Legal Analysis of the Implementation of Asset Recovery in Corruption Cases in Indonesia: Positive Law and International Law Perspectives

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Abstract

Corruption is one of the most complex and destructive crimes, not only harming state finances, but also hampering development and public trust in the legal system. Asset recovery is a strategic step aimed at restoring state losses due to corruption. This study analyzes the application of asset recovery in corruption cases in Indonesia from the perspective of positive law and international law. This study uses a normative juridical method with data sources in the form of primary legal materials, such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 8 of 2010, and international instruments such as the United Nations Convention Against Corruption (UNCAC) which has been ratified by Indonesia through Law Number 7 of 2006.

The results of the study show that although the positive and international legal framework has provided a strong foundation, the implementation of asset recovery in Indonesia still faces challenges, such as the complexity of tracking cross-border assets, the lack of technical capacity of law enforcement officers, and suboptimal inter-agency coordination. In addition, obstacles in international cooperation mechanisms, such as mutual legal assistance (MLA), often slow down the asset recovery process. This study recommends the formation of a special task force for asset recovery, increasing the technical capacity of law enforcement officers, and reforming the domestic legal system to simplify asset recovery procedures. Transparency and accountability in the management of recovered assets should also be a priority to ensure direct benefits for the community. With a holistic and integrated approach, asset recovery can be a more effective tool in efforts to eradicate corruption in Indonesia.

Keywords: Corruption, Asset Recovery, Positive Law, UNCAC, Mutual Legal Assistance

INTRODUCTION

Corruption is one of the most complex and destructive crimes in modern society. Not only does it harm state finances, corruption also erodes the values of justice, public trust in the government, and hinders sustainable development. In Indonesia, corruption has long been a major concern in efforts to reform law and governance. This is supported by data from the Corruption Eradication Commission (KPK) which shows that state losses due to corruption each year reach trillions of rupiah. This phenomenon demands legal steps that are not only repressive, but also proactive, one of which is through the asset recovery mechanism.(Hafid 2021)

In the context of positive Indonesian law, asset recovery efforts have been regulated in several regulations, such as Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been amended by Law Number 20 of 2001, and Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. In addition, the asset recovery approach is also supported by international legal instruments, especially the United Nations Convention Against Corruption (UNCAC) which has been ratified by Indonesia through Law

Number 7 of 2006. This convention provides comprehensive guidance on how member countries can work together to track, freeze, confiscate, and return assets resulting from crime.

Although existing regulations have provided a strong legal basis, the implementation of asset recovery in Indonesia still faces various challenges. One of the main challenges is the complexity in tracing assets that are often hidden through global financial networks. Corruptors generally use various money laundering techniques to disguise the origins of their assets, such as through cross-border transfers, the formation of shell companies, or investments in the property sector. As a result, asset recovery efforts require cross-jurisdictional cooperation involving many parties, including governments, law enforcement agencies, and international financial institutions.(Siahaan et al. 2018)

In addition, the asset recovery process is often hampered by weaknesses in the legal system and bureaucracy at the domestic level. For example, the lack of technical capacity of law enforcement officers in using the mutual legal assistance (MLA) mechanism or mutual legal assistance agreements. Another obstacle is the lengthy and complicated court procedures, which often provide opportunities for perpetrators to remove or move their assets before a legal decision is made. Not infrequently, major corruption cases in Indonesia involve assets spread across various countries, so it takes years to recover these assets.

On the other hand, the asset recovery approach also has a very important aspect of justice. Asset recovery is not only intended to return state losses, but also to provide a deterrent effect for perpetrators of corruption and improve public trust in the legal system. However, without an effective mechanism, asset recovery can be a suboptimal tool in eradicating corruption. This is exacerbated by the lack of transparency and accountability in the management of assets that have been successfully recovered. In some cases, assets that have been returned to the state are actually misused again, creating a cycle of corruption that continues to repeat itself.(Nasution, Terarianto, and Siregar 2022)

From an international law perspective, the UNCAC has provided a clear framework to encourage cooperation between countries in asset recovery. Articles 51 to 59 of the UNCAC specifically regulate the obligations of states parties to provide assistance in asset recovery, including the mechanism for returning assets to the country of origin. However, the success of the implementation of the UNCAC is highly dependent on the political commitment of each country, including Indonesia. In some cases, countries receiving corrupt assets tend to be reluctant to cooperate for various reasons, such as legal protection for third parties or concerns about the economic impact.

