

## Legal Position Of The Property Separation Agreement In Marriage Against The Confiscation Of The Husband's Property By The Court

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### Abstract

*This study aims to examine the legal position of the property separation agreement in marriage, as stipulated in Article 29 of Law Number 1 of 1974 concerning Marriage, especially related to the confiscation of marital property by the court, as well as evaluate the extent to which legal protection can be provided for the property. The type of research used is normative juridical with descriptive-analytical nature, using a legal approach and a case approach. Data collection techniques are carried out through literature studies, then data management is analyzed qualitatively. The findings of the study show that the property separation agreement has significant legal force in separating the inherited property of each party, but in the implementation of confiscation by the court, inconsistencies are often found caused by differences in legal interpretation and judicial practice. Therefore, this study emphasizes the need for stricter and more consistent law enforcement to protect the ownership rights of inherited property that has been separated, so that there is no unlawful confiscation and innocent parties can obtain optimal legal protection.*

**Keywords:** Property Separation Agreement, Property Confiscation, Inherited Property, Legal Protection.

### A. Introduction

Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a harmonious and prosperous family, as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage.<sup>1</sup> However, marriage is not only interpreted as an emotional bond between two people who want to form a happy and eternal family, but also as a legal event that brings various juridical consequences, one of which is related to the ownership and management of wealth. In the Indonesian civil law system, in general, every property acquired during the marriage period is considered joint property, as stipulated in Article 35 paragraph (1) of the Marriage Law which states that "Property acquired during marriage becomes joint property," and is also affirmed in Article 119 of the Civil Code (KUHPerdata) which reads, "From the moment the marriage takes place, according to the law, there is a complete joint property between husband and wife, insofar as there are no other provisions in the marriage

<sup>1</sup> "Please, Lily. "The Legal Consequences of Marriage Registration." ASAS 8, no. 2 (2016).

*agreement. The joint property, during the course of the marriage, shall not be abolished or altered by an agreement between husband and wife."* Consequently, if there is no special arrangement through the marriage agreement, then the property acquired during the marriage period is legally seen as joint property between husband and wife, regardless of who directly acquires the property.<sup>2</sup>

The legal situation becomes complex when events such as divorce, bankruptcy, or the involvement of one spouse in a criminal act occurs. In criminal cases, especially corruption or money laundering (TPPU), the state often confiscates assets suspected of being related to these criminal acts.<sup>3</sup> Problems arise if the confiscated assets are the personal property of the uninvolved spouse. This creates injustice, especially if the property is innate or the result of personal efforts that have no connection to crime. To prevent the mixing of property and provide legal certainty, Indonesian law regulates the mechanism of marriage agreements, including property separation agreements, as stated in Article 29 of Law Number 1 of 1974 concerning Marriage. This agreement must be made before the marriage and ratified by the marriage registrar. The goal is to protect the property of each party and provide strict juridical boundaries if legal problems arise.<sup>4</sup>

The agreement on the separation of property has a strong legal basis in civil law and is a concrete form of the principle of freedom of contract or *the principle of pacta sunt servanda*, which is stated in Article 1338 of the Civil Code "*All agreements made in accordance with the law shall be valid as law for those who make them.*" This provides a guarantee that property that has been explicitly separated through a marriage agreement cannot be confiscated, unless it is legally proven to be the proceeds or means of a criminal act.<sup>5</sup> However, in practice, the implementation of confiscation by law enforcement officials still often causes controversy and inconsistencies, especially when it comes to proving the origin of property and neglect of legal marriage agreements. The case of the confiscation of personal property belonging to Sandra Dewi (SD) due to the involvement of her husband, Harvey Moeis (HM), in the case of alleged corruption, is one of the concrete examples that have emerged into the public sphere and caused legal debate.<sup>6</sup> In the case, even though the couple had made a prenuptial agreement deed — which stated that there was no mixing of assets between the two — investigators still seized a number of items that were legally claimed to be the wife's personal property. This raises profound questions regarding the legal position of the separation of assets agreement in the context of the protection of property rights and the limitation of confiscation by the state.

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<sup>2</sup> Djuniarti, Evi. "The Law of Joint Property Reviewed from The Perspective of Marriage Law and Civil Code." *Journal of Legal Research P-ISSN 1410* (2017): 5632.

<sup>3</sup> Santoso, Bagus Teguh. "Legal remedies for separatist creditors against confiscation in criminal cases of corruption and/or money laundering in bankruptcy." PhD diss., AIRLANGGA UNIVERSITY, 2015.

<sup>4</sup> AŦÖyun, Wildaniyah Mufidatul, and Alif Hendra Hidayatullah. "Maslahah Perspective in Marriage Agreements Regarding Property in Marriage Law." *Harmony* 22, no. 1 (2023): 22-47.

<sup>5</sup> Nurfitriah, Messiah. "A marriage promise that is binding in relation to the principle of pacta sunt servanda." *USM Law Review Journal* 6, no. 1 (2023): 79-93.

<sup>6</sup> Anugrahadi, War. "Sandra Dewi's Assets Confiscated Even though She Has Separated Her Assets with Harvey, This Is What the Lawyer Said." *Liputan6*, February 28, 2024. Accessed February 28, 2025. <https://www.liputan6.com/news/read/5848570/aset-sandra-dewi-disita-meski-sudah-pisah-harta-dengan-harvey-ini-kata-pengacara?page=3>.

