



Protecting a Spouse's Assets or Recovering the Proceeds of Corruption? The Dilemma of Legal Certainty

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Original Article

Abstract

Marital agreements regulate the separation of assets between spouses; however, their legal status in corruption cases raises questions about their evidentiary value and their capacity to protect assets from seizure or forfeiture. This study examines the legal status of marital agreements as authentic deeds, identifies the legal criteria for determining asset provenance, third-party good faith, and the nexus between assets and criminal offenses, and analyzes these issues in light of Supreme Court Decision No. 5009 K/Pid.Sus/2025. It also examines notaries' responsibilities in exercising due diligence and adhering to the principle of prudence. This study employs a normative legal research method using statutory and case-law approaches, with qualitative analysis of legal materials. The findings indicate that the evidentiary force of an authentic deed does not confer absolute immunity from asset seizure or forfeiture. Asset protection depends on the validity of the agreement, the origin of the assets, the parties' good faith, the connection between the assets and the alleged criminal offense, and the sufficiency of the evidence. Notaries are required to verify supporting documents and draft contractual clauses with due care. Legal certainty therefore requires proportionate evidentiary standards and stronger due diligence requirements within the notarial profession.

Keywords: *Marital Agreement, Authentic Deed, Asset Seizure, Corruption, Notary*

Abstrak

Perjanjian perkawinan berfungsi mengatur pemisahan harta suami istri, tetapi kedudukannya dalam perkara korupsi menimbulkan persoalan mengenai kekuatan pembuktian dan perlindungan aset dari penyitaan serta perampasan. Penelitian ini bertujuan menganalisis kedudukan perjanjian perkawinan sebagai akta autentik, mengidentifikasi parameter yuridis penentuan asal-usul harta, itikad baik pihak ketiga, dan keterkaitan aset dengan tindak pidana berdasarkan Putusan Mahkamah Agung Nomor 5009 K/Pid.Sus/2025, serta merumuskan tanggung jawab Notaris dalam menerapkan prinsip kehati-hatian. Penelitian menggunakan metode hukum normatif melalui pendekatan perundang-undangan dan kasus, dengan analisis kualitatif terhadap bahan hukum. Kekuatan pembuktian akta autentik tidak memberikan kekebalan mutlak terhadap penyitaan atau perampasan. Perlindungan aset bergantung pada keabsahan perjanjian, asal-usul harta, itikad baik, keterkaitan dengan tindak pidana, dan kecukupan bukti. Notaris wajib memverifikasi dokumen serta menyusun klausul secara cermat. kepastian hukum memerlukan pembuktian proporsional dan penguatan standar kehati-hatian kenotariatan.

Kata kunci: *Perjanjian Perkawinan, Akta Autentik, Penyitaan Aset, Tindak Pidana Korupsi, Notaris*

1. INTRODUCTION

As a state governed by the rule of law, as stipulated in Article 1(3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is obligated to ensure legal certainty, justice, and the protection of lawfully acquired property rights. This obligation has particular significance in the context of marital property, which may be regulated through a marital agreement. Under Article 29 of Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, and following the legal developments introduced by Constitutional Court Decision No. 69/PUU-XIII/2015, marital agreements may be executed either before or during marriage. This legal framework broadens the autonomy of spouses in determining their marital property regime while enhancing legal certainty in their marital relationship.

Legal certainty in this context is closely associated with the role of a notary as a public official authorized to execute authentic deeds. A marital agreement executed as an authentic deed carries substantial evidentiary weight in establishing the agreement reached between the parties. However, the evidentiary force of such a deed does not automatically exempt all assets listed in the agreement or owned by either spouse from seizure or forfeiture in criminal proceedings. The protection of property rights remains contingent on the validity of ownership, the origin of the assets, and their connection to the alleged criminal offense.

On the one hand, the state has a legitimate interest in recovering state financial losses through asset tracing, seizure, and forfeiture. On the other hand, these measures must respect the rights of spouses who are not involved in the alleged criminal conduct and who have lawfully acquired their assets.¹ The tension between these competing interests positions marital agreements not merely as instruments of private law but also as legally relevant documents for establishing ownership and protecting the rights of third parties acting in good faith.

This issue is illustrated by the case involving Harvey Moeis and assets registered in the name of Sandra Dewi, as addressed in Supreme Court Decision No. 5009 K/Pid.Sus/2025. The case raises fundamental questions about the extent to which assets may be protected under a marital agreement when challenged by mechanisms for recovering assets derived from corruption. Addressing these questions requires an integrated analysis of marriage law, notarial law, the law of evidence, and anti-corruption law to determine the circumstances under which a spouse's assets warrant legal protection and those in which the public interest in recovering assets derived from corruption should prevail.

¹ Berlian Zahra Arwaa and Abdul Salam, "Kedudukan Harta Pribadi Sebagai Bentuk Ganti Rugi Atas Perbuatan Melawan Hukum Pasangan: Perbandingan Hukum Indonesia Dan Prancis," *Lex Patrimonium* 4, no. 2 (2025): 1–23.

Existing research on the forfeiture of assets derived from corruption generally identifies the recovery of state financial losses as a central objective of law enforcement. Mahmud's study of Decision No. 62/Pid.Sus/Tipikor/2013/PN.PBR demonstrates that criminal sentencing does not necessarily result in the optimal recovery of state financial losses. Challenges involving the payment of restitution in the form of replacement money and the failure to trace all assets belonging to convicted individuals may impede effective asset recovery. These findings suggest that the effectiveness of anti-corruption enforcement should be assessed not only by the imposition of criminal penalties but also by the extent to which assets proven to have originated from criminal activity are successfully recovered. Nevertheless, this body of research does not specifically examine the legal status of a spouse's assets separated under a marital agreement.²