In Indonesia, the commitment to improve the effectiveness of asset recovery has been seen in various initiatives, such as the establishment of the Asset Recovery Task Force under the KPK and international cooperation through the Stolen Asset Recovery Initiative (StAR) led by the World Bank and UNODC. However, these efforts are far from perfect. For example, in major cases such as the Bank Century or BLBI scandals, most of the assets reported missing have yet to be found and recovered, despite various legal and diplomatic efforts.(Asyari, nd)

This research is relevant because corruption and asset recovery are two sides of the same coin that cannot be separated. Effective asset recovery can be a strategic tool in eradicating corruption, but it requires a holistic and integrated approach. Therefore, this research will examine the implementation of asset recovery in corruption cases in Indonesia, both from the perspective of positive law and international law. This analysis will include an evaluation of existing regulations, obstacles faced, and recommendations to improve the effectiveness of asset recovery mechanisms, including how Indonesia can make maximum use of UNCAC in order to eradicate corruption.

Thus, this study is expected to provide significant contributions, not only in identifying the weaknesses of the current legal system, but also in offering solutions that can improve the

effectiveness of recovering assets from corruption. These solutions are not only technical in nature, but also include normative and philosophical aspects, such as how to ensure that recovered assets can be used for the benefit of society at large, thus bringing real benefits to national development.

METHOD

This study uses a normative legal approach, emphasizing the analysis of laws and regulations related to the recovery of assets resulting from corruption in Indonesia and international legal instruments such as the United Nations Convention Against Corruption (UNCAC). The data used in this study are sourced from primary legal materials, such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 8 of 2010, and UNCAC documents. In addition, secondary legal materials, such as books, scientific journals, and official reports from related institutions, including the Corruption Eradication Commission (KPK) and the United Nations Office on Drugs and Crime (UNODC), are also the main sources for analyzing the issues studied.(Indra Utama Tanjung 2024)

The analytical method used is descriptive-analytical, with the aim of describing the implementation of asset recovery in the Indonesian legal system and comparing it with international practices. This study also identifies legal and administrative obstacles faced in the asset recovery process, both at the national and cross-country levels. The results of the analysis are expected to provide concrete recommendations to strengthen the regulation and implementation of asset recovery, so that it can make a real contribution to efforts to eradicate corruption in Indonesia.

RESULTS AND DISCUSSION

Principles and Legal Framework for Asset Recovery in Corruption Crimes in Indonesia

Recovery of assets resulting from corruption is one of the strategic steps in eradicating corruption which aims to restore state losses due to unlawful acts. In Indonesia, asset recovery is regulated in several laws and regulations, especially Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001. Article 18 paragraph (1) letters b and c of this law expressly states that the court may impose additional penalties in the form of confiscation of goods obtained from the proceeds of criminal acts of corruption and payment of compensation in the amount of the proceeds of the crime.(Mahmud, Syawali, and Amrulloh 2021)

In addition, the asset recovery mechanism is also strengthened by Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU TPPU). Article 68 of the TPPU Law states that the proceeds of crimes related to money laundering can be confiscated, frozen, or seized for the state, even if the proceeds have been transferred or disguised through various laundering methods. This mechanism is important considering that many corruption cases involve the perpetrators' efforts to hide assets through complex financial networks, both domestically and abroad.

However, the implementation of positive law related to asset recovery in Indonesia still faces significant challenges. One of them is the difficulty of tracking assets that have been hidden or transferred to foreign jurisdictions. For example, major corruption cases such as the Bank Century scandal show that assets reported missing are spread across various countries, requiring time and international cooperation to recover them.(Andika 2022)In this case, the role of mutual legal assistance (MLA) as stipulated in Law Number 1 of 2006 concerning Mutual Assistance in Criminal

Matters is very important. MLA allows Indonesia to cooperate with other countries in tracking, freezing, and seizing assets located abroad. Although the domestic legal framework is quite adequate, its implementation is often hampered by the technical capacity of law enforcement officers. Law enforcers are often poorly trained in using available legal tools, such as tracing and freezing assets through international financial networks. In addition, coordination between institutions, both at the national and international levels, is often an obstacle. For example, in several cases, delays in submitting MLA requests resulted in assets that should have been frozen being successfully transferred by the perpetrators.

