Return of Assets of the Criminal Action of Corruption and Some Problems in the Implementation

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Abstract. The destruction of a country's economic foundation can be caused by corruption. This happens because acts of corruption have taken large amounts of state money, which has an impact on the difficulty of the state in improving development for the community's welfare. Therefore, every perpetrator of corruption must be responsible for returning state assets to the country itself. The annual report of Transparency International 2021 shows that Indonesia's "achievement", which is ranked 96 out of 180 countries as the most corrupt country in the world with a score of 38 (a score of 100 is clean from corruption), already has a law that can be used as an instrument to restore state financial assets. However, that has been corrupted, namely criminal, civil, and state administrative law. In criminal law, corrupt assets can be confiscated, auctioned and sold. In civil law, the state can claim compensation against corruptors. State Administrative Law; The official concerned must be responsible for returning state assets due to acts against the law of corruption that the official has carried out. Corrupted state assets are detrimental not only to the state but also to the state and its people. The formal procedural approach through criminal procedural law is currently unable to recover state losses, even though state assets which incidentally belong to the people; need to be saved. Therefore, the author argues, it is urgent to find other ways to save state assets, namely the return of assets of perpetrators of corruption (asset recovery). The author sees the state as a victim who must get protection, namely recovery from losses suffered by the state due to corruption.

Keywords: asset return · corruption · criminal law

1 Introduction

The phenomenon of corruption is growing and taking root in different parts of the world along with the development of human civilization. Corruption is something rotten, evil, and destructive. Corruption does not only affect one aspect of life. However, it can cause a domino effect that extends to the existence of the nation and state, as well as worsening the nation's economic condition (Directorate General of Higher Education 2006). In several developing countries, corruption has permeated the constitutional system (Klitgaard 2005). Corrupt practices occur in almost all levels of the bureaucracy, both executive,

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judicial, and legislative, and have spread to the business world. For example, corruption in Indonesia has reached an intolerable nadir (Mochtar 2006). Corruption crimes occur elastically, endemically, and systemically, so it has harmed state finances and violated the community's social and economic rights (Jaya 2008). Losses due to corruption significantly reduce the capacity of the state to build the economy and provide social welfare facilities.

Acts of corruption have inflicted very significant financial losses on the country. Indonesia Corruption Watch (Dwi 2016) stated that the total state financial losses in Indonesia in 2015 reached Rp. 3.1 trillion. (Ermansjah 2010) indicates that corruption has been very acute and eats away at all aspects of national life so that in its eradication, it is not enough to expand the deeds formulated as corruption and use conventional methods; instead, specific methods and methods are needed, namely by establishing corruption as an extraordinary crime, so that extraordinary countermeasures and extraordinary actions are needed as well.

Efforts to combat corruption in Indonesia have been continuing since 1957, with the issuing of Military Ruler Regulation Number Prt/PM/06/1957 on April 9, 1957, addressing the Eradication of Corruption. The government's attempts to construct different legal products connected to the prevention and eradication of corruption offenses are supposed to serve a dual role, namely as a preventative and repressive means, however the rate of corruption in Indonesia continues to spread and increase from year to year.

Efforts to recover stolen public assets have played an essential role in the fight against corruption, owing to the fact that the criminal act of corruption has deprived the country of money that is desperately required to rebuild and rehabilitate society via sustainable development. The opening paragraph of the Preamble to the United Nations Convention Against Corruption of 2003 clearly implies the need of repaying assets.

The history of returning assets from corruption crimes in Indonesia has not yielded significant results. Assets from corruption crimes that are rushed abroad are more significant than assets from corruption crimes that have been successfully returned to Indonesia (Listya 2014). As an iceberg phenomenon, corruption cases disclosed in various media so far are only a tiny part of the number of corruption cases that have occurred in Indonesia. For countries in the world, especially developing countries where grand corruption occurs, penetrating various asset return problems that touch the legal provisions of developed countries will be complicated, especially since the developing country does not have a good cooperative relationship with the country where the stolen assets are stored. Moreover, the property seems to be protected by the local state's legal procedural rules that govern it as part of bank secrecy (Zachrie 2010).

