

The Urgency of Returning Assets Proceeds of Corruption in State Financial Recovery

Rinaldy Amrullah^{1*}, Maroni¹, Diah Gustiniati¹, Gunawan Jatmiko¹

¹Department of Law, University of Lampung, Bandar Lampung Jl. Prof. Sumantri Brojonegoro No.1 Bandar Lampung, Indonesia 35145

DOI: [10.36348/sijlcj.2022.v05i03.004](https://doi.org/10.36348/sijlcj.2022.v05i03.004)

| Received: 11.02.2022 | Accepted: 16.03.2022 | Published: 22.03.2022

*Corresponding author: Rinaldy Amrullah

Department of Law, University of Lampung, Bandar Lampung Jl. Prof. Sumantri Brojonegoro No.1 Bandar Lampung, Indonesia 35145

Abstract

Return expected state losses capable of covering the state budget deficit to cover the inability of the state to finance various aspect need based on Law No. 11 of 2009 concerning People's Welfare. Return state assets are approach in fight crime whose presence started in 1980-1988, which then applied to the type more crime-wide with incorporated into Organized Crime in 2000. Mechanism return assets are also considered urgent because who did business return on asset results corruption, and it turns out that his business often meets any obstacle. Obstacles that are then looking for road exit with arranging problem return asset. The inner country takes finance consequence act criminal corruption based on more evidence-strong, that asset the suspected originated from perpetrator act criminal corruption or used for perpetrator act criminal corruption in areas that are growing in general many stored in centres financial, this is an agenda for the Indonesian state for true, true croak all the money in the areas small whatever value. With thereby eradication act criminal corruption also pays attention interest people, beside eradicate act criminal corruption must also notice return state finances as consequence deed that because corruption always concerning state finances. Based on what is important, the study about urgency return asset results acts criminal corruption. Destination search asset is for knowing existence and type hidden assets from results act criminal, which will be used for replacement loss to the state, whose information originated among others from Financial Services Provider, Center for Transaction Reports and Analysis Finance (PPATK), Research Results Academics and NGOs, Disputes in Courts, Commissions Eradication Corruption (KPK), and others.

Keywords: Criminal Corruption Act, Return assets, State Losses.

Copyright © 2022 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution **4.0 International License (CC BY-NC 4.0)** which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

The founding father with assertive set the goals of the Indonesian state as listed in paragraph IV Preamble Constitution The 1945 Constitution of the Republic of Indonesia is protecting whole spilt Indonesian blood, advancing well-being generally, educating life nation, and follow doing world order, based on independence, peace eternal, and justice social. Return state assets from act criminal corruption still very far from hope Indonesian nation, so effort disclosure must made as benchmark measuring success. Return state assets only as wishful thinking mere still many state assets that the authorities enforcer law has not detected, remember that return state finances _ from act criminal corruption could bring up various deed act criminal corruption, such as existence hoarding riches results from corruption in some area or another way to

do perpetrator for could blur origin suggestion assets and still many not yet known whereabouts [¹].

Return expected state losses capable of covering the state budget deficit to cover the inability of the state to finance various aspect need based on Law No. 11 of 2009 concerning People's Welfare. Return state assets are approach in fight crime whose presence started in 1980-1988, which then applied to the type more crime-wide with incorporated into Organized Crime in 2000. Mechanism return assets are also considered urgent because who did business return on asset results corruption, and it turns out that his business

¹ Achmad Ali, (2002), The Downfall of Law in Indonesia, Jakarta: Ghalia Indonesia, p . 99

often meets any obstacle [²]. Obstacles that are then looking for road exit with arranging problem return asset [³]. The inner country takes finance consequence act criminal corruption based on more strong evidence strong, that asset the suspected originated from perpetrator act criminal corruption or used for perpetrator act criminal corruption in areas that are growing in general many stored in centres financial, this is an agenda for the Indonesian state for true, true croak all the money in the areas small whatever value [⁴]. With thereby eradication act criminal corruption also pays attention interest people, beside eradicate act criminal corruption must also notice return state finances as consequence deed that because corruption always concerning state finances [⁵].

METHOD OF RESEARCH

Legal/empirical sociology research, which includes research on legal identification (unwritten) and research on the effectiveness of law in the community/field [⁶]. The research method used in this study is based on normative law [⁷]. Nevertheless, we are not studying the norm system in the rule of law but observing how the reactions and interactions occur when the norm system works in society.

DISCUSSION

A. Follow Criminal Corruption

According to ACFE, corruption is divided into contradictions conflict of interest, bribery, illegal (illegal gratuity), and extortion (economic extortion). This definition differs from the definition of corruption involved in the Corruption Act. In language law positive that, understanding corruption by general, is threatened action _ with provision Articles of the Anti-Corruption Law. For example, in one article, corruption occurs if it fulfils three criteria which are a condition that somebody can be snared with Constitution corruption, the condition is:

- 1) Fight law;
- 2) Enrich self alone or someone else or corporation ;

² As Alternative *et al.*, "Return Model Assets (Asset Recovery)," and

³ Romli Atmasasmita, (2003), Introduction to Criminal Law Criminal, Jakarta: Prenada Media, p.34

⁴ Yaris Adhial Fajrin and Ach. Faisal Triwijaya, "Punishment Asset Forfeiture for Corruptor In Perspective of Indonesian Community Justice," FIAT JUSTICIA: Jurnal Law 13, no. 3 (2019): 209, <https://doi.org/10.25041/fiatjustisia.v13no3.1702>.