A positive law-based approach must also be complemented by modern administrative and technological mechanisms to support the effectiveness of asset recovery. The government, through the KPK, has attempted to improve this capability by establishing an Asset Recovery Center that functions to manage the entire asset recovery process, from tracking to executing the return of assets to the state. However, the effectiveness of this institution is still questionable, especially in handling major cases involving international networks.(Sitepu and Piadi 2019)Furthermore, Article 38C of Law Number 31 of 1999 states that the return of assets to the state must be carried out after the legal process is completed. However, in practice, this process often takes a very long time for various reasons, such as the appeal or cassation process filed by the perpetrator. In this context, legal procedure reform is important to accelerate the asset recovery process without ignoring the principle of justice.

In addition to the legal aspect, asset recovery also has a social justice dimension. Assets that are successfully recovered should be used for the benefit of the community, such as infrastructure development or public services. However, the lack of transparency in the management of recovered assets is often in the spotlight. For example, in some cases, recovered assets are not used optimally for the benefit of the community, raising questions about the government's accountability in managing the results of asset recovery.

From an Islamic legal perspective, asset recovery also has a strong basis. The concept of istiḥsān (legal preference) in Islamic law allows the acquisition of assets for the public interest as long as it does not conflict with the principles of justice and welfare. In this context, the positive legal approach in Indonesia can be synchronized with Islamic legal values to create a more equitable asset recovery system.

Over Capacity as an Impact of Fulfillment of Health Rights of Inmates in Class II B Sintang Penitentiary

Asset recovery in the context of corruption is one of the fundamental steps aimed at returning state losses and providing a deterrent effect to perpetrators of corruption. In the perspective of positive Indonesian law and international law, the approach to asset recovery has a complementary framework, although its implementation in the field faces many challenges.(Socialist 2020)Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 provides a legal basis for the recovery of assets resulting from corruption. Article 18 paragraph (1) letter b states that one of the additional penalties that can be imposed on perpetrators of corruption is the confiscation of property obtained from the crime. In addition, Article 18 paragraph (1) letter c gives the court the authority to require the perpetrator to pay compensation for the amount of state losses.

The implementation of asset recovery is strengthened by the existence of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering (TPPU). Articles 67 to 69 of the TPPU Law stipulate that proceeds of criminal acts related to corruption can be confiscated, frozen, or seized for the state. This mechanism is very relevant considering that perpetrators of corruption often use money laundering techniques to hide the origin of their assets. This law provides a strong legal basis for law enforcement officers to track and freeze assets, both domestically and those that have been transferred abroad.(Sangkilang 2023)

However, on the other hand, there are weaknesses in the implementation of positive law in Indonesia, especially in terms of the technical implementation of asset recovery. One example is the Bank Century scandal case, where most of the assets reported missing have not been recovered despite various legal efforts. This obstacle is caused by the lack of technical capacity in tracking cross-border assets, weak coordination between institutions, and the inability to optimally utilize the mutual legal assistance (MLA) mechanism. International law, especially through the United Nations Convention Against Corruption (UNCAC), provides a very important framework in supporting cross-border asset recovery. UNCAC, which has been ratified by Indonesia through Law Number 7 of 2006, places asset recovery as one of the main pillars in eradicating corruption. Articles 51 to 59 of UNCAC regulate the mechanism for asset recovery, including international cooperation in tracking, freezing, and returning assets derived from the proceeds of corruption.(Toriq 2021)

One of the key features of the UNCAC is the obligation of states parties to provide mutual legal assistance (MLA) in the recovery of assets. Article 55 of the UNCAC, for example, requires states to assist each other in tracing and freezing assets resulting from corruption upon the request of another state. In addition, Article 57 stipulates that confiscated assets must be returned to the country of origin or used for the benefit of society, provided that the country of origin can prove that the assets originated from corruption.