The protection of third-party property rights is further examined by Evander, who analyzes the objection mechanism under Article 19(2) of the Law on the Eradication of Corruption Crimes and Supreme Court Regulation No. 2 of 2022. The study highlights concerns regarding the consistency of legal norms and the procedures governing objections to court decisions. Its relevance lies in recognizing that the objective of asset recovery must not override the rights of third parties with legitimate claims to property ownership. However, these procedural considerations must be further connected to the evidentiary requirements for establishing asset provenance within the legal framework governing the separation of marital property.³

Third-party protection within the asset forfeiture regime has also been examined by Harefa and Supardi. Their study indicates that the absence of uniform standards for assessing good faith makes legal protection highly dependent on judicial discretion. Ambiguity in the applicable standards of proof creates potential legal uncertainty, particularly when seized assets are formally owned by individuals who have not been charged with a criminal offense.⁴ Similarly, Sidauruk et al. examine third-party protection following the enactment of Law No. 20 of 2025 concerning the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP). Their study emphasizes the importance of judicial oversight, restrictions on asset seizure, and the restitution of assets belonging to third parties who have acted in good faith. Collectively,

² Ade Mahmud, "Problematisasi Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Yudisial* 11, no. 3 (2018): 347–66, <https://doi.org/10.29123/jy.v11i3.262>.

³ Evander Evander, "Keberatan Pihak Ketiga Yang Beritikad Baik Terhadap Perampasan Aset Dalam Tindak Pidana Korupsi," *Jurist-Diction Law Journal* 7, no. 1 (2024): 21–38, <https://doi.org/10.20473/jd.v7i1.54674>.

⁴ Beniharmoni Harefa and Supardi Supardi, "Perampasan Aset Tindak Pidana Pencucian Uang: Perlindungan Pihak Ketiga Beritikad Baik Dalam Perspektif Hukum Indonesia," *Risalah Hukum* 21, no. 2 (2025): 135–49, <https://doi.org/10.30872/risalah.v21.i2.2008>.

these studies demonstrate that effective third-party protection requires both clear substantive legal standards and adequate procedural safeguards.⁵

Wiguna specifically investigates legal certainty in marital agreements concerning the assets of spouses involved in corruption cases. The study concludes that the enforceability of such agreements depends, in part, on the availability of legitimate evidence establishing the origin of the assets.⁶ Meanwhile, Lase et al. analyze asset seizure in the electronic identity card (e-ID) corruption case and find that a forfeiture mechanism requiring proof through criminal proceedings continues to face challenges in achieving optimal asset recovery.⁷ Akbar and Hasan further identify regulatory limitations, the complexity of evidentiary requirements, and difficulties in interagency coordination as obstacles to effective asset recovery.⁸ Although previous studies have addressed the recovery of assets derived from corruption, the protection of third parties acting in good faith, and the legal certainty of marital agreements, the interaction among these issues remains insufficiently examined. In particular, the evidentiary function of authentic deeds and the professional responsibilities of notaries have not been comprehensively analyzed in conjunction with Supreme Court Decision No. 5009 K/Pid.Sus/2025. This study addresses that gap through an integrated analysis of the limits of legal protection for a spouse's assets, the evidentiary standards for establishing asset provenance, and the due diligence obligations of notaries in preventing the misuse of marital agreements.

This study has three objectives. First, it examines the legal status and evidentiary weight of marital agreements as authentic deeds and determines the extent to which they can protect assets against seizure and forfeiture. Second, it identifies the legal criteria for establishing the origin of assets, assessing third-party good faith, and determining the connection between specific assets and criminal offenses, based on an analysis of Supreme Court Decision No. 5009 K/Pid.Sus/2025. Third, it analyzes the role and professional responsibilities of notaries in applying the principle of due diligence when drafting marital agreements.

2. RESEARCH METHODOLOGY

⁵ Tambos Arthur Sidauruk et al., "Perlindungan Hukum Terhadap Aset Milik Pihak Ketiga Atas Tindakan Penyitaan Dalam Perkara Pidana," *Jurnal Hukum Lex Generalis* 7, no. 12 (2026): 1–26, <https://doi.org/10.56370/jhlg.v7i12.4781>.

⁶ Ervan Wiguna, "Kekuatan Mengikat Perjanjian Kawin Sebagai Dasar Perlindungan Harta Benda Suami Istri Terhadap Tindak Pidana Korupsi" (Universitas Pasundan, 2026), <https://repository.unpas.ac.id/82689/>.

⁷ Sandra Putri Olivia Lase et al., "Penyitaan Aset Sebagai Upaya Pemulihan Kerugian Negara Dalam Proses Penyelesaian Perkara Tipikor: Studi Kasus Kasus Korupsi E-KTP Oleh Setya Novanto," *Locus Journal of Academic Literature Review* 4, no. 9 (2025): 708–17, <https://doi.org/10.56128/ljoalr.v4i9.788>.

⁸ Muhammad Fajar Akbar and Zainudin Hasan, "Perampasan Aset Dalam Tindak Pidana Korupsi Sebagai Instrumen Preventif Dan Represif Dalam Upaya Pemberantasan Korupsi Di Indonesia," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 3, no. 3 (2026): 234–44, <https://doi.org/10.62383/aliansi.v3i3.1656>.

This study employs a normative legal research method to examine the legal protection of assets lawfully acquired under a marital agreement in the context of corruption cases. It focuses on legal norms, principles, doctrines, and judicial decisions concerning marital relationships, notarial practice, property rights, and anti-corruption law. Three legal approaches are employed: the statutory, conceptual, and case-law approaches. The statutory approach examines legislation governing marriage, the notarial profession, the eradication of corruption, money laundering, and criminal procedure, including Constitutional Court Decision No. 69/PUU-XIII/2015. The conceptual approach analyzes the principles of legal certainty, property rights protection, good faith, and asset recovery. The case-law approach examines Supreme Court Decision No. 5009 K/Pid.Sus/2025 and other relevant judicial decisions.

