



# Asset Recovery in Corruption Crimes

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**Abstract.** The research objective is to determine the implementation of asset returns in corruption crimes in Indonesia and to find out the obstacles faced in asset recovery of corruption in Indonesia. The type of research used is normative research data collection technique is library research. The results of the study show that the mechanism for returning assets in criminal acts of corruption consists of criminal and civil channels and obstacles in the implementation of asset recovery in corruption cases in Indonesia, namely in terms of investigations, legal systems between different countries, inadequate facilities and infrastructure owned by Indonesia, it is not easy to cooperate with other countries, dual criminality, and the problem of central authority.

**Keywords:** Corruption, Asset Recovery, MLA

## 1 Introduction

Theft, fraud, and embezzlement criminal activities with economic motivations that were initially common in nature are now evolving to become more complicated since educated players are frequently involved and they are frequently of a transnational or cross-country nature. This type of crime in addition to generating a lot of wealth at the same time also involves a lot of funds to finance the equipment, facilities and infrastructure that support the implementation of the crime. With this intricacy, handling criminal acts for law enforcement becomes more challenging and confusing.

In addition to having some specifics that set it apart from other types of crimes, such as violations of formal criminal law or procedural law, corruption is one type of unique crime. A small minority of people or particular communities engage in rampant corruption as a means of defying the law by abusing their positions of power to further their own agendas at the expense of the state's budget Prabowo (2000).

The recently formed criminal law system in Indonesia still seeks to expose the crimes that were committed, identify the offenders, and punish them through the use of criminal sanctions, particularly "corporal punishment both imprisonment and imprisonment." However, issues of legal development on a global scale, such as the question of seizing and seizing the proceeds of crime and the instruments of crime, have not significantly impacted Indonesia's criminal law system.

The International Convention on Combating the Financing of Terrorism and the Convention against Corruption are two of the United Nations conventions that Indonesia has ratified. The treaty governs, among other things, procedures for locating, detecting, and freezing as well as seizing the proceeds and tools of illicit activity. As a result of the ratification, the Indonesian government must modify its current statutes to comply with the convention's terms.

Forms of crime have developed with the existence of forms of organized crime or organized crime. Apart from involving a group of people who have expertise in carrying out criminal acts, this form of crime is also supported by various criminal instruments so that they can collect the proceeds of criminal acts in very large numbers. Efforts to paralyze this form of crime will only be effective if the perpetrators of the crime are found and punished and the results and instruments of the crime are confiscated and confiscated by the state.

The perpetrators of corruption carry out their actions using various modes. To cover up this behavior, perpetrators usually use the following modes Wardani (2021):

- 1) Misusing the state budget.
- 2) Mark-up mode.
- 3) Bribing State administrators.
- 4) Illegal levies.
- 5) Embezzlement of funds.
- 6) Fictitious reports.
- 7) Abuse of authority.
- 8) Gratification mode.
- 9) Central/regional budget cuts.
- 10) Fictitious project activities.

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Recovery of stolen state property through corrupt criminal activity is not always simple to accomplish. The people who commit corruption have unparalleled access and are challenging to find when they are concealing or laundering the proceeds of crime. Recovery efforts are hampered by the fact that the safe haven for the proceeds of the crime transcends international borders with the nation where the corruption offense was actually committed.

In essence, the Civil Code (KUHPer) article 499, referred to as material, which refers to each object and each right that might be subject to property rights, regulates the scope of the definition of assets. Objects are divided into bodily and incorporeal objects based on their shape. In the meantime, items are separated into mobile objects and immovable objects based on their nature. mobile objects are those that have been used up and cannot be used again. According to Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which states that "Wealth is all movable or immovable objects, both tangible and intangible, which are obtained through legal or illegal means," Any assets, whether physical or intangible, including movable and immovable things, that are the proceeds of a crime, were acquired from the proceeds of a crime, or were used to profit from an act are generally considered to be assets arising from crime. In addition, assets that may be seized are not just those earned by illegal activity or those used to profit from it.

Assets used to finance (as "capital"), or as tools, facilities, or infrastructure, even any assets related to a crime or all assets belonging to the perpetrator of a crime can also be confiscated, according to the type of crime involved with these assets. Thus, criminal offenders or anyone who is involved or who wants to involve themselves in a crime or criminal organization will realize that apart from the possible benefits they will gain, it turns out that they are also faced with a large risk of losing their assets.

Money or assets resulting from criminal acts that do not smell, are the main thing for criminals. These assets are the target of efforts to recover assets resulting from criminal acts, including assets resulting from corruption crimes. This is a development with a new perspective in the effort to fight and eradicate crime. A development from a suspect-oriented perspective to a profit-oriented perspective, namely crime eradication that is oriented towards confiscating the proceeds of crime obtained and controlled by the perpetrators of crime. The pressure is no longer on the criminal or criminal person (in personam), but on the proceeds of crime or criminal property (in rem or fructus sceleris).

Asset recovery is based on two key principles, namely:

1. Identifying the assets that must be accounted for in order to be confiscated; and
2. Identifying the grounds for asset confiscation.