In the framework of civil law, as stated by Philipus M. Hadjon through Legal Protection Theory, the law should provide preventive and repressive protection to individuals, especially in guaranteeing the right to property.<sup>7</sup> The existence of a marriage agreement should be authentic evidence that is strong enough to limit the scope of confiscation, especially if there is no concrete evidence that the property is directly related to a criminal act. However, in law enforcement practice, there is often a neglect of this principle, which leads to legal uncertainty and injustice for parties who are not involved in criminal acts. On the other hand, Gustav Radbruch, through the Theory of Legal Certainty, emphasized that law must have elements of certainty, justice, and utility.<sup>8</sup> In this context, a property separation agreement made in accordance with the provisions of the law should be able to provide legal certainty for the innocent party so that they are not harmed by criminal acts committed by their spouse. However, if law enforcement officials ignore the existence of the agreement, then the value of certainty and justice in the law is injured. As a result, in addition to violating the principles of the law, this condition also has the potential to reduce public trust in the legal system itself.

Based on these problems, this study focuses on the legal position of the property separation agreement in marriage against the confiscation of marital property by the court, as well as the legal protection that can be provided for inherited property that is legally not related to a criminal act. This research is important to provide a deeper understanding of the law, as well as to strengthen the legal position of the property separation agreement in preventing the unauthorized confiscation of the property belonging to the innocent party. It is hoped that the results of this research can be a reference for policymakers, law enforcement officials, and the public in building a fair and consistent legal protection system in civil and criminal cases.

## B. Research Methods

The research method used is a normative juridical method with a descriptive-analytical approach. This study examines the applicable legal norms, especially related to the position of the property separation agreement in Article 29 of Law Number 1 of 1974 concerning Marriage.<sup>9</sup> The approach used includes a legislative approach to review normative rules regarding marriage agreements and property confiscation, as well as a case approach to see their application in practice, especially in cases of property confiscation by the court. Data was obtained through literature studies on primary legal materials such as laws and jurisprudence, as well as secondary legal materials in the form of books, scientific articles, and other legal sources. The data was analyzed qualitatively by interpreting the content of legal provisions and court decisions to assess their consistency.<sup>10</sup> The purpose of this study is to evaluate the application of legal protection to private property separated through a marriage agreement and to identify juridical constraints in the practice of confiscation.

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<sup>7</sup> Prihandini, Yudiana Dewi. "Legal protection against third parties for marriage agreements made after marriage." *Lex Renaissance* 4, no. 2 (2019): 354-366.

<sup>8</sup> Apriyanto, Apriyanto, Titik Haryanti, and Liani Sari. *Civil Law Reference Book: Theory and Practice*. PT. Sonpedia Publishing Indonesia, 2024.

<sup>9</sup> Soekanto, Soerjono, and Sri Mamudji. "Normative Law Research: A Brief Overview, 1st Edition, Cet." *Jakarta: PT Raja Grafindo Persada* (2001).

<sup>10</sup> Susanti, Dyah Ochtorina, M. Sh, A'an Efendi, and MH SH. *Legal Research: Legal Research*. Sinar Grafika, 2022.

## C. Result and Discussion

### 1. Legal Position of Property Separation Agreement in Marriage against Confiscation of Husband and Wife's Inherited Property by the Court

A property separation agreement, also known as a marriage agreement, is a legal instrument that is valid and recognized in the Indonesian legal system. The existence of this agreement is explicitly regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, which states that at the time or before the marriage takes place, the two prospective brides can make a written agreement that is ratified by the marriage registrar. The agreement can include arrangements regarding the separation of property and financial responsibilities of each party during the duration of the marriage bond.<sup>11</sup> From a civil law perspective, this agreement has legal consequences in the form of self-control over each party's property, both acquired before and during the marriage.<sup>12</sup> Thus, juridically, the property separation agreement breaks the relationship of joint ownership of the property and makes the property the property fully owned by the party concerned.

Referring to international legal practice, especially in France, prenuptial agreements contain four main types of information: provisions on marital property, a list of each party's assets at the time of the marriage, details of dowry payments received (if any), and additional clauses such as arrangements for family property in the event of the death of one spouse. This agreement is signed in the presence of a notary. The matrimonial property regime in France classifies property into three categories: joint property, separate property belonging to the husband, and separate property belonging to the wife. This provision does not only apply to property owned during the marriage, but also includes assets that will be acquired during the marriage period.<sup>13</sup>

When compared to the system in France, prenuptial agreements in Indonesia have a similar legal basis, namely providing legal certainty over the ownership and management of the property of each party in the marriage. However, the striking difference lies in the structure and technicalities of its implementation. In Indonesia, the marriage agreement is only generally regulated through Article 29 of the Marriage Law and Article 139 of the Civil Code, without detailed technical arrangements regarding the substance of the agreement as applied in France. As a result, the effectiveness of legal protection against the separation of property is highly dependent on the power of proof and official recording carried out. These agreements often face obstacles in their implementation if they are not accompanied by authentic documents and strong proof of the origin of the property before the law.

Problems arise when there is a confiscation of property by the court, especially in the context of the implementation of a corruption case decision on debts or damages charged to one of the parties in corruption. In practice, there are cases where the court confiscates property that substantially belongs to one of the spouses, on the grounds that the property

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<sup>11</sup> Mr. Y., Kurnia, I. I., Fernandha, R. D., & Goldwen, F. MARITAL AGREEMENT SEPARATION OF PROPERTY AS LEGAL PROTECTION FOR.

<sup>12</sup> Salsabilla, Denintya Indri, and Endah Hartati. "Legal Review of Husband and Wife Agreement Outside the Provisions Regarding the Separation of Property in the Marriage Agreement." *UNES Law Review* 6, no. 4 (2024): 10915-10922.

