THE CORRUPTION IN INDONESIA: THE IMPORTANCE OF ASSET RECOVERY IN RESTORING STATE FINANCES

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ABSTRACT

Corruption is the most phenomenal crimes in Indonesia, has brought severe state finances loss and hinders economy development. Based on the monitoring conducted by the Indonesia Corruption Watch (ICW), during 2019, the state financial loss reached the amount of IDR 2,002,548,977,762. One of the efforts can be measured in minimizing impact of corruption act is executing asset recovery through freezing, seizing and confiscation towards the corruptors. Therefore, this research aims to discuss the importance of asset recovery in restoring state finances loss. This research uses a normative legal research with secondary data approach. The result of the research shows that the asset recovery has not been implemented effectively. According to data on 2015, asset recovery was only reached 15, 9 trillion rupiahs, or only 10, 4% of the corrupted amount. This ineffectiveness occurs due to criminalization legal system which prioritizes the conviction of perpetrators instead of ensuring state finance recovery. Another factor was the lack of implementation of Indonesian regulations in its effort to prevent, adjudicate, and minimize the number of corruptions in Indonesia.

Keywords: Corruption, State Finances, Asset Recovery.

INTRODUCTION

Corruption in Indonesia's legal system has been formulated as a special crime with the characteristics of an extraordinary crime. The practice of corruption is established as an organized, structured, and systematic arrangement with various modus operandi (Atmasasmita, 2002). Corruption has entered into the executive, legislative, and judicial authorities' realm and is performed out by actors with high social, economic, and intellectual status. Corruption in Indonesia is believed to have been widespread and deep-rooted, ultimately destroying society itself (self-destruction). Corruption is considered a parasite that engulfs a tree to die. In this regard, the criminal act of corruption has become a crime deemed to damage the parts of social and state life (Isra et al., 2017). State financial losses caused by criminal acts of corruption are categorized as critical. Corruption in Indonesia is a recurrent and emergency national problem that the Indonesian nation has faced relatively long. According to the data, from the last five

years (2014-2018), Indonesia has not moved from position 86 (eighty-six) to 89 (eighty-nine) out of 180 (one hundred and eighty) countries assessed. In other words, Indonesia is still in the middle to lower position or is classified as a badly corrupt country.

The legal basis for the criminalization of perpetrators of corruption is carried out based on Law Number 31 of 1999 concerning Eradication of Corruption as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Acts (the Corruption Law) (Butt, 2017). In addition to the stipulation of regulations related to the criminalization of corruption perpetrators, efforts to eradicate corruption in Indonesia have been carried out since 1967 by forming a special task force to eradicate corruption. To date, these efforts have been demonstrated by the formation of the Corruption Eradication Commission (KPK) in 2002, formed under Law Number 30 of 2002 concerning the Corruption Eradication Commission. In line with this, the Corruption Crime Court established based on Law Number 46 of 2009 concerning the Corruption Crime Court as an implementation of Article 53 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (Widodo et al., 2018). Nonetheless, observing the history of state financial losses recovery in the form of compensation retaliation and asset recovery for corruption acts in Indonesia, it is sufficient to show that this effort has not generated significant results. Based on the monitoring conducted by the Indonesia Corruption Watch (ICW), during 2019, the state financial loss reached the amount of IDR 2,002,548,977,762 (twelve trillion two billion five hundred forty-eight million nine hundred and seven seventy-seven thousand seven hundred and sixty-two rupiahs). Therefore, it can be understood that the high intensity of corruption in Indonesia must, of course, be balanced with optimal efforts to recover state financial losses (Wibowo, 2018).