Asset recovery will also have a preventative effect on the growth of criminal activity motivated by financial gain in the form of criminal proceeds. The absence of assets under the culprits' control has the first preventive effect by depriving them of the means to conduct more crimes. Second, there is no longer any chance or hope to benefit from the assets obtained as a result of the crime, or at least it can be diminished, by directly confronting the criminal motivations of the perpetrators. The purpose that served as the perpetrator's motivation to conduct the crime is eliminated by returning the assets. The motivations that lead people to commit crimes can be eliminated if there are no possibilities to accomplish that aim. Third, by returning the assets, a clear message may be sent to the public that there is nowhere safe for criminals to hide the proceeds of their crimes in this world, and that no one is allowed to profit from criminal activity. because it is false to say that crime pays. These things will be able to lessen societal appetite for crime, especially among potential offenders.

There are several principles related to asset confiscation, namely:

1. The principle of In Rem Asset Forfeiture
2. Principles/Principles of Non-Conviction Based Asset Forfeiture (NCB)
3. Principle/Principle of Unjust Enrichment/Crime Does Not Pay
4. Principle/Principle of Reverse Evidence
5. Principles/Principles of Bona Fide/Presumption of Good Faith
6. General Principles of Civil Procedure Law
7. Reciprocal Principle

The fundamental principle outlined in Article 53 of UNCAC is in Chapter V on asset recovery. State parties must provide the widest possible cooperation and assistance regarding asset recovery.

In this case, Article 46 paragraph (1) UNCAC requires each participating country to provide (reciprocal) legal assistance to the victim country in need. This mutual legal assistance provides a breakthrough for the victim country to break through conventional boundaries that have been an obstacle in the process of returning assets.

Under UNCAC, the criminality of corruption need not always result in financial consequences for the state. Civil forfeiture is distinct from criminal forfeiture, which employs in persona litigation (lawsuits against people) to seize and take possession of assets as a result of crime, despite the fact that both have the same objective, namely to seize and take control of assets obtained via illicit activity.

## 2 Research Methods

Normative research is the study of laws and regulations, books, scientific papers, court decisions, legal theories, and it can even take the shape of expert opinions. This kind of normative research makes use of qualitative analysis, namely by describing the data that is already available in terms of words, phrases, or descriptors in accordance with the research problem. A statutory approach (statue approach) was adopted in this investigation.

## 3 Results and Discussion

### 3.1 Implementation of Returning Assets in Corruption Crimes

The theft of governmental funds is one of the components of corruption as a criminal crime. The old regulation, Law Number 3 of 1971, and the new regulation, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, both of which stipulate policies that the state's financial losses must be returned or replaced by the perpetrators of corruption (Asset Recovery), were made in response to this state financial loss.

According to the Corruption Crime Act, there are two (two) legal options for recovering state financial losses: criminal and civil actions. By seizing the offender's property, which had already been ordered by the court with an additional criminal verdict in the form of compensation for state financial damages, the prosecutor carried out the criminal instrument. While Articles 32, 33, and 34 of Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes and Article 38C of Law No. 20 of 2001 Concerning Amendments to Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes Committed by State Attorneys or Agencies that are Disadvantaged permit the use of civil instruments.

It is based on the theory of asset return law in order to better comprehend the legal framework of asset return. According to Purwaning M. Yanuar, the asset return legal system is made up of three (three) components, including:

- a) Substance elements;
- b) Structural elements;
- c) Elements of legal culture.

The seizure of assets obtained by corruption is not unlawful; rather, it is a legitimate action that is supported by the law and carried out by a party that has been granted legal authority. In accordance with statutory provisions, there are several parties/agencies that play a role in confiscation-deposit-confiscation. These parties play a role in every stage of the case examination process from confiscation to depositing the results of the auction to the state treasury. The authorities are as follows:

- 1) Investigator
- 2) Public Prosecutor
- 3) Judge
- 4) State Storage for Confiscated Objects (Rupbasan)

The mechanism for returning assets consists of criminal law channels and civil law routes. In this case, it can be described as follows:

- Return of Assets Through Criminal Channels

The tracking of assets stage. The following stage is decided by this crucial moment. Identifying assets, places where assets are housed, proof of ownership of assets, and their connection to the crime committed are the goals of this investigation or tracking of assets.

The second stage involves the freezing or seizure of assets. The following stage of asset recovery, asset freezing or confiscation, can be implemented if the investigation was successful in locating assets that had been acquired illegally. Frozen or confiscated property is defined by the United Nations Convention Against Corruption (UNCAC) 2003 as being temporarily prohibited from transferring, converting, disposing of, or transferring it, or as being temporarily considered to be under guardianship or supervision based on a court order or other competent body.

Asset confiscation is the third stage. Confiscation occurs when a court or other authority issues a directive revoking the owners' rights to assets acquired through corrupt activities.

The fourth stage, which involves returning and delivering the assets to the victim country, can be completed on the confiscated assets following the confiscation stage.

