

Asset Recoveryin in the Criminal Act of Corruption in ASEAN

by Rinaldy Amrullah

Submission date: 07-Jul-2022 03:44PM (UTC+0700)

Submission ID: 1867647732

File name: ASSET_RECOVERYIN_IN_THE_CRIMINAL_ACT_OF_CORRUPTION_IN_ASEAN.pdf (962.75K)

Word count: 6316

Character count: 34270



ISSN : 1410-0614
E-ISSN: 2684-9941

SIMBUR CAHAYA

Fakultas Hukum Universitas Sriwijaya

Alamat Redaksi : Fakultas Hukum Universitas Sriwijaya, Jalan Sriwijaya Negara, Bukit Besar, Palembang, Sumatera Selatan 30139, Indonesia.

Telepon : +62711-580063 Fax: +62711-581179

E-mail: jurnalsimburcahaya@gmail.com

Website: <http://journal.fh.unsri.ac.id/simburcahaya>

DOI: 10.28946/sc.v27i1.805

Asset Recovery in the Criminal Act of Corruption in ASEAN

Rinaldy Amrullah¹ Rudi Natamiharja²

rinaldy.amrullah@fh.unila.ac.id, rudinamiharja@fh.unila.ac.id

Fakultas Hukum, Universitas Lampung.

Abstrak: Penanganan korupsi tidak hanya sebatas menjatuhkan pidana penjara bagi pelaku, akan tetapi juga merampas kembali secara maksimal apa yang sudah diambil oleh koruptor. Tindakan ini perlu dilakukan dengan tujuan menimbulkan efek jera bagi para koruptor. Komis Pemberantasan Korupsi di Indonesia dinilai masih belum optimal pada orientasi pemulihan aset dalam penanganan kasus korupsi. Bagaimanakah negara-negara ASEAN dalam memberantas korupsi melalui upaya asset recovery ? Penelitian ini menggunakan metode komparatif normatif melalui pendekatan kualitatif. Berdasarkan hasil penelitian ditemukan bahwa tingkat korupsi di Asia Tenggara bukan yang terparah, akan tetapi juga bukan dalam tatanan aman terhadap korupsi dan masih digolongkan kawasan memprihatinkan. Brunei Darussalam, Filipina, Indonesia dan Singapura termasuk negara-negara yang berhasil meningkatkan skor pemberantasan korupsi. Indonesia dan Thailand menjadi negara yang berjuang keras terhadap pemberantasan korupsi sedangkan Vietnam dinilai menjadi negara yang masih kurang dalam memerangi korupsi. Pemulihan aset korupsi masih menjadi hal yang kurang diperhatikan oleh mayoritas negara kecuali Singapura dan Malaysia. Dalam memberantas korupsi secara khusus pada pemulihan aset, ASEAN perlu melakukan kerjasama yang dituangkan dalam bentuk kerjasama regional sehingga hal ini dapat menguatkan pemberantasan korupsi di ASEAN.

Kata Kunci : Pemulihan Aset, Korupsi, Koruptor, Asean

Abstract: The eradication of corruption is not only limited to imprisonment for perpetrators, but also optimally recaptures what has been taken by corruptors (asset recovery). This action needs to be done in order to create a deterrent effect for corruptors and return the state property. Corruption eradication in Southeast Asia, especially by ASEAN member countries, has not shown seriousness. This fact shown from Transparency International report. The majority of ASEAN country member have not been optimal in the orientation of asset recovery in handling corruption cases. How could ASEAN countries eradicate corruption through asset recovery efforts? This study uses a normative comparative method through a qualitative approach. Based on the results of the study found that the level of corruption in Southeast Asia is not the worst, but also not in a safe condition from the threat of corruption and is still classified as an area of concern. Brunei Darussalam, the Philippines, Indonesia and Singapore are among the countries that have succeeded in increasing corruption eradication scores. Indonesia and Thailand become countries that struggle hard to eradicate corruption while Vietnam and Laos are considered to be countries that are still lacking in fighting corruption. Based on the results of the study, it was found that the recovery of corruption assets is still a matter of little concern by the majority of countries except Singapore and Malaysia. In eradicating corruption, particularly in asset recovery, ASEAN needs to have a political will determined and become a law in conducting multilateral cooperation. The agreement must be set forth in the form of regional cooperation that has a strong tie so that this can help efforts to eradicate corruption in ASEAN.

Keywords: Asset Recovery; Corruption, Asean; Uncac, South East Asia

¹ Lecture at Faculty of Law, Department of Criminal Law, Universitas Lampung. Head of Center research Anti-Corruption and Human Rights (Pushamsikhram)

² Lecturer at Faculty of Law, Head of Department of International Law, Universitas Lampung.