The restoration of state losses due to the results of corruption is a law enforcement system that requires a process of eliminating rights to assets of perpetrators from the state as victims employing confiscation, freezing, seizing both in local, regional, and international competence so that loss can be recovered to the state (victim) (Seregig et al., 2019). In the Corruption Law, the form of state losses recovery is formulated by granting a necessary penalty in the form of a fine as described in Article 2 to Article 13 of the Corruption Law and additional penalties in the form of seizing of movable objects that are either tangible or intangible or immovable objects, payment of replacement funds as described in Article 18 Paragraph (1) letter a, letter b, Article 18

Paragraph (2), Paragraph (3) and Article 19 Paragraph (1) of the Corruption Law. In connection with asset recovery, the property seized formulated in Article 18 Paragraph (1) letter (a) of the Corruption Law include:

1. Tangible or intangible movable property that is used for or obtained from a criminal act of corruption, including a company owned by the convicted where the criminal act of corruption is committed, as well as the price of the goods that replace these items;
2. Immovable goods used for or obtained from a criminal act of corruption, including companies owned by the convicted person where the criminal act of corruption committed, as well as the price of the goods that replaced these items.

The asset recovery of corruption perpetrators is a rational action to retrieve state financial losses. The asset recovery can only be carried out if the perpetrator is legally and convincingly proven to have committed a criminal act and caused the state financial loss

according to the court's binding verdict (inkracht van gerisjde). The strict regulation regarding asset recovery shows that even though the law enforcement officers have legal evidence in proving the state financial loss originating from the corruption act, or that the first-degree court has decided the case, the asset recovery approach still cannot be executed before all legal remedies have come to the binding decision (Lyston, 2018).

In connection with this matter, the research argues that the criminal verdict at the first-degree court shall be implemented first, even though the convicted corruption filed an appeal, cassation, or judicial review. The following argument points that if the asset recovery is executed after a final court decision, it can potentially bring the convicted person opportunities to conceal their assets. If this happens, law enforcers will encounter a massive challenge to identify and confiscate the corrupted assets and increase the amount of state financial loss. The strict regulation to oblige the legal decision before asset recovery execution has several objectives that lead to ineffectiveness of the verdict implementation, due to (1) the death of the defendant; (2) the failure to identify the location of the defendant; (3) the insufficiency of prosecuted evidence in court that lead to the case termination by law (Firmansyah et al., 2020).

State losses due to corruption, according to 2015 data, reached 152.01 trillion rupiah, while the recovery was only reached 15.9 trillion rupiah or only 10.4% of the amount that was corrupted. Whereas the main objective of eradicating corruption is to recover State loss. Article 20 of Law No. 30 of 2014 concerning Government Administration stipulates that State losses' liability is divided into administrative and criminal responsibility. However, it seems that administrative responsibility for recovering state losses has not been fully implemented. Substantially, asset recovery is an essential part of preventing and eradicating criminal acts especially corruption (Mashendra, 2020). Considering the need for adequate legal instruments to combat corruption and the need for optimal adjustment of paradigms and provisions and international instruments, it is necessary to draft and enact the Criminal Asset Recovery Bill. The Asset Recovery Bill is expected to be a tool for the State in restoring its financial status to a greater level. Therefore, this research is addressed to discuss the importance of assets recovery through confiscation in the criminal act of corruption towards the State's financial recovery, in research entitled "*The Corruption in Indonesia: The Importance of Asset Recovery in Restoring State Finances"*.

RESEARCH METHOD

This research uses normative legal research with a secondary data collection method. Normative legal research examines law conceptualized as norms or rules that apply in society and are considered control tools to sustain the society. This research is focused on the legal issues approach, especially concerning the importance of asset recovery in restoring state financial loss from corruption acts. This research examined statutory regulations, norms, theories, supporting documents, legal literature, and other materials related to the studied problems.

RESULT AND DISCUSSION

Corruption is considered one of the most phenomenal crimes since corruption is detrimental to state finances and a violation of society's social and economic rights. In the perspective of Indonesian criminal law, the criminal act of corruption is regulated in Law

Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Act. The Corruption Law was established according to public awareness due to the deteriorating effect on state finances and possibly hinders national development. Therefore, the state authorities acknowledge the urgency of enacting the regulation to eradicate corruption act to maintain a prosperous society based on Pancasila and the 1945 Constitution (Purnomo, 2018).

