SKRIPSI

PERLINDUNGAN PEMEGANG HAK TANGGUNGAN ATAS OBJEK YANG DISITA NEGARA DALAM PERKARA TINDAK PIDANA KORUPSI

(Putusan Mahkamah Agung Nomor 540 K/Pdt/2022)

Diajukan Sebagai Salah Satu Syarat

Untuk Memperoleh Gelar Sarjana Hukum

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PERLINDUNGAN PEMEGANG HAK TANGGUNGAN ATAS OBJEK YANG DISITA NEGARA DALAM PERKARA TINDAK PIDANA KORUPSI

(Putusan Mahkamah Agung Nomor 540 K/Pdt/2022)

(Attallah Azmi Siswanto, 2110111063, Fak. Hukum, Universitas Andalas, 97 halaman, 2025)

ABSTRAK

Konflik hukum antara jaminan hak tanggungan dan kewenangan negara dalam menyita aset korupsi menimbulkan ketidakpastian bagi kreditur perbankan. Hak tanggungan menjamin prioritas eksekusi objek jaminan melalui prinsip *droit de préférence* dan *droit de suite* (UU No. 4/1996), namun Pasal 18–19 UU Tipikor mengutamakan pemulihan kerugian negara dengan merampas aset terpidana. Penelitian normatif yuridis ini menganalisis Putusan Mahkamah Agung No. 540 K/Pdt/2022 yang mengabaikan hak PT Bank Panin selaku kreditur pemegang hak tanggungan sah atas objek sitaan kasus korupsi Muhammad Helmi Kamal Lubis. Metode penelitian melibatkan pendekatan perundang-undangan, kasus, dan konseptual dengan mengkaji UU Hak Tanggungan, UU Tipikor, PERMA No. 2/2022, serta teori kepentingan Roscoe Pound dan kepastian hukum Jan M. Otto. Temuan penelitian menunjukkan adanya distorsi kepentingan umum, di mana Mahkamah Agung menafsirkan "kepentingan umum" secara sempit sebagai restitusi fiskal negara, sehingga mengabaikan fungsi perbankan sebagai *agent of development* (Pasal 4 UU Perbankan) yang bertugas melindungi dana masyarakat (*public trust*). Selain itu, putusan tersebut melanggar asas jaminan dengan mengesampingkan prinsip *droit de préférence* dan *droit de suite*, serta bertentangan dengan Yurisprudensi No. 1731K/Pdt/2011 yang seharusnya melindungi eksekusi objek jaminan meskipun disita negara. Terdapat pula disharmoni kelembagaan, di mana PERMA No. 2/2022 gagal melindungi kreditur karena membatasi "pihak ketiga beritikad baik" hanya pada pemilik fisik aset, tanpa mempertimbangkan pemegang hak kebendaan terdaftar seperti Bank Panin. Implikasi putusan ini berpotensi mengikis stabilitas sistem perbankan melalui peningkatan risiko kredit macet dan erosi kepercayaan terhadap sertifikat hak tanggungan. Sebagai rekomendasi, diperlukan revisi kebijakan dengan memperluas definisi "pihak ketiga beritikad baik" dalam PERMA No. 2/2022 agar mencakup pemegang hak jaminan kebendaan. Selain itu, harmonisasi hukum antara UU Tipikor dan UU Hak Tanggungan perlu dilakukan dengan mekanisme alokasi hasil lelang objek sitaan bagi pelunasan utang kreditur beritikad baik. Kolaborasi institusional antara Kejaksaan, OJK, dan perbankan juga diperlukan untuk memverifikasi aset sebelum penyitaan guna menyeimbangkan kepentingan pemulihan negara dan kepastian hukum transaksi perdata.

Kata Kunci: **Hak Tanggungan, Kepentingan Umum, Kepastian Hukum, Tindak Pidana Korupsi.**

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PROTECTION OF HOLDERS OF DEPENDENT RIGHTS ON OBJECTS CONFISCATED BY THE STATE IN CASES OF CORRUPTION

(Supreme Court Decision Number 540 K/Pdt/2022)

(Attallah Azmi Siswanto, 2110111063, Faculty of Law, Andalas University, 97 pages, 2025)

ABSTRACT

The legal conflict between the guarantee of the right of dependency and the state's authority to confiscate corruption assets creates uncertainty for banking creditors. The right of dependency guarantees the priority of execution of the collateral object through the principles *of droit de préférence* and *droit de suite* (Law No. 4/1996), but Articles 18–19 of the Corruption Law prioritize the recovery of state losses by confiscating the assets of the convict. This juridical normative research analyzes the Supreme Court Decision No. 540 K/Pdt/2022 which ignores the rights of PT Bank Panin as the creditor holding the legal right of dependency over the object confiscated in the Muhammad Helmi Kamal Lubis corruption case. The research method involves a legislative, case, and conceptual approach by examining the Law on Dependent Rights, the Corruption Law, PERMA No. 2/2022, as well as the theory of Roscoe Pound's interests and Jan M. Otto's legal certainty. The findings of the study show that there is a distortion of the public interest, where the Supreme Court interpreted the "public interest" narrowly as state fiscal restitution, thus ignoring the function of banking as *an agent of development* (Article 4 of the Banking Law) tasked with protecting public funds (public *trust*). In addition, the decision violates the principle of guarantee by overriding the principles *of droit de préférence* and *droit de suite*, and is contrary to Jurisprudence No. 1731K/Pdt/2011 which is supposed to protect the execution of the object of the guarantee even though it is confiscated by the state. There is also institutional disharmony, where PERMA No. 2/2022 fails to protect creditors because it limits "third parties in good faith" to only the physical owners of the assets, without considering registered property rights holders such as Bank Panin. The implications of this ruling have the potential to erode the stability of the banking system through increased risk of bad loans and erosion of trust in certificates of dependents. As a recommendation, a policy revision is needed by expanding the definition of "third party in good faith" in PERMA No. 2/2022 to include holders of property security rights. In addition, legal harmonization between the Corruption Law and the Law on the Rights of Dependents needs to be carried out with a mechanism for the allocation of the proceeds of the confiscated object auction for the repayment of debts of creditors in good faith. Institutional collaboration between the Prosecutor's Office, OJK, and banks is also needed to verify assets before confiscation to balance the interests of state recovery and legal certainty of civil transactions.

Keywords: **Dependent Rights, Public Interest, Legal Certainty, Corruption Crimes.**

This minor thesis has defended in front of the examiner team at June 11th, 2025.

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