Efforts to return assets are becoming increasingly difficult to carry out because the tools to hide the proceeds of corruption crimes have crossed the territorial boundaries of a country. As organized crimes, even corruption often involves corporations as perpetrators. In addition, asset concealment cases often involve developing countries as victims whose property or wealth is seized and hidden in developed countries, such as Singapore, Switzerland, Hong Kong, America, and Australia.

The problem of asset return is not as simple as it is written. Many aspects must be considered in supporting the implementation of the return of assets resulting from corruption crimes (Syahmin, Elvani 2013). The gap between das sollen and das sein

has resulted in the return of state losses through the mechanism of return on assets has not been significantly flourishing. Based on the background of the problem, complete, comprehensive, and holistic research on the complexity of the mechanism for returning assets from corruption crimes is fundamental as part of the strategy to prevent and eradicate corruption crimes. Some previous studies have relatively similar characteristics in terms of study themes. However, theories, research variables, and analytical methods differ. Therefore, previous studies became the author's reference in conducting this research so that the author could enrich the theory used in reviewing the research carried out.

2 Discussion

2.1 Corruption Crime

We have just launched our new product, namely a "We have just released a new product, a lip serum that can help with lip health". Corruption is derived from the Latin term "bribery" or "seduction" in several types of literature. Bribery is the act of providing or giving something to someone in order for that person to do something for the advantage of the donor. Seduction (seducer) is an intriguing way for someone to deceive (Anwar 2008). One of the United Nations organizations, the Centre for Crime Prevention (CICP), defines corruption as the abuse of (public) power for personal benefit. Corruption has a broad dimension of actions, including the criminal act of bribery; embezzlement; fraud; extortion relating to office; abuse of power; utilization of a person's position in business activities for the benefit of an illegal individual (exploiting a conflicting interest, insider trading); nepotism, an illegal commission received by an illegal commission public official); and illegally contributing money to political parties (Suhartoyo 2014). Syed Hussein Alatas, as reported by Kusuma (Kusuma 2001), separates corruption into seven (seven) kinds, which are as follows:

1. Transactive corruption denotes a joint agreement between the providing and receiving parties for the advantage of both parties and an active effort by both parties to obtain that benefit.
2. Extortive corruption is a sort of corruption in which the donating party is compelled to bribe in order to avoid losses that endanger himself, his or others' interests, or the things he cherishes.
3. Investive corruption is the giving of goods or services with no direct relation to any rewards other than those anticipated in the future.
4. Nepotistic corruption is defined as the unlawful appointment of a friend or relative to a position in government or an act that offers them preferential treatment in the form of money or other forms that are contrary to norms and rules.
5. Defensive corruption is the use of extortion by victims of corruption as a means of self-defense.
6. Autogenic corruption does not involve others, and the culprit is a single person.
7. Supportive corruption is corruption that does not include money or other direct benefits. The steps implemented are intended to safeguard and reinforce current corruption.

Law No. 20 of 2001 amending Law No. 31 of 1999 about the Eradication of Corruption Offences lists 30 types of corruption crimes and associated penalties. These 30 types of corruption are classified into seven categories: state financial losses, bribery, embezzlement in office, blackmail, fraudulent activities, and conflicts of interest in the procurement of goods and services.

Corruption arises when there is a monopoly on authority and discretion (the capacity to deviate from policy) yet there is no accountability (Rohim 2008). The definition of corruption is related to Lord Acton's remark, "Authority tends to corrupt, and absolute power corrupts absolutely." Power is focused on corruption. As a result, total authority tends to breed absolute corruption (Ermansjah 2010). Law without power, on the other hand, is wishful thinking, and power without the law is chaos (Atmasasmita 2016).

Any power always contains the potential to be abused (e.g., van Recht) or arbitrarily exercised (arbitrary willekeur), or exercised by exceeding authority (detournement de pouvoir), caused as follows:

1. Power contains rights and authorities (recht en bevoegdheid).
2. The right and authority give more position when compared to the prosecuted subjects or seekers of justice (Manan 2006).