I. Introduction

Corruption is a dangerous crime and it is growing nowadays. It could endanger a state.³ This crime occurs not only in national scale as in Indonesia, but also has become a transnational crime⁴ involving several countries.⁵ Corruption caused a loss to a country and become a source of income to other countries as well by hiding and saving it.⁶ Therefore, it is no exaggeration to say that corruption occurs systematically and widespread, so that it not only harms the state finance, but also violates the rights of social and economic community at large as explained in the explanation of Law No. 2 of 2001 concerning Amendment to the Law Corruption needs to be done in extraordinary ways.⁷

Reflecting on the explanation and how it was quoted by Heni Siswanto as well, there is hardly any country in the world that is clean from corruption. Therefore, the problem of corruption does not belong to only one country (domestic problem) but also become a universal problem so it cannot be done by itself, it requires the attention of the international community (multinational cooperation).

Regarding TPU which has become a universal issue, Kofi Annan, the Secretary of the United Nations (1997-2006), in the introduction of the Corruption Convention 2003, stated that : *“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a*

³ Saragih, Yasmirah dan Berlian Mandasari. *The Enforcement of the 2009 Law Number 46 on Corruption Court : The Role of Special Corruption Court*. Sriwijaya law Review, Volume2 Issues 1 July 2018. p. 195.

⁴ Point b preamble of Act number 7 of 2006 regarding ratification of United National Nations Conventions Against Corruption.

⁵ Maskun. *Combating Corruption Based on International Rules*. Indonesia Law Review, Volume 4 Issues 1 January 2014. p. 55.

⁶ Hiariej, Eddy O.S.. Pengembalian Aset Kejahatan, https://pustakahpi.kemlu.go.id/dir_dok/OPINIO%20JURIS_vol1_13d.pdf#page=9 diakses 5 Oktober 2019.

⁷ Siswanto, Heni. Pembangunan Penegakan Hukum Pidana yang Mengefektifkan Korporasi Sebagai Subjek Tindak Pidana Korupsi. *Fiat Justitia* Volume 9 Nomor 1 April 2016. h. 53.

23

key element in economic underperformance and a major obstacle to poverty alleviation and development.

From this statement it can be concluded that the corruption epidemic has developed and must be a concern of the international community. The statement is a signal that the war against corruption has been sparked universally by the United Nations (UN), especially with the declaration of December 9th as an anti-corruption day.

Corruption can be caused by several things, various opinions about the cause of corruption expressed by Septiana Dwiputrianti. There are nine causes of corruption and among them the main one is law enforcement. Sometimes the law is only used temporarily as a political “makeup” and always changes following the changes of the government. Septiana also revealed several causes of corruption that were uttered by several figures such as Singh (1974), Merican (1971) and Ainan (1982) where the red line that could be drawn from the opinion of the crowd was the certainty of the provisions even though the urgency in putting the priority of rules among them are different.⁸

The commitment to the eradication of corruption internationally has been started since the birth of the anti-corruption convention in 2003 known as the United Nations Convention Against Corruption (UNCAC or the Convention). This Convention is an international agreement issued by the United Nations through General Assembly Resolution No. 58/4 dated October 31, 2003. On December 9th in the same year, 114 countries signed the convention, then in 2017 there were 140 countries and international organizations which agreed and in the end 186 countries have ratified UNCAC.⁹ This means that almost all members of the UN have agreed and recognized the legality of the UNCAC.

The UNCAC has become an instrument of international law in fights and supports the eradication of corruption, organized crime¹⁰ and economic crime, including money laundering. This convention includes provisions for the prevention of corruption and rules for international cooperation and procedural standards.

The international community has recognized that preventive action and penalties for cross-border corruption are urgently needed. Through this Convention it can be stated that

⁸ *Ibid.*

⁹ The development of number country ratify the UNCAC increase mostly because not all country should put their signature before the ratification.

¹⁰ It is a category of transnational, national, or local groupings of highly centralized enterprises run by criminals who intend to engage in illegal activity, most commonly for profit.

international cooperation is needed so that civil society and non-governmental organizations are included in the process of accountability and the right to obtain information related to corruption. This convention certainly aims to reduce various types of corruption, such as trading in influence and abuse of power, as well as bribery and laundering. Another goal of UNCAC is to strengthen international law enforcement and judicial cooperation between countries by providing effective legal mechanisms for the recovery of international assets.

Based on an annual report released by Transparency International¹¹ on the Corruption Perception Index (CPI)¹² in 2018 of the 180 countries, it was found that more than two-thirds of the countries were not serious about combating corruption, in other words corruption was still rampant. This is evidenced by the values obtained by these countries which are still below the average value of 50. Where the scale value of 100 is very clean and zero is very corrupt. For example in 2018 Denmark ranks first with 88 while in the last position as the most corrupt country is Somalia with 10.

The number of countries that score less than 50 indicates that some countries that are members of the United Nations organization have been infected with corruption or it is difficult to combating corruption. So Kofi Annan was right, that corruption has been rampant and must be a common concern, namely in this case the international community. There must be a Convention that can unite the perception of combating corruption between nations.