As a result of occurred corruption as criminal acts so far, this research shows that, apart from a detrimental impact on state finances and economic development, the corruption act also hinders the growth and sustainability of national development. Therefore, this research argues that Indonesia needs the most recent, reliable, and accommodating regulation in eradicating corruption cases. In order to minimize the impact on economic and national development, it is necessary to ensure that the corrupted funds are ultimately restored back to the state as a victim. One of the efforts can be measured through the asset recovery of corruptors by seizing their owned properties, which will be further discussed below.

As a result of the criminal acts of corruption that have occurred so far, apart from detrimental to the state finances or the country's economy, it also hinders the growth and continuity of national development, which demands high efficiency and that Law No. society, therefore it needs to be replaced with a new Law on Corruption Eradication so that it is hoped that it will be more effective in preventing and eradicating corruption. One of the efforts to prosecute perpetrators of corruption is by seizing assets, which will be described below:

Asset Recovery in the Corruption Law

Asset recovery resulting from the corruption act is outlined under Law No. 31 of 1999 junto Law No. 20 of 2001 as positive Indonesian law. The regulation concerning asset recovery is one of the efforts in implementing the ratification of the Anti-Corruption Convention of 2003 under Law no 7 of 2006. The provisions in the Anti-Corruption Convention have become an essential topic of discussion since it has been formulated in Article 2 Letter g, which outlined "*Confiscation*" (refers to asset recovery), which means deprivation of property under the court's decision or other competent authority (Lyston, 2018). The 2003 Anti-Corruption Convention stipulated Article 31 concerning Freezing, Seizing, and confiscation states that:

1. Each State Party shall take, to the extent permitted by its national legal system, the necessary measures to enable the asset confiscation of:
    a) Proceeds gained from a criminal offense determined under this Convention, or assets which have the same value as the proceeds of the crime
    b) Property, equipment, or other items utilized or intended for use in the offense established under this Convention.
2. Each State Party shall take the measures which may be necessary for the identification, tracing, freezing, or seizing of any matter referred to in paragraph (1) of this article for the purpose of possible confiscation.
3. Each State Party shall adopt, according to its national law, legislative and other measures that may be necessary to regulate the administration of the frozen, seized, or confiscated property specified in paragraphs 1 and 2 of this article by the competent authorities.
4. If the proceeds of the crime have been changed or converted, partially or wholly, into assets in other forms, then the assets referred to in this article shall be used as substitutes for the proceeds of the mentioned crime.

5. If the proceeds of the crime are combined with property obtained from legitimate sources, then the corrupted assets, and without prejudice to any authority related to freezing or seizing, may be subject to confiscation up to the value estimated from the proceeds.
6. Income or other benefits derived from the proceeds converted or combined will also be subject to an action referred to in this article, in the same manner, and for the same amount as the proceeds of the criminal act.
7. For this article's purposes and Article 55 of this Convention, each State Party shall authorize their courts or other competent authorities to order banks, financial institutions to compose banking, financial or commercial documents available for confiscated execution. A State party may consider the possibility of requiring an offender to provide a legal source of their property that is suspected as crime proceeds and therefore available to be confiscated. These conditions are deemed to be consistent with the basic principles of their national law, consistent with a related judicial process.
8. The provisions of this article cannot be interpreted as detrimental to third parties in good faith.
9. Nothing contained in this article affects the principle that the measures referred to will be formulated and implemented in accordance with and subject to the provisions of the national law.