⁵ Suradi, (2006), Corruption In Sector Government and Private, Yogyakarta: Gava Media, p. 87

⁶ Soerjono Soekanto, Normative Legal Research: A Brief Overview, Edition 1 Ce. (Jakarta: PT Raja Grafindo Persada, 2001).

⁷ Soerjono Soekanto and Sri Mamuji, "Normative Legal Research, Cet 4, PT," Raja Grafindo Persada, Jakarta (1994).

- 3) Disadvantage state finance or the country's economy.

With criteria, the people who can be snared with Constitution corruption, isn't it? Only State officials only but party private follow-up involved and business entities/ corporations can be snared with provisions of the Anti-Corruption Act.

Definition corruption could be expanded with deed civil servant or State administrators who because position accept something (gratuity) from party third, as set in Article 12 letter B paragraph (1) of the Anti-Corruption Law and Article 16 of the Law Number 30 of 2002 concerning Commission Eradication Follow Criminal Corruption. Definition by complete, have explained in 13 pieces chapter in the Corruption Act. Based on articles, corruption is formulated in three twenty forms or types of criminal corruption. Articles the explain by detailed about actions that can wear criminal prison because of corruption. Third, twenty shape/type act of criminal corruption is grouped into: loss of State finances; bribe; Embezzlement in position; blackmail; deed cheat; collision interest in procurement; and Gratification.

B. Asset Recovery

Asset Recovery is activity tracking, freezing, confiscation, confiscation, maintenance/management and return of stolen assets/proceeds crime (including assets used in crime) to victims of crime (e.g. the state to case corruption) [⁸] both at home and abroad.

Search asset-related with return assets owned by a country/organization or something taken by another party with method oppose the law. Search assets/assets carried out by investigators/investigators assisted by forensic auditors with method collect and evaluate the evidence transaction-related financial and non - financial with asset results deed criminal.

Destination search asset is for knowing existence and type hidden assets from results act criminal, which will be used for replacement loss to the state, whose information originated among others from Financial Services Provider, Center for Transaction Reports and Analysis Finance (PPATK), Research Results Academics and NGOs, Disputes in Courts, Commissions Eradication Corruption (KPK), and others.

Asset results crime usually interpreted as every treasure wealth, whether tangible _ or no shape, good thing move nor no move, which is results act criminal, or obtained from results act criminal, or as form profit

⁸ Ade Mahmud, "Problematics Of Asset Recovery In Returning State Damages Due To Criminal Acts Of Corruption," Jurnal Judicial 11, no. 3 (December 26, 2018): 347, <https://doi.org/10.29123/jy.v11i3.262>.

from something act criminal. Farther from that, treasure wealth that can be robbed is limited to something obtained _, or something from profit earned _ from something act criminal. Treasure wealth is used _ for finance (capital), or as tools, means, or infrastructure, even every treasure related wealth _ with active criminal or whole treasure riches owned by perpetrator act criminal can also be confiscated, appropriate with type act related crimes _ with treasure riches that. Thus, perpetrators act criminal, or everyone involved _ or who want to involve themselves in something crime or organized crime will realize that besides the possibility the profit that will they get it, it turns out they also face with big risk lost treasure riches them.

C. Recovery State Finance

Tunakotta, in the book *Accountancy Forensic and Investigative Audit* (2007), states that what is meant with recovery loss is a process for change assets that have been found past search asset, be an asset for handed over to winning side in solution dispute. This process can happen inside and abroad, including, among others: investigation on the evidence about ownership treasure, freeze or blocking accounts in banks and institutions finance other, and blocking. With thereby could be concluded if act criminal money laundering or act criminal corruption in Thing This is what the state is harming, then recovery loss will be handed over to the state.

Recovery loss state finance with an effort to return state finances losses in act criminal corruption in reality still face obstacles good at level procedural as well as at the level technical. At the level of procedural need instruments law certain exact following the modus operandi of action crime and object problem the law. In the case of act criminal corruption results from act crime in the form of state finances in reality not only accepted or enjoyed by the defendant but also accepted or enjoyed by parties the third that does not Becomes defendant. In such thing effort return loss state finances by parties third by procedural need appropriate and effective law.

