one billion rupiah) Article 11 of Law Number 30 of 2002. In carrying out its duties and authority, the Corruption Eradication Commission is based on:

- a) Legal certainty is a principle in a legal state that prioritizes the basis of statutory rules, propriety and justice in every policy carrying out the duties and authority of the corruption eradication commission.
- b) Openness is a principle that opens up to the public's right to obtain correct, honest and non-discriminatory information about the performance of the Corruption Eradication Commission in carrying out its duties and functions.
- c) Accountability is a principle that determines that every activity and final result of the Corruption Eradication Commission's activities must be accountable to the community or people as the holder of the highest sovereignty of the state in accordance with applicable laws and regulations.
- d) The public interest is a principle that prioritizes general welfare in an aspirational, accommodative, and selective manner .
- e) Proportionality is a principle that prioritizes balance between the duties, authority, responsibilities and obligations of the Corruption Eradication Commission.

The basis of the Corruption Eradication Commission's authority to carry out confiscations in Corruption Crimes is that confiscations are part of the investigation. Therefore, all authorities relating to confiscation regulated in Law Number 8 of 1981 concerning Criminal Procedure Law also apply to investigators, investigations and prosecutions at the Corruption Eradication Commission (Article 38 paragraph 1). The provisions as intended in Article 7 paragraph 2 of Law Number 8 of 1981 concerning Criminal Procedure Law do not apply to investigators of criminal acts of corruption.

Investigations, investigations and prosecutions for criminal acts of corruption are carried out based on the applicable criminal procedural law and based on Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Investigations, investigations and prosecutions are carried out based on orders and acting for and on behalf of the Corruption Eradication Commission.

a. Investigation

An investigator is an investigator at the Corruption Eradication Commission who is appointed and dismissed by the Corruption Eradication Commission (Article 43 paragraph 1 of Law Number 30 of 2002). Investigators carry out the function of investigating criminal acts of corruption. If the investigator, in carrying out the investigation, finds sufficient initial evidence of a suspected Corruption Crime, within a period of no later than seven working days from the date sufficient initial evidence is found, the investigator reports it to the Corruption Eradication Commission. Sufficient preliminary evidence is considered to exist if at least two pieces of evidence have been found. In the event that the investigator carrying out his duties does not find sufficient preliminary evidence, the investigator reports to the Corruption Eradication Commission and the Corruption Eradication Commission stops the investigation. If the Corruption Eradication Commission is of the opinion that the case is being continued, the Corruption Eradication Commission will carry out its own investigation or can delegate the case to police investigators and the prosecutor's office.

b. Investigation

An investigator is an investigator at the Corruption Eradication Commission who is appointed and dismissed by the Corruption Eradication Commission (Article 45 paragraph

1 of Law Number 30 of 2002). Investigators carry out the function of investigating Corruption Crimes. Based on a strong suspicion that there is sufficient preliminary evidence, investigators can carry out confiscations without permission from the Chairman of the District Court in connection with their investigative duties (Article 47 paragraph 1 of Law Number 30 of 2002). Investigators are required to prepare a confiscation report on the day of the confiscation which contains:

- a) Clear name, and number of objects or other valuables confiscated
- b) Information on the place, time, day, date, month and year the confiscation was carried out.
- c) Information regarding the owner or person in control of goods or other valuable objects.
- d) Signature and identity of the investigator who carried out the confiscation.
- e) Signature and identity of the owner or person who controls the item.

A criminal corruption case occurred and the head of the court has not yet made a final decision to grant permission to the Corruption Eradication Commission to carry out an investigation into the suspect. The Corruption Eradication Commission has the basic authority to carry out investigations without having to wait for a final decision from the head of the court. The KPK's authority to handle corruption cases is regulated in Article 6 letter c of Law no. 30 of 2002 concerning the Corruption Eradication Commission (Corruption Eradication Commission Law), that the Corruption Eradication Commission has the task of carrying out investigations, investigation and prosecution of Corruption Crimes. Regarding the confiscation of criminal acts of corruption, it is regulated in article 47 paragraph 1 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, which states: "On the basis of a strong suspicion that there is sufficient preliminary evidence, investigators can carry out confiscations without the permission of the Chairman of the District Court related to his investigative duties" (Welda, 2015) .