Primary and secondary legal materials were collected through library research and analyzed using a descriptive qualitative method. The analysis incorporates grammatical, systematic, and teleological interpretation to examine the meaning, coherence, and purpose of the applicable legal provisions. This approach aims to develop prescriptive legal arguments concerning the limits of protection afforded to the assets of a spouse who is not involved in corruption and the role of notaries in exercising due diligence to ensure legal certainty.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Legal Status and Evidentiary Weight of Marital Agreements as Authentic Deeds and the Limits of Their Protection Against Asset Seizure and Forfeiture

The evidentiary weight of an authentic deed must be distinguished from the evidence required to establish the lawful origin of an asset. This distinction provides the basis for balancing the property rights of a spouse who is not involved in a criminal offense against the state's interest in recovering financial losses resulting from corruption.

a) Marital Agreements as Instruments of Legal Protection

The legal basis for marital agreements is established in Article 29 of Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, and further developed through Constitutional Court Decision No. 69/PUU-XIII/2015. These legal provisions allow spouses to determine their marital property regime through an agreement that satisfies the applicable legal requirements. When executed before an authorized notary in the form of an authentic deed, a marital agreement carries the evidentiary weight accorded to authentic deeds under Articles 1868 and 1870 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata).

A marital agreement serves a preventive function by clarifying the boundaries of asset ownership and reducing the potential for disputes between spouses. It also serves a remedial function when used as evidence in resolving disputes over property ownership.⁹ Furthermore, from the perspective of legal certainty, the separation of marital property helps identify each spouse's property rights in a more structured and legally ascertainable manner.¹⁰ Thus, a marital agreement does more than document a private arrangement; it also provides a documentary basis for evaluating ownership claims when one spouse becomes involved in criminal proceedings.

The evidentiary weight of an authentic deed does not establish that all information concerning the assets listed in the deed automatically proves the lawfulness of their origin. Within the scope of its evidentiary effect, an authentic deed establishes the statements and agreements documented by the parties. However, it does not independently demonstrate that every asset acquired subsequently derives from a lawful source. A fundamental distinction therefore exists between the validity of a marital agreement as a civil law instrument and the legitimacy of the origin of assets as an evidentiary issue in criminal proceedings. This distinction defines the limits of the protection that a marital agreement can provide for a spouse's property.

b) The Evidentiary Weight of Authentic Deeds and Proof of Asset Provenance

The evidentiary value of a marital agreement should be assessed at two distinct levels. The first concerns the existence, formal validity, and content of the agreement executed before a notary. The second concerns the relationship between the agreement and the specific assets subject to seizure or forfeiture. At the first level, an authentic deed provides a strong evidentiary basis for establishing the parties' agreement to separate their property. At the second level, additional evidence is necessary to establish ownership, the date of acquisition, the source of funds used to acquire the assets, and any connection between those assets and the criminal offense under investigation.

This distinction demonstrates that formal ownership and the provenance of wealth are related but legally distinct issues. Assets registered in the name of a defendant's spouse are not necessarily proceeds of crime. Conversely, assets registered in the name of a third party are not automatically exempt from legal scrutiny when evidence links them to a criminal offense.¹¹ Accordingly, asset assessments must consider the totality

⁹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya* (Bina Ilmu, 1987).

¹⁰ Ervinda Ervinda et al., "Kedudukan Perjanjian Prenuptial Terhadap Harta Perkawinan Dalam Sistem Hukum Perdata Indonesia," *Journal of Innovative and Creativity* 5, no. 3 (2025): 37091–99, <https://doi.org/10.31004/joecy.v5i3.6281>.

¹¹ Afdila E. Palandi et al., "Kajian Terhadap Penyitaan Aset Istri Yang Disebabkan Oleh Suami Tersangka Kasus Korupsi Menurut Undang-Undang No. 19 Tahun 2019 Tentang Komisi Pemberantasan Tindak Pidana Korupsi," *Lex Administratum* 13, no. 3 (2025): 1–14.

of relevant evidence rather than rely exclusively on the names appearing in ownership documents or the mere existence of a marital agreement.

This analysis distinguishes between two categories of assets. The first comprises assets proven to have originated from criminal activity or to have a legally established connection to a criminal offense. A marital agreement cannot be invoked to obstruct lawful enforcement measures against such assets. The second comprises assets proven to have been acquired lawfully, held as personal property, and unconnected to any criminal offense. Assets in this category are entitled to legal protection in accordance with applicable law. This classification underscores the central function of a marital agreement: to clarify the separation of property ownership between spouses, not to replace the evidentiary requirements for establishing the lawful origin of assets.

c) Limits on the Applicability of Marital Agreements in Asset Seizure and Forfeiture Proceedings

The limits of marital agreements become apparent when the protection of property rights intersects with the state's authority to recover assets derived from corruption. Article 18 of the Law on the Eradication of Corruption Crimes provides a legal basis for imposing additional criminal penalties, including the forfeiture of specific assets and the payment of restitution in the form of replacement money, subject to applicable legal requirements. However, this authority does not justify the seizure or forfeiture of all assets belonging to a defendant's spouse without first examining ownership rights and the connection between the assets and the criminal offense.

The good faith of a third party is a critical consideration in this assessment. Good faith cannot be established solely by claiming that the asset owner was unaware of the criminal conduct committed by their spouse. Instead, the assessment should consider evidence concerning how the assets were acquired, the legitimacy of the underlying transactions, the source of the funds, and any involvement in concealing or disguising the proceeds of crime. These factors must be evaluated cautiously and on the basis of concrete evidence, rather than used to presume that a defendant's spouse necessarily knew of or benefited from the proceeds of criminal activity.

The case involving Harvey Moeis and Sandra Dewi illustrates the significance of this issue. Marital Agreement No. 1176 was presented as the basis for separating the couple's assets, while various assets associated with Sandra Dewi became the subject of dispute during the corruption proceedings. This situation demonstrates that a marital agreement must be evaluated alongside evidence establishing ownership and the origin of the assets in question. Nevertheless, the case should not be interpreted to mean that all assets belonging to a defendant's spouse necessarily constitute proceeds of crime or that a marital agreement automatically exempts assets from forfeiture. Conclusions

concerning individual assets must be grounded in verified facts and the legal reasoning articulated in the relevant judicial decision.