Many parties agree with that Constitution Number 8 of 2010 concerning Prevention and Eradication Follow Criminal Money Laundering (PPTPPU) is more effective for restoring state finances in Thing return assets (asset recovery) if compared to Constitution Eradication Follow Criminal Corruption (Tipikor Law). The reason is that the PPTPPU Law uses a new paradigm in handling criminal acts, namely, following the money approach cash flow to detect money laundering and take action against criminal others. Legal basis recovery state loss from results search asset among others, in Constitution Number 8 of 2010 concerning Prevention and Eradication Follow Criminal Money Laundering (PPTPPU) and the Law Eradication Follow Criminal Corruption (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001). In the

PPTPPU Law, the problem is recovery state losses include: _ in chapters 3 and 4 as follows:

Chapter 3: " Every person who places, transfers, spends, pays, grants, deposits, carries to abroad, change shape, swap with currency or letter valuable or other actions on treasure wealth he knows or deserves guessed is results act criminal as meant in Article 2 paragraph (1) with destination hide or disguise origin suggestion treasure riches convicted because act criminal money laundering with criminal imprisonment for a maximum of 20 (two) twenty) years and a maximum fine of Rp. 10,000,000.00 (ten billion rupiah)."

Chapter 4: " Everyone who hides " or disguise origin proposal, source, location, designation, transfer rights, or actual ownership on treasure wealth he knows or deserves guessed is results act criminal as meant in Article 2 paragraph (1) shall be punished because act criminal money laundering with criminal imprisonment for a maximum of 20 (two) twenty) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)."

In the anti-money laundering concept, perpetrators and results act criminal could be known through search asset. Next asset results act criminal the robbed for country or returned to those entitled. If treasure riches results act criminal earlier belongs to the state, then treasure the will returned to the state. Search treasure riches results act criminal in general carried out by the agency finance through regulated mechanism in regulation legislation. Financial institutions have a role urgent specifically in applying principle recognize user service and report transactions certain to authority (financial intelligence unit) as ingredient analysis and for next be delivered to the investigator. Based on these data investigator will follow up on the data by law until with asset the clear its value and its ultimate existence could be used for replacement loss to those who are entitled. Whereas earlier law to replace state losses in-laws Eradication Follow Criminal Corruption (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001) which is described in Article 17 and Article 18 as the following: Article 17: " In addition to " could be sentenced criminal as meant in Article 2, Article 3, Article 5 to with Article 14, the defendant could sentence criminal addition as meant in Article 18.

CONCLUSION

Enforcement law through disclosure act criminal, find the perpetrator and enter the culprit to in prison (follow the suspect) only not yet effective push happening act criminal corruption if no accompanied with effort confiscate and confiscate results and instruments his crime. Besides that, handling criminal corruption not only for convict perpetrators but also must restore state finances. The efforts that have been

loaded in regulation legislation to ensure recovered state losses, among others through:

- 1) Deprivation asset results act criminal corruption.
- 2) Proof backwards in optimization return asset results act criminal corruption.
- 3) Return asset results act criminal corruption through lawsuit civil as well as.
- 4) Criminal replacement money payment in skeleton return asset results acts criminal corruption.

The efforts that have been accommodated in regulation legislation for maximizing recovery state losses constrained several aspects good from the enforcer's side of neither law nor settings. From side regulations, rules related to plundering asset results act criminal corruption that refers to the Criminal Code, Criminal Procedure Code, and Anti- Corruption Act not yet felt adequate to give base footing in do confiscation and return asset. So that return asset results act criminal corruption in the system the law in Indonesia is not yet enforced and carried out effectively. While on the personal side of enforcers, the law still occurs misinterpretation. Among them in CHAPTER V COVER A interpret Article 18 Paragraph (1) letter an of the Corruption Law. Provision the mention that plunder conducted to use items for or obtained from criminal corruption.

Therefore investigators and judges are trapped in the provision, so be very careful do confiscation. Even though in skeleton rescue state finances act criminal corruption, prosecutor investigator since start investigation has required do foreclosure to treasure thing suspect, wife/husband, children and any person or entity that has a connection with case suspect. Impact

no existence foreclosure during the judicial process in progress make replacement money decision Becomes blunt moment the execution. There are provision Article 18 paragraph (3) of the Anti-Corruption Law Becomes gap for convert replacement money payment Becomes corporal punishment with reason convict no have treasure sufficient thing for pay replacement money.

REFERENCES

- Ade, M. (2018). "Problematics of Asset Recovery in Returning State Damages Due to Criminal Acts of Corruption," *Jurnal Judicial* 11, no. 3 (December 26, 2018): 347, <https://doi.org/10.29123/jy.v11i3.262>.
- DHM Meuwissen. (1994). *Legal Studies* (Translator B. Arief Sidharta), pro-Justitia, *Journal unique Parahyangan*, 4.
- Fajrin, Y. A. (2019). Punishment Asset Forfeiture for Corruptor In Perspective of Indonesian Community Justice. *Fiat Justisia: Jurnal Ilmu Hukum*, 13(3), 209-230.
- Romli, A. (2003). *Introduction to Criminal Law Criminal*, Jakarta: Prenada Media, 34.
- Soekanto, S., & Mamudji, S. (2001). *Normative legal research a brief overview*. Jakarta: Raja Grafindo Persada.
- Soerjono, S., & Sri Mamuji. (1994). "Normative Legal Research, Cet 4, PT," Raja Grafindo Persada, Jakarta.
- Soerjono, S., & Sri, M. (2006). *Normative Legal Research Something Overview Brief*, Jakarta: Rajawali Press.
- Suradi. (2006). *Corruption In Sector Government and Private*, Yogyakarta: Gava Media, 87