The Corruption Eradication Commission has the basic authority to carry out confiscations in criminal acts of corruption even though there has been no final decision from the head of the district court. In Law Number 30 of 2002, it is explained that all acts of wiretapping, search and confiscation are the absolute authority of the Corruption Eradication Commission in handling corruption cases without having to obtain permission from a group or other institution. Confiscation of criminal acts of corruption is regulated in article 47 paragraph 1 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, which states: "On the basis of a strong suspicion that there is sufficient preliminary evidence, an investigator can carry out a confiscation without the permission of the Chairman of the District Court in relation to investigative duties." Then in Article 6 letter c of Law no. 30 of 2002 concerning the Corruption Eradication Commission (Corruption Eradication Commission Law), that the Corruption Eradication Commission has the task of carrying out investigations, investigation and prosecution of Corruption Crimes. As for other matters, the Corruption Eradication Commission has additional authority, namely that it can take over corruption cases even if they are being handled by the Police or Prosecutor's Office (Article 8 paragraph (2) of the Corruption Eradication Commission Law). However, the takeover of corruption cases must be for the reasons stipulated in Article 9 of the Corruption Eradication Commission Law. The takeover of investigations and prosecutions as intended in Article 8, is carried out by the Corruption Eradication Commission for the reasons stated in that article.



In carrying out the duties of Investigation, Investigation and Prosecution, the Corruption Eradication Commission has the authority. All authorities relating to investigation, investigation and prosecution as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Law also apply to investigators, investigators and public prosecutors. at the Corruption Eradication Commission (Article 38 paragraph (1)). In particular, the investigative and investigatory authority possessed by the Corruption Eradication Commission is: carrying out wiretapping and recording conversations, ordering the relevant agencies to prohibit someone from traveling abroad, requesting information from banks and other financial institutions about the financial condition of the suspect/defendant being investigated, ordering to banks and other financial institutions to block accounts suspected of being proceeds of corruption belonging to suspects/defendants/other related parties. Apart from that, other authorities include: Ordering the suspect's leadership or superior to temporarily dismiss the suspect from his position, requesting data on the suspect's or defendant's wealth and tax data from the relevant agency, temporarily suspending financial transactions, trade transactions and other agreements or temporarily revoking permits or licenses. , as well as concessions carried out or owned by suspects/defendants who are suspected based on sufficient initial evidence to be related to the crime being investigated, request assistance from Indonesian Interpol or other country's law enforcement agencies to carry out searches, arrest and confiscate evidence abroad, request assistance the police or other relevant agencies to carry out arrests, detention, searches and confiscations in corruption cases that are being handled.

Investigating, investigating and prosecuting criminal acts of corruption are carried out based on the applicable criminal procedural law and based on Law Number 31 of 1999 concerning the eradication of criminal acts of corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 2001. 1999 concerning the Eradication of Corruption. Investigations, inquiries and prosecutions are carried out based on orders and acting for and on behalf of the Corruption Eradication Commission. For the purposes of the investigation, the suspect of a criminal act of corruption is obliged to provide information to the investigator regarding all his assets and the assets of his wife, or husband, children and the assets of every person or corporation known and/or suspected of having a connection with the criminal act of corruption committed by the suspect. . After the investigation is deemed sufficient, the investigator makes an official report and submits it to the leadership of the Corruption Eradication Commission for follow-up (Mukhlis, 2011) .