<sup>13</sup> Frémeaux, Nicolas, and Marion Leturcq. "Prenuptial agreements and matrimonial property regimes in France, 1855–2010." *Explorations in Economic History* 68 (2018): 132-142.

is in joint possession or cannot be proven to be personal property. Theoretically, a property separation agreement that has met formal and material requirements and does not conflict with the applicable positive law, should have binding legal force, not only for the parties who made it, but also for third parties.<sup>14</sup> However, in its implementation, the recognition of the existence and validity of the property separation agreement is often ignored if it is not supported by strong evidence as in Article 147 of the Civil Code "*A marriage agreement must be made with a notary deed before the marriage takes place, and will be void if it is not made in this way. The agreement shall come into force at the time of the marriage, no other time shall be specified for it.*", the purpose of the article is such as proof of the origin of property ownership, a deed of agreement that has been officially recorded at the Civil Registry Office or the Office of Religious Affairs, and an authentic deed from a notary. The lack of clarity of proof is often a loophole used to generalize property ownership in the household, thus giving rise to the potential for injustice.<sup>15</sup>

However, in the context of corruption and money laundering, there has been a shift in the legal approach in looking at the strength of property separation agreement documents. This is due to the possibility that the agreement will be misused as a tool of disguise or protection of assets resulting from criminal acts, especially to avoid confiscation or confiscation of assets by the state. Therefore, in some cases, the property separation agreement can be set aside if it is proven that the agreement does not meet the principle of halal cause as referred to in Article 1320 of the Civil Code.<sup>16</sup> In the concrete case of Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst, the SD witness objected to the confiscation of a number of her belongings which were declared as part of the compensation money in the corruption case that ensnared her husband, HM. These items include 88 *branded bags* that were declared to have come from *witness endorsements since 2012, long before their wedding*.<sup>17</sup> In his defense, the witness submitted evidence in the form of a Deed of Property Separation Agreement Number 1176 dated October 12, 2016, which was prepared in the presence of notary Recky Francky Limpele, SH. The agreement explicitly states that there is no partnership of property between husband and wife in any form, including income and losses.

In the legal aspect of proof, authentic deeds such as marriage agreements have strong legal force and cannot be refuted except by proof to the contrary (*tegenbewijs*). Normatively, an authentic deed is written evidence that has perfect evidentiary power as stated in Article 1868 of the Civil Code: "*An authentic deed is a deed made in the form prescribed by law by or before a public official authorized for it at the place where the deed*

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<sup>14</sup> Subekti, Sri. *Legal protection of the parties to the post-marital property separation agreement*. University 17 August 1945, 2021.

<sup>15</sup> Susanti, Dyah Ochtorina. "Marriage Agreement as a Form of Legal Protection for Married Couples (Maqashid Sharia Perspective)." (2018).

<sup>16</sup> Silalahi, Riovaldi Paruntungan, Nirindah Daniella Sembiring, Nabila Aulia Adek Putri, and Dwi Desi Yai Tarina. "Dispute Resolution of Abuse of Circumstances in Marriage Agreements: Between Default and Unlawful Acts in Decision No. 3/Pdt./2015/PN. Sos." *Media Hukum Indonesia (MHI)* 3, no. 3 (2025).

<sup>17</sup> Imam Sukamto, "The Fate of Sandra Dewi's Property after the Harvey Moeis Verdict," *Tempo.co*, July 12, 2023, <https://www.tempo.co/hukum/nasib-harta-sandra-dewi-setelah-vonis-harvey-moeis-1207203>,

was made.”<sup>18</sup> Therefore, if there is no evidence that the agreement was drafted with the intention of unlawful, then the agreement must be respected as valid evidence in separating property ownership. However, Article 37A and Article 38B of the Corruption Law provide a legal loophole where reverse proof can be made against the property of the defendant, husband, wife, children, or other related parties. If the wealth cannot be proven of its origin, then it is legally considered the result of a criminal act and can be confiscated for the state.<sup>19</sup> Therefore, in criminal cases, including TPPU and Corruption, it is not enough to only show the existence of a property separation agreement, but must also be accompanied by proof of the history and origin of the wealth.

In judicial practice, judges through several of their rulings have emphasized the importance of proving the status of property ownership in confiscation disputes. If it is proven that the confiscated property does not belong to the debtor, then the confiscation can be declared null and void because it is contrary to the principles of justice, the principle of legality, and the principle of protection of private property.<sup>20</sup> The principle of justice requires that every legal action be carried out proportionately and not harm the innocent party. The principle of legality affirms that any act of confiscation must be based on clear and valid legal provisions. Meanwhile, the principle of protection of personal property rights guarantees that a person's ownership of his property cannot be challenged without a valid reason and legal basis.<sup>21</sup> However, there is still a normative vacuum in the laws and regulations that technically regulate the mechanism for the protection of the property of the spouse from the defendant or defendant in the execution process. This ambiguity gives rise to legal uncertainty, which ultimately opens up the possibility of violations of individual civil rights in the marital bond, especially for couples who are legally not related to the alleged crime.

In the framework of Indonesian civil law, the existence of a property separation agreement is inseparable from the fundamental principles in treaty law. One of the relevant principles is the principle of *freedom of contract*, which gives the parties the freedom to make and determine the content of their agreements, as long as they do not conflict with law, public order, and decency.<sup>22</sup> This principle is reflected in Article 1338 paragraph (1) of the Civil Code which states that “All agreements made in accordance with the law shall be valid as law for those who make them.” This means that the agreement on the separation of assets, as long as it is made in good faith and meets the requirements for the validity of the agreement, has binding force like a law for the parties, including in the face of legal proceedings involving third parties, such as in the case of confiscation by the court. More deeply, *the principle of pacta sunt servanda*, which is the principle that every agreement must be kept, is the basis that the content of the property separation agreement must be

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<sup>18</sup> Loke, Williams Elsafan. "THE STRENGTH OF THE AGREEMENT AS A MEANS OF PROOF ACCORDING TO THE CIVIL PROCEDURE LAW IN INDONESIA." *LEX ADMINISTRATUM* 10, no. 2 (2022).