These findings are consistent with Mahmud, who emphasizes the limitations of asset recovery when law enforcement authorities fail to identify and seize assets legally subject to forfeiture.¹² The present study extends this discussion by identifying the separation of marital property as a critical issue in asset recovery proceedings. The studies by Evander and Harefa and Supardi are also relevant because they examine third-party protection and the absence of uniform standards for assessing good faith.¹³ Meanwhile, Wiguna directly addresses the legal certainty of prenuptial and postnuptial agreements in corruption cases. Building on these studies, the present research examines the interaction among the evidentiary weight of authentic deeds, the legality of asset provenance, and the limits of state authority to seize or forfeit property.¹⁴

Legal certainty cannot be achieved merely by recognizing the existence of a marital agreement. It also requires investigative and evidentiary procedures capable of distinguishing lawfully acquired personal assets from those connected to criminal activity. The protection of property rights and the recovery of state assets are not inherently incompatible objectives. They can be reconciled through an individualized assessment of each asset, a comprehensive evaluation of the available evidence, and effective legal mechanisms that allow third parties to assert and defend their ownership rights.

A marital agreement executed as an authentic deed serves as an evidentiary instrument for establishing the separation of assets and plays an important role in protecting lawfully acquired property. However, its evidentiary force is not absolute and does not prevent the state from tracing assets suspected of being connected to corruption. The scope of legal protection depends on the validity of the agreement, the provenance of the assets, their potential connection to criminal activity, and the good faith of the owner. Although a marital agreement provides a legal basis for establishing the separation of marital property, the protection afforded to specific assets ultimately depends on evidence of ownership and the lawfulness of their origin. This approach preserves the evidentiary function of authentic deeds without allowing them to be used to circumvent criminal accountability, while ensuring that efforts to recover state assets do not disregard the legitimate property rights of third parties.

3.2. Legal Criteria for Determining Asset Provenance, Third-Party Good Faith, and the Connection Between Assets and Criminal Offenses

¹² Mahmud, "Problematika Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi."

¹³ Evander, "Keberatan Pihak Ketiga Yang Beritikad Baik Terhadap Perampasan Aset Dalam Tindak Pidana Korupsi"; Harefa and Supardi, "Perampasan Aset Tindak Pidana Pencucian Uang."

¹⁴ Wiguna, "Kekuatan Mengikat Perjanjian Kawin Sebagai Dasar Perlindungan Harta Benda Suami Istri Terhadap Tindak Pidana Korupsi."

The assessment of an asset cannot be based solely on the name appearing on ownership documents or the existence of a marital property agreement. Instead, the analysis must consider the source of funds, the timing of acquisition, the connection between the asset and the alleged criminal offense, the owner's good faith, and the ability to substantiate ownership claims through judicial proceedings.

a) The Lawfulness of Asset Provenance as a Primary Criterion

The lawfulness of an asset's origin is a fundamental criterion for determining whether it is entitled to protection against seizure or forfeiture. Article 28H(4) of the 1945 Constitution of the Republic of Indonesia guarantees the right to private property and prohibits its arbitrary expropriation. However, this constitutional guarantee does not preclude the state from forfeiting assets that are legally established as proceeds or instrumentalities of criminal activity. Article 18(1)(a) and (b) of Law No. 31 of 1999, as amended by Law No. 20 of 2001, provides a legal basis for the forfeiture of property used in or obtained through corruption, as well as the recovery of its equivalent value, subject to the applicable legal requirements.

The provenance of an asset should be examined through ownership documents, transaction records, bank statements and fund flows, the owner's income records, and the date of acquisition. Income from lawful employment or business activities, inheritances, gifts, and investments may substantiate a claim of lawful ownership, provided that the claim is supported by verifiable evidence. Conversely, registering an asset in a defendant's spouse's name does not, by itself, establish that the funds used to acquire it originated from a lawful source. Similarly, a marital property agreement establishing the separation of assets confirms the existence of a private legal arrangement but does not automatically establish the lawful origin of any specific asset claimed as separate property.

In the context of Supreme Court Decision No. 5009 K/Pid.Sus/2025, the separation of assets between Harvey Moeis and Sandra Dewi highlights the importance of distinguishing formal ownership from the economic source of the funds used to acquire property. Nevertheless, the assessment of any particular asset must remain grounded in the facts, legal reasoning, and relevant evidence presented in the judicial decision. It would therefore be inaccurate to conclude that all assets held in the names of a defendant and their spouse constitute proceeds of corruption. Conversely, the existence of a prenuptial or marital property agreement does not render such assets categorically immune from seizure or forfeiture.

b) The Connection Between Assets and the Criminal Offense

The second criterion concerns the factual and legal connection between an asset and the criminal offense under investigation. Article 18(1)(a) of the Law on the Eradication

of Corruption Crimes provides for the forfeiture of property used in or obtained through corruption, including substitute property where applicable under the law. Meanwhile, Article 39(1) of the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHAP) identifies categories of property subject to seizure, including property suspected of having been obtained through a criminal offense or otherwise connected to such an offense, in accordance with the applicable statutory provisions. Accordingly, asset seizure and forfeiture must not be based solely on the marital relationship or personal proximity between an asset owner and a defendant. Rather, these measures must rest on an adequate legal basis and evidence establishing the relevant connection between the assets and the criminal proceedings.

Several indicators may be considered in establishing this connection, including the source of funds used to purchase the asset, the movement of funds through financial transactions, the timing of the acquisition, the use of the asset in committing the offense, and the possibility that the asset represents the transformation or appreciation of property derived from criminal activity. These indicators must be assessed cumulatively and in context rather than treated as independent or automatic proof of criminal involvement. For example, the acquisition of an asset during the period in which an offense was committed may justify further investigation; however, the timing of the transaction alone is insufficient to establish that the asset originated from criminal activity.