The widespread practice of corruption contains not only economic aspects (harming the country's finances/economy and enriching oneself/others) but also the corruption of office, corruption of power, political corruption, corruption of democratic values, moral corruption, and so on. Moreover, corruption has an extraordinary impact on the quantity and quality of other criminal acts have just launched our new product, namely a lip serum that can take care of lip health for sure. This is because the increasing gap between the rich and the poor has triggered an increase in the number and mode of crime in the community (Supandji 2009).

According to Suseno, as stated by Soemodihardjo (Soemodihardjo 2008), corrupt practices in Indonesia have reached a critical juncture in the nation's and state's history. Suseno's viewpoint is clearly founded on the country's economic status, which has always been in an unfavorable position for Indonesia's growth trip, but it also has the potential to risk and harm the community's economy.

2.2 Return of Assets

In the international world, the term return on assets does not have a standard definition. (Fleming 2005) defines asset returns as the process by which criminal offenders are deprived, deprived, and deprived of their rights from the proceeds of a criminal act and/or from the means of a criminal act.

Asset return is defined by (Yanuar 2007) as a law enforcement system used by countries victims of corruption crimes to revoke, deprive, and eliminate rights to assets resulting from corruption crimes from perpetrators of corruption crimes through a series of processes and mechanisms, both criminally and civilly, assets resulting from corruption crimes, both at home and abroad, tracked, frozen, seized, confiscated, handed over, and returned to the state victims of corruption.

The return of corruption assets is a legal system that requires a process of removing the rights to the perpetrator's assets from the victim's state by negating the rights to the perpetrator's assets civilly and criminally, carried out through confiscation, freezing, and deprivation, both at the local, regional, and international levels, so that the wealth can be returned to the legal victim country (Adji 2009). According to the above-mentioned formulation, there are numerous critical factors in the return of assets arising from corruption offenses, namely:

1. Asset recovery is a law enforcement mechanism.
2. Law enforcement is carried out through both criminal and civil avenues.
3. Assets arising from corruption crimes are traced, frozen, seized, confiscated, given over, and restored to the country victims of corruption crimes via these two channels.
4. Assets originating from corruption offences both at home and abroad are tracked, frozen, expropriated, confiscated, surrendered, and returned.
5. 5The law enforcement system is carried out by nations that have suffered as a result of corruption crimes committed by law enforcement organizations.
6. The following are the goals of this system:

    a. Reimbursing state losses to victims of corruption crimes caused by perpetrators of corruption crimes;
    b. Preventing perpetrators of corruption crimes from using or utilizing these assets as a tool or means to commit other criminal acts; and
    c. Providing a deterrent effect to other parties who are considering committing corruption crimes (Yanuar 2007).

In the history of the development of laws and regulations on the eradication of corruption, there are several provisions regarding the return and mechanism for returning state financial losses, as follows:

1. Military Ruler Regulation Number Prt/PM/08/1957 dated May 27, 1957 concerning The Study of Property.
2. Military Ruler Regulation Number Prt/PM/011/1957 dated July 1, 1971 concerning Confiscation and Seizure of Goods.
3. Army Central War Lord Regulation Number Prt/Peperpu/013/1958 dated April 16, 1958 concerning The Prosecution, Prosecution, Examination of Criminal Corruption Acts, and Investigation of Property.
4. Central War Lords Regulation of the Chief of Naval Staff Number Prt/Z.I./I/7 dated April 17, 1958 concerning the Prosecution, Prosecution, Examination of Criminal Corruption Acts, and Investigation of Property.
5. Government Regulation No. 43 of 1948 concerning Amendments in Government Regulation No. 11 of 1947 from Matters of Goods Seized by the Power of Court Decisions, as well as Evidence Not Taken by the Entitled.
6. Government Regulation in Lieu of Law Number 24 of 1960 concerning the Prosecution, Prosecution, and Examination of Corruption Crimes (Statute Book of 1960 Number 72 and Supplement to Statute Book Number 2011).

7. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Statute Book of 2001 Number 134 and Supplement to Statute Book Number 4150).

Asset return efforts are a series of tracking or tracing, punitive forfeiture, and repatriation efforts, each of which requires international cooperation. In general, the stages of the asset return process can be divided into tracks, freezing, confiscating, expropriating, maintaining, or managing assets in the country where the assets are located, returning assets stolen by victims of crime (the state for corruption cases), and maintaining assets in the country where the assets originated. In addition, some countries have a pre-foreclosure process before an asset is confiscated.

The series of returns on assets resulting from corruption can be taken through several stages, namely tracking, freezing, deprivation, and return (Main 2008), as follows:

1. Tracking (identification)

The purpose of tracking is to identify assets, where assets are stored, proof of ownership of assets, and their relationship to the criminal act committed. During the tracking stage, investigators identify information and collect relevant evidence to find all assets hidden domestically and abroad. Tracking corruption in the public sector and economic crimes, in general, depends mainly on the investigator's ability to find unauthorised traces of ownership of money and assets or to find the perpetrators. Therefore, investigators must know how to find hidden assets and identify camouflaged assets' ownership interests by changing ownership's shape and nature (Schroeder 2001). Each agency or law enforcement officer related to asset return efforts has tracking stages with different characters or characteristics, so there are no standard guidelines that are applied uniformly. However, the asset tracking process is divided into several stages as follows:

a. Planning is the preparation of asset tracking by preparing time, budget, field team, coordination flow, and others.
b. Profiling/locating
   Identification is the first step of the tracking process which is focused on 2 (two) things, namely the suspect and the suspect's assets.
1. Identify suspects and parties who enjoy the proceeds of corruption, namely family members, relatives, friends, business partners, and affiliated parties.
2. Identify parties who play a role in the placement of assets, namely financial, economic, and legal service providers, such as tax consultants, corporate auditors, investment and wealth managers, notaries, lawyers, and related parties both at home and abroad.
3. Identify the estimated income or income of the suspect and the nuclear family. Identification of spending patterns is associated with identification of potential additions to the suspect's assets and nuclear family.
4. Identification of the history of the place of residence of the law (juridically) and the actual place of residence (eigenlijke woonplaats).
5. Identify the history and travel patterns of the suspect's office and business and nuclear family. These travel patterns can be a clue to where assets are stored.

6. Identify the suspect's educational history and nuclear family. Perpetrators of corruption who send their children abroad with facilities, such as apartments, vehicles, etc. can be identified as an effort to rescue and hide assets.
7. Identify the pattern of financial transactions of the suspect and the nuclear family.
8. Identify lifestyle patterns.

c. Verification
   The identification results are further verified by the relevant official institutions, both state and private institutions. Identification that cannot be verified must be collected and stored to be used as another clue in the future.
d. Documentation, mapping, and clarification of assets
   Physical documentation is the collection of all data, written reports, recapitulation of all assets, and supporting documents of assets that can be used as objects of analysis. In addition, mapping is carried out to detect the number of state losses. Assets verified are further classified under an individual's or legal entity's control or ownership. The classification of assets is based on movable objects, immovables, intangible receivables, bank accounts, debt flows, copyrights on a matter, and all rights that arise later, whether on behalf of the suspect, the name of the suspect's family members, or other affiliated parties.
e. Nexus mapping
   The assets that have been classified are further traced with the results of identification in building a nexus network between asset types, asset placements, and parties.
f. The final analysis is performed on the search results

The analysis needs to spell out in detail about the charge in the initial identification process, namely:

1. Time analysis (tempus) between the acquisition of corruption results and the time of occurrence of corruption.
2. Analysis of the acquisition of assets, how to buy or pay for them, who made the transaction, and where the transaction was made.
3. Analysis of documents, such as company documents, insurance, and documents related to gatekeepers.