The implementation of UNCAC in Indonesia has had a positive impact in several cases, such as Indonesia's success in recovering assets from abroad through cooperation with countries such as Switzerland and Singapore. However, in practice, this process often faces obstacles, such as differences in legal systems between the country of origin and the country where the assets are hidden. For example, some countries have strict rules regarding the protection of third-party property rights which often hinder the asset recovery process.(Zahra 2018)Despite having a strong legal framework, both from the perspective of Indonesian positive law and international law, the implementation of asset recovery in corruption cases still faces significant challenges. One of the main challenges is the complexity of the global financial network that allows corruptors to hide their assets in ways that are very difficult to trace. Techniques such as cross-border transfers, the formation of shell companies, and the use of accounts in the names of third parties are often used to avoid detection.(SUTRISNO, n.d.)

In addition, the lack of technical capacity of law enforcement officers in Indonesia is also a serious obstacle. In some cases, such as the Bank Indonesia Liquidity Assistance (BLBI) scandal, many assets that were reported missing were never recovered due to limitations in tracking assets that had been spread across multiple countries. This indicates the need for increased training and resources for law enforcement officers to use modern tools in asset tracking.

Another challenge is the lack of coordination between institutions, both at the national and international levels. In major cases, such as tax evasion or corruption involving high-ranking state officials, the asset recovery process is often hampered by complicated bureaucracy and overlapping authority between institutions. For example, in Indonesia, there are several institutions that have

authority related to asset recovery, such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Financial Transaction Reports and Analysis Center (PPATK). The disharmony between these institutions often hampers the effectiveness of the asset recovery process.(Purba, Tanjung, and Oktaviona 2024)

To overcome these challenges, there are several recommendations that can be proposed. First, the government needs to strengthen the inter-agency coordination mechanism by establishing a special task force for asset recovery. This task force must have clear authority and adequate resources to track, freeze, and manage assets resulting from corruption.(Cape 2024)Second, Indonesia needs to be more active in utilizing available international cooperation mechanisms, such as the Stolen Asset Recovery Initiative (StAR) led by the World Bank and UNODC. Through this initiative, developing countries can obtain technical and financial support to increase capacity in the asset recovery process.

Third, domestic legal system reforms also need to be carried out to accelerate the asset recovery process. One step that can be taken is to simplify court procedures in asset recovery cases, including giving law enforcement officers broader authority to temporarily freeze assets before the legal process is completed. Fourth, the government must ensure that recovered assets are used transparently and accountably for the benefit of the community. In this case, a strict monitoring mechanism is needed to prevent misuse of assets that have been returned to the state.

CONCLUSION

Asset recovery in corruption cases is a strategic step that plays an important role in returning state losses, providing a deterrent effect, and restoring public trust in the legal system. This analysis shows that Indonesia has an adequate positive legal framework, including through Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 8 of 2010, and Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. At the international level, Indonesia has ratified the United Nations Convention Against Corruption (UNCAC), which provides guidance and mechanisms for international cooperation for asset recovery. However, the implementation of this legal framework still faces challenges, such as the lack of technical capacity of law enforcement officers, complex bureaucracy, and obstacles to cross-country cooperation.

To improve the effectiveness of asset recovery, strategic steps are needed, such as strengthening inter-agency coordination through the formation of a special task force that has adequate authority and resources. In addition, increasing the technical capacity of law enforcement officers through training in cross-border asset tracking and strengthening international cooperation, such as through the mutual legal assistance (MLA) mechanism and the Stolen Asset Recovery Initiative (StAR), are crucial steps. Domestic legal system reforms are also needed to accelerate the court process in asset recovery, including granting temporary asset freezing authority.

The government must ensure that recovered assets are used transparently and accountably for the benefit of the community, such as infrastructure development and public services. Strict supervision and accountability in asset management are essential to prevent misuse of recovered assets. With a holistic and integrated approach, asset recovery can be a more effective tool in eradicating corruption, increasing public trust, and contributing to sustainable national development.

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