According to Law No. 31 of 1999 junto Law No. 20 of 2001, the provisions for assets confiscation in Article 31 of the Anti-Corruption Convention have mostly been accommodated in several provisions, such as Law No. 31 of 1999 junto. Law No. 20 of 2001. Several provisions have regulated the asset confiscation of corruption perpetrators. However, based on these provisions, asset recovery through confiscation can only be carried out after the perpetrator is legally proven and convicted of committing crimes. Asset recovery resulting from corruption acts regulated under Law No. 31 of 1999 junto. Law No. 20 of 2001 adopting a criminal and civil mechanism. Asset recovery through confiscation, according to the criminal law approach, can only be carried out to the convicted party, whereas in terms of the accountability of other parties outside the convict, it can be pursued through a civil suit by the Public Prosecutor on behalf of the State (Mahmud, 2018). Moreover, Article 17, in conjunction with Article 18 of the Anti-Corruption Convention, states that the corruptors are deemed to recover the state finance by returning all funds that have been corrupted as an addition to the main punishment. Otherwise, the corruptors' assets will be confiscated and auctioned off (Trinchera, 2020).

The Indonesian government has only recovered around 10-15% of the corrupted funds. Regrettably, the Indonesian justice system has been only focusing on corruptors' convictions instead of ensuring State finances' recovery. The author argues that the most beneficial way to convict corruptors is to ensure both physical and material punishment is executed effectively.

The Importance of Asset Recovery in Corruption Case towards the State Finances and Economy Restoration

During the 20 years of enacting the Anti-Corruption Act, many Corruption perpetrators have been brought to trial and received decisions from the court. The data from the research and development center of the Corruption Eradication Commission, the value of state losses due to criminal acts of Corruption in Indonesia during 2003-2015 reached Rp. 153.01 trillion. Meanwhile, the number of financial penalties that succeeded in recovering state losses in the form of fines, confiscation of assets, and payment of replacement money was only collected at

IDR 15,957,821,529,773, or around 10.4%. The total state losses came from 2,321 cases involving 3,109 defendants. This data shows that corrupt convicts' financial penalties tend to be sub-optimal, lower than the state losses arising from Corruption (Saldi, 2008). So, it can be concluded that the confiscation of assets resulting from Corruption to recover state financial losses is not entirely successful. In fact, the main objective of eradicating Corruption is to recover state losses.

One of the elements of corruption in Article 2 and Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption (UU Tipikor) is an element of state financial loss, this element has a consequence that the eradication of corruption is not only aimed at deterring corruptors through heavy imprisonment but also restoring state finances due to corruption as emphasized in the preamble and general explanation of the Corruption Act. Failure to return the proceeds of corruption can reduce the meaning of "*punishing the corruptors*" itself (Isra et al., 2017).

This is also related to the provisions of Article 4 of the Corruption Eradication Law, which states that the return of financial losses to the State or the State's economy does not eliminate the conviction of the criminal offender as referred to in Article 2 and Article 3 of the Corruption Eradication Law. The enactment of this article becomes an argumentum a contrario for the purpose of eradicating corruption in the Corruption Act. As expressed by Prof. Romli Atmasasmita, this article made the corruptors not have the good faith to return the State's finances because the punishment for him would still lead to imprisonment. From this problem, a discourse on eliminating crime for perpetrators of criminal acts of corruption is born that returns state financial losses as a restorative justice effort from the resulting losses. This also becomes the ratio legis for the birth of several laws and regulations that do not make state losses a reason for implementing agency punishment (Nurhalimah, 2017).

Indonesia can see an example of a revolutionary concept to eradicate corruption in the country of Saudi Arabia. The country has a mechanism to return state assets from corruption by seizing an average of 70% of the total assets owned by the defendant of corruption, as stated in the financial agreements. Subsequently, after the signing of these financial agreements, the crown prince, as chairman of the anti-corruption committee, issued a royal order to free the corrupt defendant from all conviction charges. This revolutionary concept of eradicating corruption through withdrawing the wealth of corruptors that Indonesia needs to consider as a reference, namely placing recovery of state losses through the seizure of the suspect's property.

Basically, asset recovery is a law enforcement system carried out by countries victims of corruption to revoke, seize, and eliminate rights to assets resulting from corruption perpetrators through a series of processes and mechanisms, both criminal and civil. Assets resulting from corruption both inside and outside the country are tracked, frozen, seized, confiscated, handed over, and returned to the state caused by corruption and to prevent the perpetrators of corruption from using the assets resulting from corruption as a tool or means of other criminal acts and provide a deterrent effect on perpetrator / potential perpetrator (Yanuar, 2007).