If a criminal act of corruption occurs and the corruption eradication commission has not yet conducted an investigation, while the case has already been investigated by the police or prosecutor's office, the agency is obliged to notify the corruption eradication commission no later than fourteen working days from the start of the investigation, if the corruption eradication commission has already begun carrying out the investigation. investigation, then the police or prosecutor's office no longer has the authority to carry out the investigation. If the investigation is carried out simultaneously, the investigation carried out by the police or prosecutor's office will immediately be stopped.

Based on the duties and authorities as referred to above, the Corruption Eradication Commission as a *super body institution* in handling criminal acts of corruption, the task of carrying out the position of the Corruption Eradication Commission is above other institutions that have the authority to investigate criminal acts of corruption, it is in the duties

of the Corruption Eradication Commission to carry out coordination, monitoring, Supervision, establish reporting standards, and the Corruption Eradication Commission collects and assesses developments in handling corruption and can take over handling corruption that is not working, or is hampered in the investigation process. In other words, the Corruption Eradication Commission has a strong basis of authority to carry out investigations into criminal acts of corruption even though there has been no permanent legal decision (*i nkrach*) from the district court.

### **Legal Position of Goods Confiscated in Corruption Crimes**

#### **Foreclosure**

Confiscation is a series of actions by investigators to take over or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence, investigation, prosecution and justice. According to the provisions of Article 1 point 16 of the Criminal Procedure Code, which determines that confiscation is defined as "a series of actions by investigators to take over and/or keep under their control movable or immovable, tangible and/or intangible objects for the purposes of evidence in investigations, prosecutions and Justice". The legal basis for confiscation is regulated in Article 10 point b of the Criminal Code where confiscation is an additional crime, which consists of: 1. revocation of certain rights; 2. confiscation of certain items; 3. announcement of the judge's decision. M. Yahya Harahap (in Toruan, 2020) is of the opinion that what is meant by confiscation as determined by the Criminal Procedure Code (KUHAP) is "Forcible efforts carried out by investigators to take or 'seize' certain pieces of evidence from someone who holds them. or storage.

The purpose of confiscation is for "proof" purposes, especially as evidence before a court of law. As in the opinion of Sitorus (2020) that the confiscation of confiscated evidence is carried out only in the interests of evidence, prosecution and justice, an object or item can be confiscated and controlled by another person or other party temporarily. So confiscation (*beslagnemng*) is a method used by authorized officials to temporarily control confiscated evidence, whether it is property belonging to the suspect/defendant or evidence confiscated as a result of a crime. It is very likely that without evidence the case cannot be submitted to court, therefore, in order for the case to be complete with evidence, investigators will confiscate it to be used as evidence in investigations, prosecutions and in court examinations. Jan Rimmelink (in Ferdiyanto, 2017) believes that confiscated objects have a limited scope, namely they only concern property or wealth (*vermogenstraf*). According to Andi Hamzah (in Sitorus, 2020) regarding evidence or objects that can be confiscated, namely: Items belonging to the suspect that were obtained as a result of a crime and items that were intentionally used to commit a crime.

In Article 33 of the Criminal Code, provisions regarding objects that can be confiscated include:

- a. objects owned by the convict in whole or in part which he used himself or obtained from committing a crime;
- b. objects used for crime;
- c. objects with assistance for committing crimes;
- d. objects with the help of obstructing investigations;
- e. objects that will be used to commit crimes; And
- f. rights to property

In relation to the procedure or implementation of confiscation, in general the provisions are regulated in Articles 38 to Article 46 of the Criminal Procedure Code and cover all goods/objects as evidence or as evidence of a crime (including the provisions of Article 184 of the Criminal Procedure Code).

Procedures for carrying out confiscations, the Criminal Procedure Code distinguishes several types of confiscation procedures. There are confiscations in the form of:

- a. Ordinary confiscation with the usual implementation procedures ; The procedures for implementing ordinary or general forms of confiscation are contained in the provisions of Article 38 of the Criminal Procedure Code.
- b. Confiscation in very necessary or urgent circumstances; Seizure is identical to a search with all the risks it will face as stipulated in Article 34 of the Criminal Code.
- c. Confiscation while caught red-handed (OTT); As stipulated in Article 40 and Article 41 of the Criminal Procedure Code.
- d. Confiscation in indirect circumstances. Namely in the form of an order to hand over items that need to be confiscated by investigators to the owner or holder of the objects (provisions of Article 42 and Article 43 of the Criminal Procedure Code).