<sup>19</sup> Kartayasa, Mansur. *Corruption & Reverse Proof: From the Perspective of Legislative Policy and Human Rights*. Kencana, 2015.

<sup>20</sup> Atmadja, I. Great God. "Legal principles in the legal system." *Kertha Wicaksana* 12, no. 2 (2018): 145-155.

<sup>21</sup> *Ibid*

<sup>22</sup> Hendroko, Agus Yudha. "The Law of Fundamental Agreements of Proportionality in Commercial Contracts." *Surabaya: Kencana* (2010).

respected not only by the bound parties, but also by third parties, including the court.<sup>23</sup> This emphasizes that the confiscation of the property belonging to one of the parties who is not the debtor must pay attention to the content and existence of the agreement. If the court continues to confiscate without paying attention to the property separation agreement, then this is contrary to the principles of justice and legal certainty.

The position of the property separation agreement as evidence in the trial is relatively strong, if supported by complete evidence. In the practice of civil and criminal procedural law, the property separation agreement can be used as evidence of letters, especially if it is stated in the form of an authentic deed (notary deed). Based on Article 1868 of the Civil Code which reads "*An authentic deed is a deed made in the form determined by law by or in the presence of a public official authorized for it at the place where the deed is made.*" In this case, an authentic deed has perfect evidentiary power regarding what is stated in it, as long as it cannot be proven otherwise by the rejecting party.<sup>24</sup> Therefore, if the court is faced with a valid property separation agreement document, it must legally recognize and consider the agreement in determining the object of confiscation.

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Based on practice, a property separation agreement will only be honored by the court if it can be proven that the disputed property actually belongs to one of the parties separately. This is where it is important to have additional evidence such as proof of purchase, separate accounts, sale and purchase deeds, or proof of personal income to reinforce that the property does not fall under the debtor's common property or property. That in principle and theoretically, the property separation agreement has a very strong legal position, both as a form of application of the principle *of pacta sunt servanda*, as a guarantee of legal certainty, and as authentic evidence in the trial. However, such power must be sustained by consistent application in practice, as well as detailed evidentiary documentation to avoid abuse or neglect of the rights of either party in the seizure proceedings by the courts.<sup>26</sup>

In a broader context, the legal force of the property separation agreement is not only

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<sup>23</sup> Nugroho, Raditya Rizki. "IMPLEMENTATION OF THE PRINCIPLE OF LEGAL CERTAINTY IN THE MAKING OF MARRIAGE AGREEMENT DEEDS BY NOTARIES." PhD diss., Sultan Agung Islamic University Semarang, 2025.

<sup>24</sup> Tutik, Dr. Titik Triwulan, and MH SH. *Civil law in the national legal system*. Kencana, 2015.

<sup>25</sup> Tutik, Dr. Titik Triwulan, and MH SH. *Civil law in the national legal system*. Kencana, 2015.

<sup>26</sup> Savannah, Faradhita Maudy. "Legal Status of the Marriage Agreement Deed Made at a Notary in the Distribution of Joint Property After Divorce." Master's thesis, Sultan Agung Islamic University (Indonesia), 2024.

tested through the provisions of Law Number 1 of 1974 and the Anti-Corruption Law, but also directly confronts the law of reverse proof as stipulated in the Anti-Corruption Law. Article 37A of the Anti-Corruption Law expressly requires the defendant to prove the origin of his wealth, including the property of his spouse, children, and other related parties. If the defendant cannot prove the fairness or balance between income and the value of wealth, then the provisions of Article 38B paragraph (2) provide a legal basis for the state to consider the property as the result of a crime of corruption that can be confiscated.<sup>27</sup> This provision directly puts the property separation agreement in a very crucial but also vulnerable position. Although the agreement is legally valid and binding, in the criminal law realm, the existence of the agreement can be ignored if it is considered an instrument that is misused to disguise or protect the proceeds of crime. This also touches on the aspect of good faith, as one of the elements of the validity of an agreement according to Article 1320 of the Civil Code.<sup>28</sup> Property separation agreements made with the motive of avoiding legal entanglement over property resulting from corruption or money laundering, can be substantively considered to be contrary to the requirements of "*causa yang halal*" and therefore can be declared null and void.<sup>29</sup>

Furthermore, the principle of *reasonableness* is an important parameter in assessing the legitimacy of property ownership. According to Subekti, the principle of fairness requires the compatibility between legal income and the amount and type of property owned. Therefore, if the property registered in the name of the spouse (wife or husband) significantly exceeds the reasonable economic profile, and its origin cannot be explained, then the property separation agreement can no longer be used as a valid legal shield.<sup>30</sup> Under these conditions, the state has the legitimacy to penetrate the walls of civil law formalities to ensure the implementation of the eradication of corruption and money laundering. In investigative practice, as in the case that befell HM and SD, investigators need to trace not only the formal form of the marriage agreement that has been made, but also the background, time of making, and the purpose of making the agreement. If it is proven that a criminal act was committed before the marriage agreement was drafted, then the agreement does not have the power to free the spouse's property from legal bondage. In fact, a marriage agreement in this context can be considered a form of legal engineering, so that it is no longer protected by the principle of freedom of contract.<sup>31</sup>

Normatively, both the Anti-Corruption Law and the Anti-Corruption Law adhere *to the principle of substance over form*, which is to prioritize the reality and substance of ownership and the origin of property rather than the formal form of ownership. Therefore, the investigation of corruption or money laundering cases does not stop at the legal-formal identification of property ownership, but extends to the analysis of transactions, economic

<sup>27</sup> Busroh, H. Firman Freaddy. "Reverse Proof in Corruption Crimes." *Toxicology* 2, no. 2 (2016): 335-352.