This criterion emphasizes that asset recovery must target property having a legally demonstrable connection to a criminal offense while safeguarding the rights of parties who can establish independent ownership and a legitimate source of acquisition. Accordingly, asset tracing and the analysis of financial flows are essential to determining whether seized property is connected to the criminal offense under investigation.¹⁵

c) Third-Party Good Faith as a Basis for Legal Protection

The third criterion is the good faith of a third party, which refers to circumstances in which an asset owner or holder has lawfully acquired and maintained their property rights without participating in, or having relevant knowledge of, any connection between the asset and a criminal offense. Article 19(1) and (2) of the Law on the Eradication of Corruption Crimes, read in conjunction with Supreme Court Regulation No. 2 of 2022, establishes an objection mechanism for third parties adversely affected by court decisions ordering the forfeiture of property that does not belong to the defendant. These provisions demonstrate that the state's interest in combating corruption must be balanced against the protection of individuals who have legitimate ownership claims.

¹⁵ Nashriana Nashriana et al., "Urgensi Model Penelusuran Aset (Asset Tracing) Hasil Tindak Pidana Pencucian Uang Dalam Perkara Tindak Pidana Korupsi Pt. Asuransi Jiwasraya Oleh Kejaksaan Republik Indonesia," *Peshum: Jurnal Pendidikan, Sosial Dan Humaniora* 5, no. 4 (2026): 8799–813, <https://doi.org/10.56799/peshum.v5i4.19012>.

Good faith cannot be presumed merely because an asset owner is the defendant's spouse, appears on the relevant ownership documents, or is a party to a marital property agreement. Instead, good faith must be assessed on the basis of objective evidence, including the owner's source of income, involvement in relevant transactions, knowledge of the origin of the funds, the reasonableness of the asset acquisition process, and any actions intended to conceal or divert the proceeds of crime.¹⁶ All such evidence must be evaluated comprehensively in accordance with the applicable rules of evidence.

In the case involving Harvey Moeis, assets registered in Sandra Dewi's name or under her control illustrate that marital status alone does not establish involvement in a criminal offense. However, it also does not automatically exclude the possibility that the assets are connected to such an offense. Determining whether a third party acted in good faith therefore requires an examination of the origin and acquisition of each individual asset. Legal protection should be based on established facts rather than assumptions arising from familial relationships.

d) Validity of Marital Property Agreements and the Ability to Substantiate Ownership Claims

The validity of a marital property agreement and the timing of its execution constitute important supplementary criteria in assessing asset ownership. Article 29 of Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, must be interpreted in conjunction with Constitutional Court Decision No. 69/PUU-XIII/2015, which recognizes the possibility of executing a marital agreement before or during marriage. However, the formal validity of an agreement does not automatically establish that all assets identified or claimed as separate property originated from lawful sources.

The date of execution, the consistency of the agreement's provisions with the factual circumstances, and the manner in which the agreement has been implemented are relevant to determining whether it was genuinely intended to regulate the spouses' property relations or was instead used to conceal or divert assets. Nevertheless, the execution of an agreement shortly before an investigation or the emergence of allegations of criminal conduct does not, by itself, establish misuse. Such a conclusion must be supported by sufficient evidence.

The ability to substantiate ownership claims provides the evidentiary link among these criteria. Ownership documents, the authentic deed embodying the marital agreement, proof of income, transaction records, and other relevant information must be evaluated according to their relevance and probative value. Although a marital agreement may strengthen a claim that property has been separated, evidence

¹⁶ Nasfiahtul Istani Daely et al., "Prinsip Itikad Baik Dalam Pengalihan Hak Atas Saham Pada Perseroan Terbatas Tertutup Melalui Mekanisme Jual Beli: Analisis Putusan-Putusan Pengadilan," *Jurnal Hukum Lex Generalis* 6, no. 4 (2026): 1–30, <https://doi.org/10.56370/jhlg.v6i4.2670>.

concerning the source of funds and the movement of transactions remains essential to determining the lawfulness of asset provenance and any potential connection to a criminal offense.

This analysis is consistent with Mahmud's discussion of asset recovery, understood as the recovery of property derived from criminal activity to address financial losses suffered by the state.¹⁷ It also relates to Siregar's emphasis on establishing the nexus between assets and criminal offenses,¹⁸ as well as Ali et al.'s argument that protecting third parties acting in good faith is necessary to balance the state's interests against individual property rights.¹⁹ Furthermore, Amallia et al., in their discussion of the evidentiary weight of authentic deeds, reinforce the principle that compliance with the formal requirements for executing an authentic deed must be distinguished from the evidentiary requirements for establishing the source of funds used to acquire an asset.²⁰

This study contributes to the existing literature by integrating these considerations into a unified framework for evaluating assets separated under a marital agreement. The lawfulness of asset provenance, the potential connection between assets and criminal activity, third-party good faith, the validity of the agreement, and the sufficiency of supporting evidence must not be assessed in isolation. Rather, these criteria are complementary and should be considered collectively to determine whether particular assets warrant legal protection or may lawfully be subject to seizure or forfeiture.

Asset protection cannot be determined on the basis of a single formal criterion. A marital property agreement establishes the legal framework governing ownership between spouses; however, it does not eliminate the need to trace the source of funds or establish whether the assets are connected to a criminal offense. At the same time, the state's authority to order asset forfeiture must be exercised on a sound legal basis and supported by relevant evidence, rather than justified solely by the fact that the assets are held by members of the defendant's family.

Five principal legal criteria should be considered when assessing asset protection in corruption cases: (1) the lawfulness of the assets' origin; (2) the existence of a connection between the assets and the criminal offense; (3) the good faith of third parties; (4) the validity, timing, and purpose of the marital property agreement; and (5) the ability to substantiate ownership rights and asset provenance in judicial proceedings.

¹⁷ Mahmud, "Problematisasi Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi."