Several conditions carried out by investigators in confiscating goods/objects or assets belonging to suspects or owners/holders of goods/objects or assets include :

- a. Showing or displaying identification;
- b. Showing goods/objects or assets to be confiscated;
- c. The confiscation carried out must show the confiscated goods/objects or assets witnessed by the village head or neighborhood head and there must be a minimum of two witnesses;
- d. The next requirement or procedure, as stated above, is to provide testimony during the confiscation by showing the goods/objects or assets to be confiscated
- e. Make confiscation minutes;
- f. Submit derivative confiscation minutes;
- g. Wrapping confiscated goods/objects or assets.

To maintain the quality, quantity and even safety of confiscated goods/objects or assets, Article 130 paragraph (1) of the Criminal Procedure Code has determined the following methods for packaging confiscated objects :

- a. The weight or quantity is recorded according to the type of each confiscated object. If the type is difficult to determine, at least note down its characteristics and characteristics
- b. Note down the day and date of confiscation;
- c. Note the place where the confiscation was carried out;
- d. The identity of the person from whom the object was confiscated;
- e. It is given a seal and seal and signed by the investigator. Specifically in handling corruption and TPPU, if the person concerned does not want to comply with the investigator's orders and does not want to hand over the goods/objects in question, then the investigator can apply Article 21 of the Corruption Law. Article 21 of the Corruption Law states "Every person who intentionally prevents, obstructs or thwarts, directly or indirectly, the investigation, prosecution and examination at court of suspects and defendants or witnesses in a corruption case, shall be punished with a minimum imprisonment 3 (three) years and a maximum of 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah).

The provisions of Article 39 paragraph (1) of the Criminal Procedure Code determine goods/objects that can be subject to confiscation if:

- a. Goods/objects or bills of suspects or defendants which in whole or in part are suspected to have been obtained from a criminal act or as a result of a criminal act;
- b. Goods/objects that have been used directly to commit a criminal act or to prepare a criminal act;
- c. Goods/objects used to hinder the investigation of criminal acts;
- d. Goods/objects specifically made or intended to commit criminal acts;
- e. Other goods/objects that have a direct connection with criminal acts

From the explanation of the contents of this article, we can generally understand that the aim of the Corruption Eradication Commission in carrying out confiscations is to prove that a criminal act has indeed occurred, and that the defendant was the one who committed it and must be held accountable for it. In Article 44 of the Criminal Code:

- 1) Confiscated objects are stored in the state's confiscated objects storage house.
- 2) The storage of confiscated objects is carried out as well as possible and responsibility for them rests with the authorized officials in accordance with the level of examination in the judicial process and these objects are prohibited from being used by anyone.

The purpose of confiscation is to protect the assets resulting from the criminal act so that they are not lost or destroyed or their rights are transferred by the Defendant to another party. The confiscation of items suspected to be the result of corruption by the Corruption Eradication Commission was carried out as a result of previous inquiries and investigations. This is done with the intention that the court can request that the confiscated goods, if the defendant is guilty or the goods are proven to be the proceeds of criminal corruption, can be confiscated by the State and an auction will be held where the proceeds from the auction of the confiscated goods will be entered into the State treasury. This is reinforced by Article 45 of the Criminal Procedure Code, which states that confiscated goods with special characteristics can be sold at auction. Therefore, regarding the legal status of goods confiscated by the Corruption Eradication Commission, the confiscated goods can be auctioned even though there has not been a permanent judge's decision (inkrach) from the district court. This is in accordance with the provisions of Article 45 of the Criminal Procedure Code (KUHP) that:

- 1) In the event that confiscated objects consist of objects that can be easily damaged or are dangerous, so that they are impossible to store until the court decision on the case in question has permanent legal force or if the cost of storing the objects will be too high, as far as possible, with the consent of the suspect or his attorney, the following actions are taken:
  - a. if the case is still in the hands of the investigator or public prosecutor, the object can be sold at auction or can be secured by the investigator or public prosecutor, witnessed by the suspect or his attorney;
  - b. If the case is already in the hands of the court, the object can be secured or sold at auction by the public prosecutor with the permission of the judge hearing the case and witnessed by the defendant or his attorney.
- 2) The proceeds from the auction of the object in question in the form of money are used as evidence.

- 3) For evidentiary purposes, as far as possible, part of the objects as intended in paragraph (1) will be set aside.
- 4) Confiscated objects that are prohibited or prohibited from being circulated, do not include the provisions as intended in paragraph (1), are confiscated to be used for state interests or to be destroyed.

#### Article 46

- 1) Objects subject to confiscation may be returned to the person or persons from whom they were confiscated, or to the person or persons most entitled to them if:
  - a. the interests of investigation and prosecution no longer require;
  - b. the case was not prosecuted because there was insufficient evidence or it turned out not to be a criminal act;
  - c. matter is set aside for the public interest or the matter is closed for the sake of the law, except when the thing is obtained from a criminal act or used to commit a criminal act.
- 2) When the matter has been decided, then the thing subject to confiscation is returned to the person or to those mentioned in the decision, unless according to the judge's decision the thing is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or, if the thing is still needed as evidence in other matters

#### **Legal Position of Confiscated Goods**

Thus, the author assumes that regarding the legal status of confiscated goods, they will certainly be used as evidence by the Corruption Eradication Commission as law enforcers. However, problems often occur in managing confiscated goods. This obstacle is due to inadequate storage space which can cause damage, large maintenance costs for confiscated goods and a decrease in the value or price of the confiscated goods. Based on article 44 of the Criminal Procedure Code, confiscated goods are stored at RUPBASAN (State Storage House for Confiscated Objects) and if they are not available in that area, they can be stored at the prosecutor's office, court, and in this case they can also be stored at the Corruption Eradication Commission office. The act of confiscation is authorized by law for the purposes of criminal procedures but must not be carried out arbitrarily, but rather in ways that have been established or determined by law and must not violate human rights.

Furthermore, confiscated goods can also be auctioned even though there has been no permanent legal decision (*inkracht*) from the district court. In article 45 paragraph 1 of the Criminal Procedure Code, as long as the case has not been *finalized*, law enforcers can only auction confiscated items with the permission of the suspect or defendant. It is proposed to create a special account to save money from the sale of confiscated goods from cases that do not yet have *inkracht status*. Then the management of confiscated goods with special characteristics can be sold at auction. On the other hand, conditions of confiscated goods that are easily damaged are often found so that auction efforts are very necessary in terms of preserving value and minimizing state losses. This provision was also adopted in article 47 A paragraph (1) of the Corruption Eradication Commission Law which states that goods resulting from searches and confiscations as referred to in article 47 can be auctioned (Albert & Yohana, 2022). However, to carry out an auction of confiscated items, it is necessary to obtain approval from the suspect or defendant or his attorney. Approval must be done to provide legal certainty. Because, at this stage the district court has not yet decided whether or

not the confiscated items will be returned to the suspect. If the decision ends without agreement and when the judge's decision is returned to the defendant.