The Anti-Corruption Law regulates mechanisms or procedures that can be applied in returning assets through criminal channels and returning assets through civil channels. In addition to the Anti-Corruption Law, Law Number 7 of 2006 concerning the Ratification of the Anti-Corruption Convention (UNCAC) Ramelan (2003), which also regulates that asset recovery, can be carried out through legal action (indirect asset recovery through criminal recovery) and

civil/private action (direct asset recovery. through civil recovery). Technically, UNCAC regulates the return of assets of perpetrators of corruption through direct returns from a court process based on the "*negotiation plea"* or "*multiple bargaining systems"* and indirectly through confiscation processes based on court decisions (Sadeli, 2010). Civil litigation needs to be placed as the primary legal remedy in addition to criminal action, not just a facultative or complementary measure of the criminal law, as regulated in the Corruption Eradication Law. Therefore, a progressive concept of repayment of state finances is needed, for example, by harmonizing the United Nations Convention against Corruption (UNCAC) 2003. Unfortunately, according to Eddy OS Hiariej, the Government is not responsive to the mandate of the United Nations convention regarding Anti-Corruption, which asks the State party to a quo Indonesia, namely to adjust changes to the law on corruption eradication after one year of ratification. The fundamental shift according to the convention is to identify corruption not only in the public sector but also in the private sector. One of the objectives of the convention is the return of assets resulting from the corruption.

National policies in the field of confiscation of criminal assets must have a holistic vision based on real needs and meet international standards, whether determined by the United Nations, the Financial Action Task Force (FATF), or other international institutions or organizations that are competent in the field of prevention and eradication of acts of criminal. To realize effective laws and regulations in asset recovery from a criminal act, political commitment, proportional laws and regulations, vital intelligence in the financial sector, supervision of the financial sector, law enforcement, and international cooperation are required. Given the confiscation of assets is an essential part in the prevention and eradication of criminal acts, especially corruption, and also a consideration of the need for adequate legal instruments in fighting corruption, as well as the need for maximum alignment of paradigms and provisions and international instruments in-laws and regulations, it is necessary to compile and immediately passed the Criminal Asset Recovery Bill.

According to Romli Atmasasmita, the need for the Assets Recovery Bill, based on law enforcement efforts, related to criminal acts of corruption has also produced significant results on the state treasury. Also, Romli stated that the current legal instruments in Indonesia have not been able to work optimally and activities to guarantee the results of corruption and crimes in the financial and banking sector in general. In line with that, Mudzakkir stated that the Asset Recovery Bill needs to be passed because it is strategic enough for the crime of money laundering in Indonesia. Besides, the asset recovery bill is also useful for recovering losses from the perpetrator's criminal acts. Furthermore, Mudzakkir also stated that the assets recovery bill must be prepared proportionally and still prioritizes injustice (Latifah, 2015).

In detail, the assets recovery bill provides for the confiscation of assets in terms of (1). The suspect or defendant has died, fled, is permanently ill, or his whereabouts are unknown; or (2). The defendant was released from all lawsuits. For the confiscation of assets from both of them, it can also be carried out against assets whose criminal cases cannot be tried or have been found guilty by a court that has obtained permanent legal force, and later it is found out that there are assets from the criminal activities that have not been declared confiscated. As for the confiscation of assets, it does not apply to improper assets that will be confiscated. Confiscation of Assets does not eliminate the power to prosecute the perpetrator of a criminal act. Assets confiscated based on a court decision that has obtained legal force can still be used to prosecute

the perpetrator of a criminal act.