¹⁸ Gomgom TP Siregar, "Pengembalian Aset (Aset Recovery) Pelaku Tindak Pidana Korupsi," *Unes Law Review* 6, no. 2 (2023): 4560–71, <https://doi.org/10.31933/unesrev.v6i2.1212>.

¹⁹ Mahrus Ali et al., "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution," *Cogent Social Sciences* 8, no. 1 (2022): 2069910, <https://doi.org/10.1080/23311886.2022.2069910>.

²⁰ Ainun Amallia et al., "Pertanggungjawaban Pidana Notaris Terhadap Pemalsuan Akta Kuasa Menjual (Studi Putusan MA Nomor 1209 K/Pid/2022)," *Jurnal Media Hukum* 14, no. 1 (2026): 216–27, <https://doi.org/10.59414/jmh.v14i1.1354>.

These criteria must be applied collectively and assessed individually for each disputed asset.

Supreme Court Decision No. 5009 K/Pid.Sus/2025 underscores that the separation of marital property does not confer immunity from asset seizure or forfeiture. Conversely, being the spouse of a defendant does not, by itself, justify presuming that all assets owned by that spouse derive from criminal activity. Legal protection must instead be determined through an individualized assessment of ownership, the source of acquisition, the connection between the assets and the criminal offense, the owner's good faith, and the available evidence. This approach seeks to balance the effective recovery of assets derived from corruption with the protection of the property rights of third parties who have lawfully acquired their assets.

3.3. The Role and Responsibilities of Notaries in Applying the Principle of Prudence When Drafting Marital Agreements

The effectiveness of a marital agreement depends not only on the authentic form of the deed but also on the diligence exercised by the notary in verifying the identities of the parties, supporting documents, intentions of the parties, clarity of contractual provisions, and consistency of the agreement with applicable legal requirements. The principle of prudence serves as a preventive safeguard that strengthens legal certainty and reduces the risk of disputes over asset ownership.

a) Verification of Identities, Documents, and the Legal Basis of Asset Ownership

The principle of prudence is primarily implemented through the verification of the parties' identities and legal capacity, the validity of the documents submitted, and the clarity of the legal intentions to be incorporated into the deed. This obligation is grounded in Article 16(1)(a) of Law No. 2 of 2014, which amends Law No. 30 of 2004 concerning the Office of the Notary. This provision requires notaries to act in a trustworthy, honest, careful, independent, and impartial manner while safeguarding the interests of the parties involved in the relevant legal transaction. Accordingly, a notary's responsibilities extend beyond merely recording the parties' statements in a formal deed; they also include conducting appropriate examinations within the scope of their legal authority and professional obligations.

Such examinations should address the clarity of the agreement's subject matter, including the types of assets involved, their ownership status, the legal basis for their acquisition, and the agreed-upon arrangements for separating marital property. When an agreement concerns high-value assets or property acquired during marriage, the notary should ensure that the relevant provisions clearly specify how those assets are to be treated in accordance with the parties' intentions. Supporting documentation may

include ownership certificates, transaction records, and other documents reasonably necessary to clarify the legal status of the assets covered by the agreement.

However, this obligation does not require a notary to guarantee the absolute substantive accuracy of every statement made by the parties. A distinction must be maintained between formal verification and the professional responsibility to investigate apparent inconsistencies or circumstances that reasonably warrant further scrutiny. When discrepancies in documents, questionable identities, or ambiguous ownership arrangements arise, the notary should seek clarification and request additional supporting documents before proceeding with the execution of the deed. This approach positions the notary as a gatekeeper of legal certainty without transforming the notary into an investigator responsible for determining whether a criminal offense has occurred.

b) Clarity of Contractual Provisions and Prevention of the Misuse of Marital Agreements

The principle of prudence must also be reflected in the drafting of contractual provisions in marital agreements. Article 29 of the Marriage Law, as amended by Law No. 16 of 2019 and interpreted in conjunction with Constitutional Court Decision No. 69/PUU-XIII/2015, provides the legal basis for marital agreements. Notaries must ensure that the provisions clearly and consistently reflect the parties' intentions and do not contravene applicable law.

Clearly drafted provisions addressing premarital assets, property acquired during marriage, income, investments, and assets obtained through transfers of ownership can reduce ambiguity and minimize the potential for disputes.²¹ Furthermore, a marital agreement must distinguish between the regulation of civil property relations between spouses and the evidentiary requirements for establishing the origin of the funds used to acquire particular assets. A contractual separation of property does not, by itself, establish that every asset was lawfully acquired or is unrelated to criminal activity.

Accordingly, when circumstances indicate that an agreement may have been designed to conceal ownership, transfer assets to evade legal obligations, or incorporate information reasonably suspected of being false, the notary should seek clarification and must not disregard applicable legal and ethical obligations. The timing of an agreement's execution may constitute a relevant contextual factor in assessing its purpose, but timing alone does not establish misuse. Any such assessment must consider the circumstances as a whole, including the agreement's intended purpose, the consistency of its provisions, and the supporting documentation.

²¹ Jannatul Wirdha et al., "Tinjauan Yuridis Pembagian Harta Bawaan Suami Dan Istri Pasca Perceraian: Studi Putusan Nomor 1323/Pdt.G/2025/PA.Pml," *Indonesian Journal of Multidisciplinary on Social and Technology* 4, no. 3 (2026): 5650–56, <https://doi.org/10.69693/ijmst.v4i3.13636>.

c) Professional Responsibilities and the Limits of Notarial Liability

A notary's professional responsibilities encompass compliance with the regulations governing the profession, diligence in drafting deeds, and maintaining the integrity of authentic instruments. Article 65 of the Law on the Office of the Notary (Undang-Undang Jabatan Notaris) addresses a notary's responsibility for deeds executed by the notary, including after the notarial protocol has been transferred in accordance with applicable law. However, the application of this provision must account for the nature of the notarial act, the type of error involved, and the applicable legal grounds for liability. It does not establish that a notary is automatically liable for every subsequent dispute involving the assets of the parties.