<sup>28</sup> Saffanah, Annisa Bella, and Wardani Rizkianti. "The Legal Strength of Proving a Notary Deed Due to Abuse of Circumstances." *Legal Standing: Journal of Legal Science* 5, no. 1 (2021): 11-24.

<sup>29</sup> Subekti, Sri, op.cit., p. 111.

<sup>30</sup> Martinelli, Imelda, Indri Elena Suni, Aulia Salma Istisofania, and Patricia Debby Julydya. "Examining the Limitations of Marriage Agreements in the Crime of Money Laundering." *Journal of Humanities History and Social Research* 4, no. 2 (2024): 204-215.

<sup>31</sup> *Ibid.*

profiles, and factual relationships between perpetrators and property owners.<sup>32</sup> A property separation agreement will only be honored to the extent that the agreement is made reasonably, legally, and does not conflict with legal norms and propriety. Thus, the relationship between the property separation agreement, the TPPU Law, and the reverse evidentiary provisions in the Corruption Law shows that there is an interconnection between civil law and criminal law. A property separation agreement cannot be seen absolutely as a protector of personal property if in its substance it is used as a tool to avoid criminal liability. Criminal law, in this case, has the power to break the boundaries of civil law for the sake of greater interests, namely the enforcement of justice and the eradication of extraordinary crimes such as corruption and money laundering.

Based on the testimony of SD witnesses in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and supported by authentic evidence in the form of Marriage Agreement Deed Number 1176 dated October 12, 2016, the property separation agreement made between SD and the defendant HM has a strong and valid legal standing, and should be fully acknowledged in the evidence at trial, including in the Corruption case. Within the framework of Indonesian civil law, an authentic deed made before a notary has perfect evidentiary power (Article 1868 of the Civil Code jo. Article 165 of the Civil Code).<sup>33</sup> Therefore, a property separation agreement that clearly states that there is no partnership of property—either in the form of profits, income, or losses—should be used as the main basis for consideration in separating property ownership between husband and wife. This agreement is not only formally and materially valid, but also reflects the *good faith* of the parties to maintain their respective economic and legal independence.

Furthermore, the application of the principle of *pacta sunt servanda* provides legal protection that the agreement that has been made is legally binding like a law for the parties. Therefore, as long as it is not proven that the agreement was made to hide the proceeds of the crime or was carried out with manipulative motives, the agreement of separation of assets must be respected in the judicial process. From the facts of the trial, it has also been revealed that:

1. The agreement is made before the date of marriage, so it meets the time requirements as specified in Article 29 of the Marriage Law.
2. Witnesses can explain in detail the origins of personal items, such as *branded bags*, obtained from *endorsement* activities since 2012, long before the marriage.
3. The confiscated goods, such as personal bags and certain property, did not come from the defendant's gifts, but from the witnesses' personal economic activities that could be proven concretely.
4. Some assets (houses, apartments) are purchased together after marriage, and can legally be considered joint property, but cannot be automatically confiscated unless it is proven that they are directly related to the proceeds of the crime.

That the confiscation of personal bags obtained through *endorsements* and other

<sup>32</sup> Zen, A. Patra M., and L. L. M. SH. *Third-party protection in good faith*. Indonesian Torch Library Foundation, 2021.

<sup>33</sup> Pramono, Dedy. "The power of proof of a deed made by a notary as a public official according to the civil procedure law in Indonesia." *Lex Journal* 12, no. 3 (2015): 147736.

personal assets that legally belong to witnesses based on the separation agreement and proof of origin, should be questioned in its legality. The neglect of the marriage agreement deed is contrary to the principles of legality, justice, and the protection of private property rights. Therefore, within the framework of fair law enforcement, the deed of separation agreement of the property belonging to the SD witness must be treated as a valid and strong legal document in proving the status of property ownership, as well as being a juridical limitation on the scope of confiscation in the Corruption case. The state can still confiscate and confiscate assets, but it must be based on concrete and proportionate evidence, not solely based on marital relationships, but through a clear and objective tracing of the origin of property.

The application of asset confiscation in criminal cases committed by one of the parties in the marriage must consider aspects of criminal procedure law as well as principles in civil law, especially related to the existence of a property separation agreement or marriage agreement. On the one hand, as explained by Disriani Latifah Soroinda, confiscation of the wife's assets is still possible if it meets the criteria in Article 39 paragraph (1) of the Criminal Code which reads: *"(1) What can be subject to confiscation are: a. the object or bill of the suspect or defendant which is all or part of it is suspected to be obtained and a criminal act or as a result and criminal act; b. objects that have been used in a criminal manner to commit a criminal act or to prepare it; c. objects used to obstruct the investigation of criminal acts; d. objects that are specifically made or intended to commit criminal acts; e. other objects that have a direct relationship with the criminal act committed."* In this case, if there is a direct relationship between the asset and the criminal act committed by the husband. For example, if the assets owned by the wife are gifts from the husband that come from the proceeds of crime, then the assets can be legally confiscated in the investigation process.<sup>34</sup> However, to ensure the validity of the confiscation, it is necessary to first examine the form and content of the marriage agreement: whether there is joint property or individual property, and what is the limit of separation.