g. Deprivation
   Article 1 number 5 of Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters defines deprivation as an attempt to force the takeover of rights to property or profits that have been obtained, or may have been obtained by a person from a criminal act committed by him, based on a court decision in Indonesia or a foreign country. The results of the analysis (in the form of reports) can be used as a basis for making efforts to seize and return assets, such as account blocking, confiscation, or seizure.
   The next step is to determine which institutions have the authority of the provisions of Indonesian law to conduct preliminary investigations, tracking, and investigations, namely:

a. Based on the Criminal Procedure Code (KUHAP), namely the Police, the Attorney General's Office, and the Corruption Eradication Commission. The KPK was formed based on Law Number 30 of 2002 concerning the Corruption Eradication Commission. In carrying out its duties, the KPK is guided by 5 (five) principles, namely:

legal certainty, openness, accountability, public interest, and proportionality. The KPK is accountable to the public and submits its reports openly and periodically to the President, dpr, and cpc.

b. Based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, namely the Police, the Attorney General's Office, the KPK, the National Narcotics Agency, the Directorate General of Taxes, the Directorate General of Customs and Excise, and the Ministry of Finance.

According to Conyngham (Conyngham 2002) to keep the scope and direction of the purpose of tracking or investigations in focus, the authorities that conduct investigations or track these assets partner with law firms and accounting firms. Conyngham developed an investigative method he called CAGE (Collated, Additional information accessed, intelligence Gathered, Evidence evaluated). This methodological approach can be known information regarding addresses, travel patterns, jurisdictions, corporate structures used, and information regarding personal interests.

2. Freezing and securing assets
   The laws and regulations call the term freezing (freezing) is blocking (restraint) and delaying transactions (suspending transactions). The freezing order of the authorized body of the victim state must meet 2 (two) conditions, as follows:

   a. The order must contain a well-founded basis, so that the competent bodies of the receiving country are sure that there are sufficient reasons for the action.
   b. Assets requested for freezing and expropriation are the object of orders issued by competent authorities.

Relevant officials who have the authority of the provisions of Indonesian law to freeze, namely:

a. Under Article 29 paragraph (4) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Concerning the Eradication of Corruption Crimes, investigators, public prosecutors, or judges can request that banks block deposit accounts belonging to suspects or defendants suspected of being the result of corruption.
b. In accordance with Article 71 paragraph (1) of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes, namely investigators, public prosecutors, or judges authorized by the reporting party to seize assets known or reasonably suspected to be the result of corruption crimes from any person who has been reported by the Indonesian Financial Transaction Reports and Analysis Center to the investigator, the suspect, or the defendant. PPATK is a central entity (focal point) in Indonesia that organizes efforts to detect and remove money laundering. PPATK is a Financial Intelligence Unit in the worldwide world, with the mission and authorization to receive financial transaction reports, analyze financial transaction data, and communicate the results of the analysis to law enforcement organizations.
c. According to Bank Indonesia Regulation No. 2/19/PBI/2000 concerning Requirements and Procedures for Granting Orders or Written Permission to Open Bank Secrets, any blocking, delaying, or freezing of the suspect's or defendant's account

by the police, public prosecutor, or judge is permissible without permission from the Governor of Bank Indonesia.

3. Deprivation (forfeiturure)
   Article 38 B paragraph (2) of Law No. 20 of 2001 amending Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Expropriation attempts might be made in the nation where the corruptor is situated or in the territory where the asset is housed. To commit appropriation, a judicial judgment is usually required. The Public Prosecutor's Office (KPK or Attorney General's Office) plays a significant role in carrying out the appropriation stage of the asset return procedure. In other circumstances, foreign central authorities require a Supreme Court fatwa or formal direction to persuade local authorities. There are various legal, criminal, and administrative alternatives to pursuing expropriation.
4. Repatriation
   Repatriation is the final step of the asset return effort. Financing related to the process of returning assets is usually taken from the amount of assets that have been successfully seized and there is a profit-sharing system between the two countries. Cooperation carried out by the Attorney General's Office, the KPK, or the central authority with the Ministry of Finance can form a significant role in carrying out the repatriation of assets resulting from corruption crimes.