Amallia et al., in their discussion of the falsification of authentic deeds and the scope of notarial liability, underscore the importance of verification and compliance with professional procedures. A notary who drafts a deed based on forged documents or false information may face legal consequences if an error or personal involvement satisfying the applicable requirements for liability is established.²² Conversely, when the parties conceal material facts and the notary has duly fulfilled their professional obligations, liability cannot automatically be imposed merely because the information is subsequently proven to be false.

The limits of notarial liability must therefore be determined proportionately. Although notaries are required to conduct legally mandated verifications and respond appropriately to circumstances that raise legitimate concerns, they cannot be treated as absolute guarantors of facts concealed by the parties or of the outcomes of subsequent criminal proceedings.

d) Relevance to the Case Involving Harvey Moeis and Sandra Dewi

The importance of the principle of prudence is evident in the context of the marital property agreement associated with the case involving Harvey Moeis and Sandra Dewi. This case illustrates that although a marital agreement can clarify the ownership arrangements between spouses, it does not automatically determine the legal status of every asset examined in criminal proceedings. Establishing whether an asset was lawfully acquired or is connected to a criminal offense requires an examination of the relevant evidence by law enforcement authorities and the courts, each acting within its respective jurisdiction.

Notaries contribute by establishing a clear documentary record of agreements concerning the separation of assets, including the timing and scope of those agreements. Careful drafting and thorough documentation of the legal basis for executing a deed can

²² Amallia et al., "Pertanggungjawaban Pidana Notaris Terhadap Pemalsuan Akta Kuasa Menjual (Studi Putusan MA Nomor 1209 K/Pid/2022)."

help distinguish civil property ownership issues from questions concerning the provenance of assets. Nevertheless, a notary cannot guarantee that assets covered by an authentic deed will be immune from seizure or forfeiture. If evidence establishes that an asset is connected to a criminal offense and satisfies the applicable legal requirements for seizure or forfeiture, the existence of the deed does not, by itself, preclude the state from taking lawful action.

This analysis is consistent with Payuyu's research on the legal protection of marital property through formal agreements, which identifies such agreements as instruments for regulating property relations and enhancing legal certainty.²³ It also aligns with the work of Khadijah et al., who emphasize the importance of notarial due diligence and the potential legal consequences of improperly exercising professional authority.²⁴ The present study bridges these perspectives by examining the relationship between the quality of deed drafting and the evidentiary requirements for establishing asset provenance within the context of asset seizure in corruption cases.

The legal protection afforded by a marital agreement rest on two complementary elements: the precision of the legal instrument and the reliability of the supporting evidence. Although a carefully drafted deed can clarify the separation of assets, it cannot replace the requirement to establish the source of funds and determine whether the assets are connected to a criminal offense when these matters are disputed. A notary's responsibilities in drafting marital agreements include verifying identities and supporting documents, explaining the legal consequences of the agreement, formulating clear and consistent provisions, and responding appropriately to apparent irregularities or purposes that may contravene the law. Notarial responsibility requires the exercise of professional authority with due diligence, independence, and compliance with applicable professional standards, while maintaining a distinction between errors attributable to the notary and false information concealed by the parties.

The principle of prudence does not guarantee immunity from asset seizure or forfeiture. Rather, it functions as a preventive safeguard that strengthens legal certainty and improves the evidentiary quality of marital agreements. Its proper application helps ensure that these agreements serve their legitimate purpose of regulating marital property rather than being misused to shield assets connected to criminal activity from lawful enforcement. Ultimately, notarial professionalism must be exercised in a manner that respects legitimate property rights while recognizing the state's interest in enforcing the law and recovering assets derived from corruption.

4. CONCLUSION

²³ Annisa Cahya Kirana Payuyu, "Perlindungan Hukum Terhadap Harta Perkawinan Dengan Pembuatan Akta Perjanjian," *Lex Administratum* 12, no. 4 (2024): 1–12.

²⁴ Khadijah Khadijah et al., "Forgery of Authentic Instruments by Notaries and the Scope of Legal Liability," *Jurnal Ilmu Hukum Kyadiren* 7, no. 2 (2026): 1504–17, <https://doi.org/10.46924/jihk.v7i2.421>.

A marital agreement has evidentiary force as an authentic deed but does not confer absolute immunity from asset seizure or forfeiture. The scope of legal protection depends on the validity of the agreement, the lawful origin of the assets, the good faith of third parties, the connection between the assets and any criminal offense, and the sufficiency of the supporting evidence. Judicial decisions must be interpreted in light of the issues examined and the scope of the proceedings; they should not be construed as substantively determining every aspect of asset ownership beyond what was actually adjudicated. Notaries are responsible for verifying identities and supporting documents, drafting clear contractual provisions, and identifying potential indicators of misuse, but they cannot guarantee the substantive accuracy of all information provided by the parties. This study contributes to the development of legal scholarship on marriage, evidence, and asset recovery by integrating the evidentiary function of authentic deeds with the legal criteria governing asset protection in corruption cases. However, its findings are limited by the examination of a single judicial decision and the use of a normative legal research approach. Further research should develop more operational due diligence guidelines for notaries and incorporate comparative analyses of judicial decisions and empirical investigations of notarial practice.