In practice, there are times when the confiscation process in a criminal act of corruption involves property belonging to a third party with good intentions whose other assets are also confiscated because their property is associated with the perpetrator of a criminal act of corruption even though the property does not originate from the criminal act in the object of the criminal act of corruption, the legal consequences of which are It arises that the property owned by a third party is property that is not related to the crime of corruption, meaning that it is lawful property so that the confiscation carried out by the Corruption Eradication Commission is invalid because some of the objects confiscated belong to other people who are not involved in the crime case. corruption crime. Actions that can be taken by a third party with good intentions include filing an objection to the Corruption Eradication Commission regarding inappropriate confiscation, or even filing a civil lawsuit to the court for legal ownership but the confiscation is carried out by the Corruption Eradication Commission, or a third party with good intentions. It is good to submit a pre-trial application because the confiscation carried out is considered illegal, not in accordance with the law because other people's objects were also confiscated even though the third party was not involved in the criminal act of corruption (NS Putri and Tajudin, 2016) .

The practice of cooperation agreements that occur is also inseparable from the risks that arise, namely non-fulfillment of the elements in the cooperation agreement that have been made by the parties, for example in a capital participation cooperation agreement and one party could take actions that are detrimental to the other party. . Honesty or good faith in the cooperation agreement is an important factor so that parties who have good intentions will receive reasonable legal protection, while those who do not have good intentions do not need to receive legal protection. In general, it can be said that in social life in society, parties who are honest or have good intentions must be protected and conversely, parties who are dishonest or do not have good intentions should suffer the consequences of their dishonesty.

Even though good faith is an important principle in contract law in various legal systems, the principle of good faith still raises a number of problems, especially those related to the abstractness of the meaning of good faith. According to Sitorus (2020), honesty or good faith can be seen in two ways, namely at the time a legal relationship comes into force or at the time of implementing the rights and obligations contained in that legal relationship. Honesty at the time of commencement in the heart of the person concerned, that the conditions necessary for the legal relationship to come into force have all been fulfilled, while later it turns out that there are conditions that have not been fulfilled. In such a case, the honest party is considered as if all the conditions have been fulfilled, or in other words, the honest party should not be harmed as a result of not fulfilling the conditions referred to in the agreement. Therefore, considering the existence of a cooperation agreement which is based on the existence of elements of a criminal act committed by one of the parties or as a whole the parties to the crime can be subject to criminal sanctions

## CONCLUSION

Based on the description that has been presented, there are several things that can be concluded as follows:

1. The basis for the Corruption Eradication Commission's authority to carry out confiscations in criminal acts of corruption, namely Law Number 30 of 2002, explains that all confiscation actions are the absolute authority of the Corruption Eradication Commission in handling cases of criminal acts of corruption without having to obtain permission from a group or other institution. Confiscation of criminal acts of corruption is regulated in Article 47 paragraph 1, which states: "On the basis of a strong suspicion that there is sufficient preliminary evidence, an investigator can carry out a confiscation without the permission of the Chairman of the District Court in connection with his investigative duties." Investigations, inquiries and prosecutions are carried out based on orders and acting for and on behalf of the Corruption Eradication Commission. It is regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.
2. The legal status of confiscated goods will of course be used as evidence by the Corruption Eradication Commission as law enforcement. However, problems often occur in managing confiscated goods. This obstacle is due to inadequate storage space which can cause damage, large maintenance costs for confiscated goods and a decrease in the value or price of the confiscated goods. Based on Article 44 of the Criminal Procedure Code, confiscated goods are stored at RUPBASAN (State Storage House for Confiscated Objects) and if they are not available in that area, they can be stored at the prosecutor's office, court, and in this case they can also be stored at the Corruption Eradication Commission office. Then the confiscated goods can also be auctioned even though there has been no permanent legal decision ( *inkrach* ) from the district court.