On the other hand, the defense of the wife's personal property rights is strengthened through a Court Decision and authentic evidence in the form of a Marriage Agreement Deed as described in Decision No. 70/Pid.Sus-TPK/2024/PN.Jkt.Pst, which states that the property separation agreement between SD and HM is made formally and materially valid. The agreement has met the legal requirements according to Article 29 of the Marriage Law, was made before the marriage, and is further proven by the origin of the property independently owned by the wife (for example, from *personal endorsement* since before marriage). Thus, the principle of *pacta sunt servanda* and the power of proof of authentic deeds (Article 1868 of the Civil Code jo. Article 165 of the Civil Code) must be respected by law enforcement officials. These two approaches are not actually contradictory, but rather complement each other within a fair legal framework:

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<sup>34</sup> Rifdah Rudi, *"There is a Marriage Agreement, Can the Assets of the Corruption Suspect's Wife Be Confiscated?"* Hukumonline.com, May 8, 2024, <https://www.hukumonline.com/klinik/a/ada-perjanjian-perkawinan-bisakah-aset-istri-tersangka-korupsi-disita-lt6639fd141509b/>.

1. Seizure is possible through:
  - a. Assets have a direct relationship with the crime (not just the spouse's).
  - b. There is concrete evidence, such as the flow of funds, the provision of proceeds of crime, or the disguise of assets by the perpetrators.
2. A separation agreement remains valid and binding, as long as:
  - a. Made in good faith, not to hide evil.
  - b. No manipulative or legal engineering evidence was found.
  - c. The origin of wealth can be proven to come from personal economic activities.

Thus, the confiscation of the property belonging to the wife or husband of the perpetrator of a criminal act cannot be carried out haphazardly based solely on the marital relationship. The act of confiscation must be based on objective and proportionate evidence, especially regarding the origin of the property and its direct relationship with the criminal act committed. Property separation agreements that are legally made and outlined in authentic deeds have a strong legal position as a juridical boundary between common property and personal property, and must be respected by law enforcement officials.<sup>35</sup> Ignoring this agreement without strong evidence of legal manipulation or engineering may result in a violation of the principles of legality, justice, and constitutional protection of private property.<sup>36</sup> Therefore, the application of confiscation must be carried out carefully, taking into account aspects of substantive justice, and not at the expense of the rights of parties who are not involved in the criminal act.

## 2. Legal Protection of Husband and Wife's Inherited Property in the Property Separation Agreement related to Confiscation by the Court

The existence of a property separation agreement in a marriage bond not only serves as a technical arrangement regarding the separation of property ownership between husband and wife, but also has a broader dimension in the context of legal protection of human rights, especially the right to private property. This right is expressly guaranteed in the constitution, as stated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: *"Everyone has the right to the protection of personal self, family, honor, dignity, and property under his or her control, as well as the right to a sense of security and protection from the threat of fear to do or not do something that is a human right."* In addition, Article 28H paragraph (4) of the 1945 Constitution also emphasizes: *"Everyone has the right to have personal property rights and these property rights must not be arbitrarily taken over by anyone."*<sup>37</sup> In this context, the state is obliged to guarantee legal protection of any form of lawful possession, including the ownership of personal property

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<sup>35</sup> Zulkarnain, Steven Agilo, and Arief Rachman Hakim. "Limitations of Marriage Agreements Based on the Civil Code." *Journal of Darma Agung* 32, no. 4 (2024): 164-175.

<sup>36</sup> Awaludin, Arif, and Bing Waluyo. "Legal Protection of Matrimonial Property through the Marriage Agreement Act." *Legal Horizon: Scientific Magazine of the Faculty of Law, Wijayakusuma University* 25, no. 1 (2023): 22-32.

<sup>37</sup> Pratiwi, Salma Rahmi. "HUSBAND'S BANKRUPTCY OF JOINT PROPERTY (CASE STUDY OF DECISION NUMBER 165/PDT. SUS. PKPU/2018/PN. TRADE. JKT. PST)." PhD diss., Sultan Agung Islamic University Semarang, 2024.

in a marital bond, as long as it is not proven to be of criminal origin.

In practice, the separation of property through a marriage agreement is a form of preventive protection against potential conflicts of ownership in marriage and in legal disputes involving one of the parties. In the case of confiscation or confiscation of assets by the state, this agreement can serve as a first step to sort out which assets can be held legally liable and which are not. However, the position of the application of the separation of assets agreement is highly dependent on two main things: (1) Complete, detailed, and well-documented administrative and substantive evidence, and (2) Consistency of application by law enforcement officials, especially judges and investigators in understanding the function and juridical value of the agreement.<sup>38</sup> The absence of a strong verification and recording system, as well as the absence of derivative technical regulations that explicitly regulate the procedure for the separation of assets in the confiscation process, means that asset separation agreements often do not have optimal implementing power. In fact, the existence of a good property rights protection system will provide legal certainty not only for married couples, but also for interested third parties, including the state in efforts to eradicate economic crimes.