REFERENCES

Journals

- Akbar, Muhammad Fajar, and Zainudin Hasan. "Perampasan Aset Dalam Tindak Pidana Korupsi Sebagai Instrumen Preventif Dan Represif Dalam Upaya Pemberantasan Korupsi Di Indonesia." *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 3, no. 3 (2026): 234–44. <https://doi.org/10.62383/aliansi.v3i3.1656>.
- Ali, Mahrus, Andi Mulyono, Wawan Sanjaya, and Ari Wibowo. "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution." *Cogent Social Sciences* 8, no. 1 (2022): 2069910. <https://doi.org/10.1080/23311886.2022.2069910>.
- Amallia, Ainun, Edi Tarsono, and Ali Abdullah. "Pertanggungjawaban Pidana Notaris Terhadap Pemalsuan Akta Kuasa Menjual (Studi Putusan MA Nomor 1209 K/Pid/2022)." *Jurnal Media Hukum* 14, no. 1 (2026): 216–27. <https://doi.org/10.59414/jmh.v14i1.1354>.
- Arwaa, Berlian Zahra, and Abdul Salam. "Kedudukan Harta Pribadi Sebagai Bentuk Ganti Rugi Atas Perbuatan Melawan Hukum Pasangan: Perbandingan Hukum Indonesia Dan Prancis." *Lex Patrimonium* 4, no. 2 (2025): 1–23.
- Daely, Nasfiahtul Istani, Hasim Purba, and Mahmud Siregar. "Prinsip Etikad Baik Dalam Pengalihan Hak Atas Saham Pada Perseroan Terbatas Tertutup Melalui Mekanisme Jual Beli: Analisis Putusan-Putusan Pengadilan." *Jurnal Hukum Lex Generalis* 6, no. 4 (2026): 1–30. <https://doi.org/10.56370/jhlg.v6i4.2670>.

- Ervinda, Ervinda, Andika Wijaya, and Satriya Nugraha. "Kedudukan Perjanjian Prenuptial Terhadap Harta Perkawinan Dalam Sistem Hukum Perdata Indonesia." *Journal of Innovative and Creativity* 5, no. 3 (2025): 37091–99. <https://doi.org/10.31004/joecy.v5i3.6281>.
- Evander, Evander. "Keberatan Pihak Ketiga Yang Beritikad Baik Terhadap Perampasan Aset Dalam Tindak Pidana Korupsi." *Jurist-Diction Law Journal* 7, no. 1 (2024): 21–38. <https://doi.org/10.20473/jd.v7i1.54674>.
- Harefa, Beniharmoni, and Supardi Supardi. "Perampasan Aset Tindak Pidana Pencucian Uang: Perlindungan Pihak Ketiga Beritikad Baik Dalam Perspektif Hukum Indonesia." *Risalah Hukum* 21, no. 2 (2025): 135–49. <https://doi.org/10.30872/risalah.v21.i2.2008>.
- Khadijah, Khadijah, Edi Tarsono, Utji Sri Wulan Wuryandari, and Agus Surono. "Forgery of Authentic Instruments by Notaries and the Scope of Legal Liability." *Jurnal Ilmu Hukum Kyadiren* 7, no. 2 (2026): 1504–17. <https://doi.org/10.46924/jihk.v7i2.421>.
- Lase, Sandra Putri Olivia, Silawati Dayang Ganjar, Ermania Widjajanti, and Novi Eko Baskoro. "Penyitaan Aset Sebagai Upaya Pemulihan Kerugian Negara Dalam Proses Penyelesaian Perkara Tipikor: Studi Kasus Kasus Korupsi E-KTP Oleh Setya Novanto." *Locus Journal of Academic Literature Review* 4, no. 9 (2025): 708–17. <https://doi.org/10.56128/ljoalr.v4i9.788>.
- Mahmud, Ade. "Problematika Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi." *Jurnal Yudisial* 11, no. 3 (2018): 347–66. <https://doi.org/10.29123/jy.v11i3.262>.
- Nashriana, Nashriana, Hamonangan Albariansyah, and Fhideal Andik Hibatullah. "Urgensi Model Penelusuran Aset (Asset Tracing) Hasil Tindak Pidana Pencucian Uang Dalam Perkara Tindak Pidana Korupsi Pt. Asuransi Jiwasraya Oleh Kejaksaan Republik Indonesia." *Peshum: Jurnal Pendidikan, Sosial Dan Humaniora* 5, no. 4 (2026): 8799–813. <https://doi.org/10.56799/peshum.v5i4.19012>.
- Palandi, Afdila E., Marthin L. Lambonan, and Yumi Simbala. "Kajian Terhadap Penyitaan Aset Istri Yang Disebabkan Oleh Suami Tersangka Kasus Korupsi Menurut Undang-Undang No. 19 Tahun 2019 Tentang Komisi Pemberantasan Tindak Pidana Korupsi." *Lex Administratum* 13, no. 3 (2025): 1–14.
- Payuyu, Annisa Cahya Kirana. "Perlindungan Hukum Terhadap Harta Perkawinan Dengan Pembuatan Akta Perjanjian." *Lex Administratum* 12, no. 4 (2024): 1–12.
- Sidauruk, Tambos Arthur, Ismail Ismail, and Gradios Nyoman Tio Rae. "Perlindungan Hukum Terhadap Aset Milik Pihak Ketiga Atas Tindakan Penyitaan Dalam Perkara Pidana." *Jurnal Hukum Lex Generalis* 7, no. 12 (2026): 1–26. <https://doi.org/10.56370/jhlg.v7i12.4781>.

Siregar, Gomgom TP. "Pengembalian Aset (Aset Recovery) Pelaku Tindak Pidana Korupsi." *Unes Law Review* 6, no. 2 (2023): 4560–71. <https://doi.org/10.31933/unesrev.v6i2.1212>.

Wirdha, Jannatul, Beggy Tamara, and Raendhi Rahmadi. "Tinjauan Yuridis Pembagian Harta Bawaan Suami Dan Istri Pasca Perceraian: Studi Putusan Nomor 1323/Pdt.G/2025/PA.Pml." *Indonesian Journal of Multidisciplinary on Social and Technology* 4, no. 3 (2026): 5650–56. <https://doi.org/10.69693/ijmst.v4i3.13636>.

Thesis

Wiguna, Ervan. "Kekuatan Mengikat Perjanjian Kawin Sebagai Dasar Perlindungan Harta Benda Suami Istri Terhadap Tindak Pidana Korupsi." Universitas Pasundan, 2026. <https://repository.unpas.ac.id/82689/>.

Books

Philipus M. Hadjon. *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya*. Bina Ilmu, 1987.