## Bibliography

- Albert, S., & Yohana, M. (2022). Juridical Review Regarding the Auction of Confiscated Goods Conducted by the Corruption Eradication Commission. *Res Justitia: Journal of Legal Studies* , 2 (2), 395–405.
- Azis, A. (2019). The Authority of the Corruption Eradication Commission in Eradicating Corruption Crimes Based on the Theory of the Rule of Law. *Surya Kencana Satu Journal: Dynamics of Legal and Justice Issues* , 9 (2), 71. <https://doi.org/10.32493/jdmhkdmmh.v9i2.2286>
- Bagas Dwiki Rosandi, & Pudji Astuti. (2016). Juridical Review of the Authority to Intercept Communications which is Incompatible with the Right to Personal Freedom According to Law Number 39 of 1999. *Unesa Surabaya Journal* , 9 , 1–7.
- Ferdiyanto, R. (2017). The evidence in Rupbasan is almost junk. *Focus.Tempo.Co* . <https://focus.tempo.co/read/1039275/barang-evi-di-rupbasan-nyaris-jadi-rongsokan>
- Jawade Hafidz, YMSTP and. (2018). Juridical Analysis of the Authority of the Corruption Eradication Commission (KPK) as a Prosecutor for Corruption Crimes. *UNIFICATION: Journal of Legal Studies* , 5 (1), 33. <https://doi.org/10.25134/unifikasi.v5i1.763>
- Monita, Y., Hafrida, Nys. Arfa, & Elizabeth Siregar. (2021). Normative Study Regarding Confiscation of Evidence in Corruption Crimes. *Journal of Socio Humanities Science* , 5 , 1246–1247. <http://legal-dictionary.thefreedictionary.com/admissible>
- Mukhlis. (2011). Shifting Positions and Duties of Police Investigators with the Development of Offenses Outside the Criminal Code. *Legal Studies* , 3 (1), 282.
- Pesik, VK (2014). The Authority of the Corruption Eradication Commission in Eradicating

- Corruption Crimes. *Lex Et Societatis* , 2 (6), 2014. <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/5377>
- Putri, NS, & Tajudin, I. (2016). *The authority of the Corruption Eradication Commission to confiscate evidence suspected to be the result of money laundering crimes whose origins do not originate from corruption crimes* . 1-23.
- Rimbawa, IMA (2021). The Authority of the Corruption Eradication Committee in Eradicating Corruption Crimes. *Yustitia Journal* , 15 (2), 87-93.
- Simangunsong, F. (2014). Law Enforcement Against Narcotics Crime Perpetrators (Case Study at the Surakarta Police Department). *RECHSTAAT Journal of Legal Studies UNSA Faculty of Law* , 8 (1), 1-18. <https://media.neliti.com/media/publications/164425-ID-penegakan-Hukum-terhadap-pelaku-tindak-p.pdf>
- Simangunsong, F. (2014). Corruption Crimes in Indonesia. *Core* .
- Sitorus, MJ (2020). The Position of Confiscated Evidence of Corruption Crimes is Reviewed from a Civil Aspect. *Riau University* .
- Thontowi, J. (2008). Prospects for Eradicating Corruption: Balancing the Authority of the Corruption Eradication Commission and Law Enforcement Institutions. *Unisia* , 31 (67), 25-36. <https://doi.org/10.20885/unisia.vol31.iss67.art3>
- Toruan, HDL (2020). Effectiveness of the Law on Storing Confiscated Goods in Rupbasan. *Legal Policy Scientific Journal* , 14 (2), 285. <https://doi.org/10.30641/politik.2020.v14.285-311>
- Welda, G. (2015). Confiscation of money laundering criminal objects originating from criminal acts of corruption. *Angewandte Chemie International Edition*, 6(11), 951-952. , 5-24.
- Youvita, FD (2018). The authority of the Corruption Eradication Commission to investigate other criminal acts related to corruption. *Legal Studies Program, Faculty of Law, Islamic University of Indonesia* , 3 , 1-87. <http://dx.doi.org/10.1186/s13662-017-1121-6><https://doi.org/10.1007/s41980-018-0101-2><https://doi.org/10.1016/j.cnsns.2018.04.019><https://doi.org/10.1016/j.cam.2017.10.014><http://dx.doi.org/10.1016/j.apm.2011.07.041><http://arxiv.org/abs/1502.020>