In TIPIKOR, it is important to make a clear distinction between assets belonging to the defendant that can be confiscated by the state and assets belonging to third parties that are not directly related to the crime. A legally valid property separation agreement is the first juridical boundary that must be respected by law enforcement officials before carrying out a confiscation action. Furthermore, the principle of *non-retroactivity* must also be used as a guide, namely that a person cannot be held criminally or civilly liable for something that is not the result of his own actions. Therefore, when SD witnesses can show concrete evidence of their personal income, such as *endorsement* cooperation contracts, proof of transfers, personal tax reports, and the purchase of assets before and after marriage from legitimate sources, the burden of proof to refute the claim lies with the prosecutor. The state does have the authority to confiscate assets in order to recover state losses, but this authority is not absolute and must be exercised carefully and proportionately. Confiscation of third party property without sufficient evidence can lead to human rights violations, especially the right to private property as guaranteed in Article 28H paragraph (4) of the 1945 Constitution, which states that "*Everyone has the right to own personal property and such property rights must not be arbitrarily taken by anyone.*"

In international practice, as reflected in the *United Nations Convention against Corruption (UNCAC)*, the act of confiscation and forfeiture of assets also requires that there be a clear and strong link between the asset and the alleged crime.<sup>39</sup> Without a *nexus* (direct link), the act of confiscation risks becoming a form of unlawful *confiscation* that harms the principle of *due process of law*.<sup>40</sup> Therefore, in this case, a marriage agreement deed that

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<sup>38</sup> Al, Ahmad Ridhwan. "Confiscation of Security in Disputes of Inherited Property and Joint Property in Mixed Marriages (Analysis Study of the Decision of the South Jakarta Religious Court Case Number 2582/Pdt. G/2013/PA. JS)." Bachelor's thesis, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta.

<sup>39</sup> Igbinedion, S. A., and Anthony Osobase. "GRAND CORRUPTION IN THE GLOBAL SOUTH: LEGAL, POLITICAL AND ECONOMIC ANALYSIS OF ASSETS RECOVERY IN NIGERIA." *Journal of Economic Criminology* (2025): 100164.

<sup>40</sup> Juliani, Rika Dwi, and Syofiaty Lubis. "Return of Assets Proceeds of Corruption and Corruption Prevention through Confiscation of Non-Conviction Based Asset Forfeiture: A Review of Indonesian Law and the United Nations

includes a property separation agreement that has been made and registered before the marriage must be the main evidence in determining the status of property ownership. If the state still intends to confiscate assets that have been expressly declared to be the personal property of SD witnesses, then the state must first prove the direct or indirect involvement of SD witnesses in the corruption crime, either through the flow of unauthorized funds, involvement in criminal schemes, or the existence of an active role in hiding the proceeds of the crime.

Legal protection for the property of a husband or wife confiscated in criminal cases, especially Corruption, must be placed within the framework of protection of personal property rights and the principle of *due process of law*.<sup>41</sup> When there is a seizure of property that legally belongs to a third party, in this case the defendant's spouse, legal protection can be provided through a mechanism of testing the status of legal ownership. Inherited property that has been regulated through a marriage agreement made before marriage, and registered as stipulated in Article 139 of the Civil Code jo. Article 29 of Law No. 1 of 1974, must be treated as private property and separate from common property. Therefore, if the confiscation is still carried out on property that does not belong to the defendant, then it has the potential to violate the constitutional right to private property.

In the event that the court still issues a verdict stating that certain assets are confiscated for the state, even though the assets legally belong to the defendant's spouse who is not involved in the crime, then there are several legal remedies that can be taken by a third party or a party who feels aggrieved (the defendant's wife or husband). First, the party may file an objection or resistance as a third party in good faith (*derden verzet*), as stipulated in Article 195 paragraph (6) of the HIR and Article 206 paragraph (6) of the Criminal Code, in civil law further explained in Article 378 of the Criminal Code where this Article gives the right to a third party to resist a decision that is detrimental to their rights, if they or their representatives are not summoned to the trial or because of the merger of the case or interference in the case.<sup>42</sup> Through this mechanism, a third party can ask the court to review the seizure and seizure that is considered unlawful against its property.

Second, if the criminal action does not provide adequate results, a civil lawsuit on the basis of unlawful acts (PMH) can also be filed based on Article 1365 of the Civil Code. This lawsuit is addressed to the state or law enforcement officials if it can be proven that the act of confiscation was carried out arbitrarily, without a sufficient legal basis, and caused material or immaterial losses. Munir Fuady explained that the concept of unlawful acts is part of the legal principles that function to regulate actions that are detrimental to other parties, establish liability for losses arising in social relations, and provide the right for the

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Convention against Corruption (UNCAC) 2003." *Journal of EDUCATIO: Journal of Indonesian Education* 9, no. 1 (2023): 273-280.

<sup>41</sup> Yours truly, Dr. H. *Asset Recovery of Corruption Crimes: Theories and Jurisprudence in Indonesia*. Bhuana Popular Science, 2020.

<sup>42</sup> RIANTI, FISKARINA EKA. "THIRD-PARTY (DERDEN VERZET) RESISTANCE TO LAND EXECUTION CONFISCATION ON THE DETERMINATION OF THE HEAD OF THE DISTRICT COURT (ANALYSIS OF COURT DECISIONS."

aggrieved party to obtain compensation through appropriate legal mechanisms.<sup>43</sup> In some civil rulings, courts have provided restitution or compensation to third parties who are significantly harmed by unlawful acts of confiscation.

As a legal solution that is structural and preventive, the defendant's spouse needs to prepare legal documentation about the origin of the property from the beginning, such as proof of transactions, tax reports, and records of asset acquisition. This step is important to distinguish personal property from property resulting from criminal acts. On the other hand, the state is obliged to strengthen regulations and technical guidelines for confiscation and confiscation so as not to harm third parties who are not involved in criminal acts. In the long term, it is necessary to strengthen procedural legal instruments, for example through the Draft Law on Criminal Asset Forfeiture which regulates in detail legal protection for third parties. Legal protection of the defendant's spouse's estates is not enough only with a pre-nuptial agreement and proof of ownership, but must also be supported by a procedural law system that provides room for objections, resistance, and compensation. The principle of justice requires that the rights of the innocent party are fully guaranteed in the criminal justice process.