2.3 Factors that Become Obstacles in the Implementation of the Return of Assets Resulting from Corruption

There are problems that often arise and become the main factor that becomes an obstacle in the asset recovery process, as follows:

1. The difference of the legal system with the country in which the stolen assets are held. The fundamental differences between common law and civil law, especially in the criminal justice system, are:

   a. Due Process Model (DPM), focuses on the protection of human rights for suspects, thus creating a fairly long bureaucracy in criminal justice. DPM is likened to a person who is doing a hurdle.
   b. Crime Control Model (CCM), which emphasizes the efficiency and effectiveness of criminal justice based on the principle of presumption of guilt. CCM is likened to a ball rolling without a barrier (Atmasasmita 2016).

2. Differences in terminology and definitions
   Indonesia has too broad a definition for corruption, for example defining the criminal act of bribery to fall into the category of corruption, while other countries provide different treatment between bribery, money laundering, and corruption (Sunarso 2009).
3. Banking secrecy system
   Assets resulting from corruption crimes are protected by bank secrecy rules that are generally applied to developed countries where typical assets are held, including Austria, Singapore, the Cayman Islands, and Liechtenstein (Zachrie 2010).

4. Agreements between countries
   The issue of asset returns if the Requesting State and the Requested State do not yet have bilateral agreements, such as Extradition and Mutual Legal Assistance (Atmasasmita 2016).
5. The process of returning assets resulting from corruption crimes requires long mechanisms and procedures, large costs, and non-limitative human resources (Adji 2009).
6. Requires a court decision that can link the assets concerned to the criminal act. Assets from corruption crimes held in other countries can be frozen and/or returned, so a specific name and information about these assets are needed, which are often not mentioned in court decisions (Prasasthi 2011).
7. Abuse of power
   Abuse of power involves the upper economic class and politics as an upper power class that synergizes with political, economic, and bureaucratic forces (Musahib 2015).
8. Willingness of developed countries to assist in asset return efforts (National Law Commission 2007).
9. Weak cooperation between institutions regarding the return of assets. It requires a consesus between the person applying (The Attorney General's Office or KPK) and the Ministry of Law and Human Rights. This process of reaching consensus is often hampered by sectoral egos and the political interests of each institution, so it takes a long time and in the end the effort is unsuccessful (Utama 2008).
10. Weak political will and government commitment (Listya 2014).

3 Conclusion

Based on the discussion that has been described and connected with the analysis that has been formulated, the following conclusions can be drawn:

1. The prevention and eradication of corruption in Indonesia has not reflected a systematic, planned, and comprehensive strategy, due to the absence of a balance between preventive measures, enforcement, return of assets from corruption, and international cooperation that focuses on the principle of reciprocity and upholds an attitude of togetherness (cooperativeness). The core problem in the strategy to prevent and eradicate corruption lies in the good faith, seriousness, willingness, and ability of all components of the nation.
2. Asset recovery is a difficult process, even under ideal circumstances, asset recovery is a complex and multidisciplinary process. The factors that become obstacles in the implementation of the return of assets resulting from criminal acts of corruption, namely:

   a. Different legal systems.
   b. Differences in terminology and definitions.
   c. Banking secrecy system.
   d. Agreements between countries.

e. Long mechanisms and procedures, large costs, and unlimited human resources.
f. Requires a court decision that can link the asset in question with a criminal act.
g. Abuse of power.
h. The unavailability of developed countries to help with asset recovery efforts.
i. Weak work there between institutions related to asset recovery.
j. Weak political will and government commitment.

3. The prevention and eradication of corruption in Indonesia has not reflected a systematic, planned, and comprehensive strategy, due to the absence of a balance between preventive measures, enforcement, return of assets from corruption, and international cooperation that focuses on the principle of reciprocity and upholds an attitude of togetherness (cooperativeness). The core problem in the strategy to prevent and eradicate corruption lies in the good faith, seriousness, willingness, and ability of all components of the nation.

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