When compared with other asset return channels/instruments, namely civil law instruments and administrative/political law, there are prominent differences. Returning state losses under criminal law is far more difficult since, even if the offender does return state losses over the course of the investigation, this does not absolve them of criminal guilt.

Since law enforcement agencies find it difficult to easily cross jurisdictional borders and carry out law enforcement within the borders of other nations, international cooperation is necessary in the process of pursuing and returning assets that were obtained through corruption. This is because corrupt officials are able to freely

cross geographical and jurisdictional boundaries between nations. According to the terms of agreements, whether bilateral, regional, or multi-lateral, or on the basis of cordial relations based on the reciprocity principle, international cooperation regarding assistance for tracing, blocking, confiscation, and management of criminal acts of assets is carried out.

- Return of Assets Through Civil Channels

Articles 32, 33, and 34 of Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes and Article 38C of Law No. 20 of 2001 Concerning Amendments to Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes Committed by State Attorneys or Agencies that are Disadvantaged govern efforts to recover state losses through civil law instruments.

As a result, civil lawsuits for criminal acts of corruption have distinct characteristics, such as the fact that they are brought after criminal proceedings can no longer be pursued due to conditions outlined in Articles 32, 33, 34, and 38C of the Corruption Law, even though there has been a loss of state funds. The option of civil actions for corruption cases is eliminated without prior criminal proceedings.

The TPK Law continues to apply the standard civil regime for civil remedies, and the trial procedure is still governed by standard formal or substantive civil law. As a result, the TIPIKOR Law mandates that the prosecutor in civil actions establish the presence of state losses. Additionally, Article 38 of Law Number 20 of 2001 only governs civil lawsuits upon the entry of a final judgment.

### 3.2 Obstacles in Implementing Asset Returns in Corruption Crimes

Various obstacles/obstacles which include the problem of confiscating assets in returning state losses will at the same time be a challenge for law enforcement today to have the courage to make legal breakthroughs, the various dynamics are as follows:

1. First, the issue of where to hide assets (safe havens) resulting from corruption which are placed outside the territory of Indonesia, perpetrators of corruption keep assets in countries that protect assets resulting from crimes through bank secrecy regulations (legal procedures).
2. Second, The banking and non-bank financial systems now contain a variety of assets arising from corruption crimes. Assets in the form of movable and immovable objects have typically been mixed with personal assets in order to blend legitimate assets with assets obtained through crime. Typically, this mixing of legitimate assets with assets obtained through crime has been done through money laundering to hide the origin of assets, making it difficult for law enforcement officials to determine which assets belong to the perpetrator and which assets need to be seized.
3. Third, the factors of law enforcement officials involved in the criminal justice system are still shackled by the notion of positivism and legism which glorify written law in the text of statutory regulations. As a result, efforts to restore state losses tend to be rigid, there is no innovation and creativity to create laws that are more just and make people happy.
4. Fourth, With the approval of the amendment to Law No. 19 of 2019 regarding the Corruption Eradication Committee and the controversial selection of a new commissioner, the issue of eliminating corruption received a new test at the end of 2019.

The interaction between countries is a further challenge that frequently arises in addition to the several preceding hurdles. Of course, this presents a significant challenge because the process of recovering assets also necessitates diplomatic contacts between the two nations Arifin (2016).

No less important, the obstacle is the political and good will of the Indonesian government. Indonesia's Bargaining Position in the eyes of the international community does not yet have a big influence, moreover the political will of the government is not shown significantly.

This is not much different from the results of a research study by the National Law Commission (KHN) which shows that apart from not having established Stolen Asset Recovery (STAR) procedures and mechanisms, there are also several obstacles that have so far been experienced in returning assets resulting from corruption. These obstacles include:

- (1) Obstacles in the investigation
- (2) Legal systems between different countries
- (3) Inadequate facilities and infrastructure owned by Indonesia
- (4) It is not easy to cooperate with other countries either in the form of extradition agreements or MLA
- (5) The problem of dual criminality
- (6) Mistakes in making demands related to compensation money and erroneous decisions by judges
- (7) Central Authority Issues

## 4 Closing

### 4.1 Conclusion

1. The mechanism for returning assets in acts of corruption consists of:

a. Criminal Line

b. Civil Path

2. Obstacles that have been experienced in returning assets resulting from corruption include:

(1) Obstacles in the investigation

(2) Legal systems between different countries

(3) Inadequate facilities and infrastructure owned by Indonesia

(4) It is not easy to cooperate with other countries either in the form of extradition agreements or MLA

(5) The problem of dual criminality

(6) Mistakes in making demands related to compensation money and erroneous decisions by judges

(7) Central Authority Issues

#### 4.2 Suggestion

1. It's good that the Indonesian government can participate in implementing the NCB procedure because it will provide benefits in the judicial process and to pursue the assets of corruptors.

2. The government needs to establish an independent institution that specifically handles asset recovery (assets recovery agencies). With the establishment of this institution, the asset recovery process can become more focused and organized.

3. It is necessary to consider expanding the scope of the MLA Law to civil lawsuits so that corruptors' assets can be taken because so far the MLA Law has only facilitated special legal assistance in the criminal field.

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