In the context of asset confiscation related to corruption, there is a tension between the state's efforts to recover state financial losses and the protection of the right to private property of third parties who are not involved in crime.<sup>44</sup> A property separation agreement that is legally made and registered before marriage is an important juridical boundary in determining the status of ownership. However, legal protection of personal property is not absolute, because permanent assets can be confiscated if it is proven to be directly related to a criminal act, as stipulated in Article 39 paragraph (1) of the Criminal Code. This is where it is important to prove the origin of assets (*source of funds*) as a mechanism for clarifying ownership. The burden of initial proof is on the owner of the property (e.g. the defendant's wife) to show proof of ownership and legal origin of the property, but in the end the state through the public prosecutor still has the obligation to prove the connection of the property with the crime (the principle of *reverse onus* in a limited context).<sup>45</sup>

Furthermore, as stated in the Constitutional Court decision No. 21/PUU-XII/2014, legal remedies to fight against unlawful confiscation can be pursued through the pretrial mechanism. The pretrial judge is authorized to determine whether the confiscation process is legal or not, but does not have the authority to assess whether the property is directly related to a criminal act. The assessment of the linkage is the exclusive authority of the principal judge in the criminal trial. Therefore, if the pretrial court decides that the seizure is invalid due to a procedural defect (e.g., there is no permission from the presiding court, no seizure minutes are made, or there is no receipt), then the seizure must be canceled.

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<sup>43</sup> Sembiring, Malemna Sura Anabertha, and I. Made Kantika. "Compensation for Victims of Wrongful Arrest in General Criminal Cases by the Police Reviewed from the Perspective of Justice." *Almufi Journal of Social and Humanities* 1, no. 3 (2024): 334-345.

<sup>44</sup> Yours truly, Lonna John. "The Urgency of Implementing Asset Forfeiture in Money Laundering." *Journal of Law to-ra: Law to Regulate and Protect Society* 9, no. 3 (2023): 351-364.

<sup>45</sup> Anandiasyah, Dimaz Atmadi Brata. "The Function of the Analysis Report (LHA) of the Financial Transaction Reporting and Analysis Center (PPATK) in Proving Money Laundering Crimes." PhD diss., AIRLANGGA UNIVERSITY, 2020.

However, if the confiscation is carried out according to the procedure, then the only way to maintain the right to the property is to prove materially in court that the asset did not originate from a criminal act.

In this context, the repressive protection mechanism for third parties who feel aggrieved does not stop at pretrial. After the main case is decided, the party who feels that he has the right to the property that has been confiscated by the state can file a resistance (*derden verzet*) or civil lawsuit based on Article 1365 of the Civil Code. This lawsuit is aimed at restoring rights to assets and demanding damages if it can be proven that the seizure has caused real harm without a sufficient legal basis. The following is a comparative table between preventive and repressive protection approaches to the seizure of inherited property based on the separation of property agreement:

**Table 1. Comparative between Preventive and Repressive Protection for the Parties**

Aspects	Preventive Protection	Repressive Protection
<b>Legal Instruments</b>	Property Separation Agreement (Article 29 of the Marriage Law, Article 139 of the KHI)	Pretrial, Derden Verzet, PMH Lawsuit (Article 1365 of the Civil Code)
<b>Purpose</b>	Distinguishing personal property and common property before the case arises	Canceling unlawful seizures
<b>Evidence Required</b>	Document of agreement, proof of origin of property, employment contract, tax	Minutes of Confiscation, evidence of procedural violations, court rulings
<b>Casting Board</b>	Courts (indirectly through legal interpretation)	Pretrial Judge / Judge of the Case / Civil Judge
<b>Debilitation</b>	It is not enough if the assets remain linked to crime	Lengthy process, heavy burden of proof, potential lawsuit rejection

Thus, legal protection of the defendant's spouse's property in the TIPIKOR case must be viewed holistically: starting from preventive efforts through documentation and separation of legal assets, to repressive measures through pretrial mechanisms, third-party resistance, and compensation lawsuits in the event of property rights violations. The state can still confiscate property, but must prove the link between property and crime objectively and procedurally. The balance between the eradication of corruption and the protection of the constitutional right to private property is a crucial point in building a fair and civilized legal system.

#### D. Conclusions and Recommendations

Legal protection of the defendant's spouse's personal property can be carried out through two approaches, namely preventive and repressive. Preventively, couples can make a property separation agreement as stipulated in Article 29 of the Marriage Law, both before and during the marriage. This agreement aims to separate personal property from joint property and must be supported by evidence such as tax statements, bank accounts, and ownership documents. If confiscation is still carried out even though there is a legal separation of property, repressive efforts can be taken through pretrial to test the legality of the confiscation act. An aggrieved third party can also file *a derden verzet* or lawsuit based on Article 1365 of the Civil Code. In the case of elementary school, the separation agreement and supporting evidence should be a strong legal basis. However, if the origin of property cannot be proven, then legal protection of private property becomes weak. Based on the results of this research, the following are recommendations for the parties involved:

For Law Enforcement Officers: In the investigation and prosecution process, the authorities must carefully assess the evidence of the origin of personal property based on complete supporting documents such as deed of separation agreement, tax statements, proof of transfer, and other official documents so that unjustified confiscation does not occur. Officials are also advised to make optimal use of pretrial mechanisms to test the legality of confiscation to prevent property rights violations and maintain a balance between the eradication of corruption and the protection of property rights.

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