Explained in the Academic draft of the Asset Recovery Bill that during the examination at the Court hearing, the judge ordered the owner, the party controlling the assets, or the party responsible for the application for confiscation of assets to prove that the assets related to the application for confiscation of assets in question did not originate or relate to criminal activity. The owner, the party who controls the assets, or a third party against the request for confiscation proves that the assets related to the case are not originating or related to a criminal act by submitting sufficient evidence. Suppose the owner, party controlling the assets, or entitled third parties cannot prove that the assets did not originate from a criminal offense. In that case, the judge decides that the assets are confiscated for the State or returned to the entitled parties. Suppose the owner, the party who controls the assets, or a third party is not present at the hearing or refuses to provide evidence. In that case, the judge decides that the asset is confiscated for the State or returned to the appropriate party.

Confiscating and seizing the proceeds and instruments of criminal acts from the perpetrators of a criminal act not only transfers some assets from the criminal to the community but also increases the possibility of the community to realize the common goal of creating justice and welfare for all members of society. This, in turn, prompted the Government of Indonesia to issue policies related to efforts to accelerate the eradication of corruption. One of the policies that have become the Indonesian Government's priority is the creation of legal instruments capable of seizing all assets resulting from a crime and all means that allow the implementation of criminal acts, especially those with economic motives.

Confiscation of proceeds of crime, in addition to reducing or eliminating the motive of economic crime that allows the active funds in large amounts that can be used to prevent and combat crime. In total, it will destroy the crime rate in Indonesia. Approaches to crime at the level of crime through confiscation and confiscation of proceeds and criminal acts that are in line with the principles of fast, simple, and low-cost justice.

This revolutionary concept of eradicating corruption through withdrawing the wealth of corruptors that Indonesia needs to consider as a reference, namely placing recovery of state losses through the seizure of the suspect's property. The confiscation is carried out using the Asset Recovery Bill mechanism, namely by first investigating the suspect's assets by KPK investigators. Then the District Court will issue a decision regarding the suspect's total assets. Furthermore, the corruptors' assets are handed over to the Asset Management Agency, which can recover and return the proceeds of crime under the Asset Recovery Bill.

Based on the withdrawal of the assets of the corruptor by the State, the investigation process by the institution concerned will be terminated. This concept follows the mandate in Article 51 of the United Nations Convention against Corruption, which states that the return of assets is a fundamental principle in this convention to eradicate corruption. It needs to be done, considering that the losses to the State due to corruption constitute oppression of the people's social rights. Soekarno expressed the oppression of the people's social rights in his state speech as exploitation de l'homme par l'homme, which must be eliminated.

The explanations above are also inseparable from the mandate of the constitutional state conception as stated in Article 1 paragraph 3 of the 1945 Constitution. The Indonesian constitutional state's ideals are realizing a just and prosperous society as stated in the Preamble of the 1945 Constitution. So, the state needs to reformulate the concept of eradicating corruption so

that it is not only actor-oriented but also oriented to the restoration of state finances as the primary condition for realizing the Welfarestate State according to the mandate of the constitution. Considering the purpose of the law, as stated by Satjipto Rahardjo, that law aims not to be at the status quo but to move to create human welfare and happiness (Yunus, 2015).

CONCLUSION

The implementation of eradicating corruption in Indonesia through Law No. 31/1999 as amended by Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption does not seem to have received optimal results; the current law still focuses on the jailing of the body against the perpetrator rather than the return of state assets that were lost from corruption, even though in fact the main objective of eradicating corruption is the return of lost assets to be returned to the state to be used as much as possible for the prosperity of the people. According to the data from the research and development center of Indonesia's Corruption Eradication Commission, state losses from 2003-2015 amounted to Rp. 153.01 trillion and only Rp. 15,957,821,529,773 or 10.4% of the funds that were successfully returned to the state. Therefore, the Indonesian government must immediately enact an asset confiscation law as mandated by the 2003 United Nations Convention Against Corruption (UNCAC) as ratified by Law No. 7 of 2006 to avoid more state losses and as a solution so that assets resulting from criminal acts of corruption can be returned to the victim (the state).

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