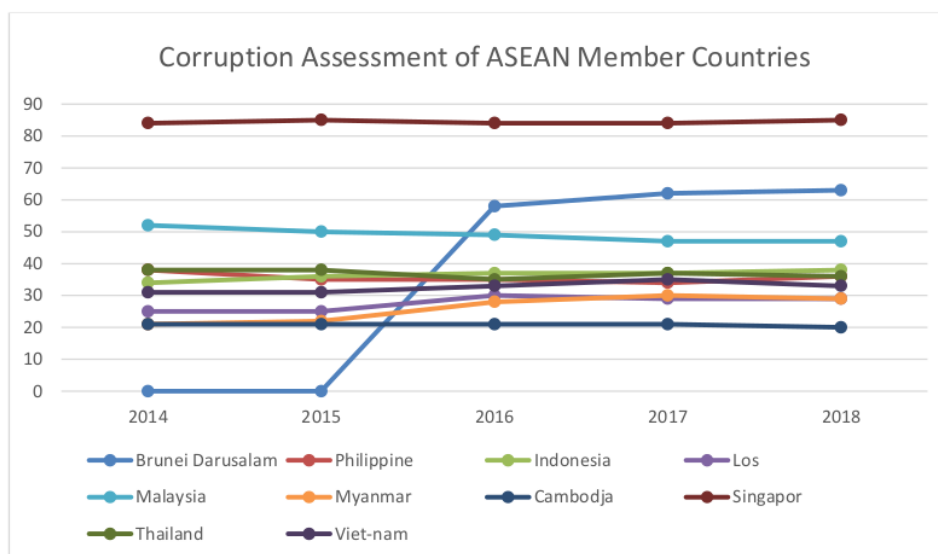
This paper focuses on the criminal act of corruption (CAC) that occurs at the regional level, specifically in Southeast Asia. The subjects to study are the members of ASEAN (The Association of Southeast Asian Nations). The ten countries are Brunei Darussalam, the Philippines, Indonesia, Cambodia, Malaysia, Myanmar, Lao People's Democratic Republic, Singapore, Thailand and Vietnam. There are at least two reasons for choosing ASEAN as the object of study: first, the absence of specific actual writing (less than the last five years) that has conducted a comparative study of corruption in ASEAN countries by describing the state of corruption in each country. Comparative comparisons become important because they can be a starting point for the actualization of law enforcement at the regional level. The second

¹¹ Transparency International is non-government organization which is move on corruption eradication. One of the result is the report of corruption index from more than 100 countries. The site could be visit in <https://www.transparency.org/> accessed on 1 October 2019.

¹² This index is used as a point of view to measure the level of corruption of a country or region. The index is calculated using 13 different data sources that provide perceptions of corruption in the public sector from business people as well as state experts. These include the State Policy and Institutional Assessment of the African Development Bank, State Policy and Institutional Assessment of the World Bank, Executive Opinion Survey of the World Economic Forum and World Justice Project Legal Index Expert Survey.

reason, since UNCAC was ratified in 2003, ASEAN does not seem to give a positive response, especially in terms of enforcing asset returns. This paper intends to provide answers to the situations that occur.

The description of corruption in Southeast Asia can be seen through a report released by Transparency International in 2018, the development of the corruption situation in ASEAN is as follows:

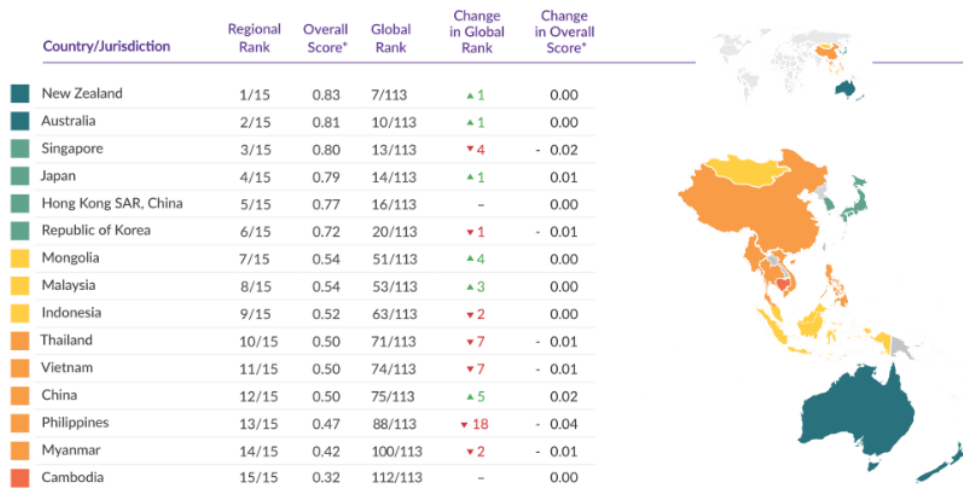


Sumber : Transparency International

Based on the graph, the best to the worst rank in terms of handling corruption by ASEAN member countries can be ranked as follows: first, Singapore occupies the first position as a country that is clean from¹³; the second is Brunei Darussalam; third Malaysia; fourth Indonesia; fifth Philippines and Thailand; sixth Vietnam; seventh Laos and Myanmar and Cambodia is the last or eighth.

The seriousness in dealing with corruption is in parallel with law enforcement by each country as the law enforcement report (rules of law index) issued by the World Justice Project in the 2017-2018 period:

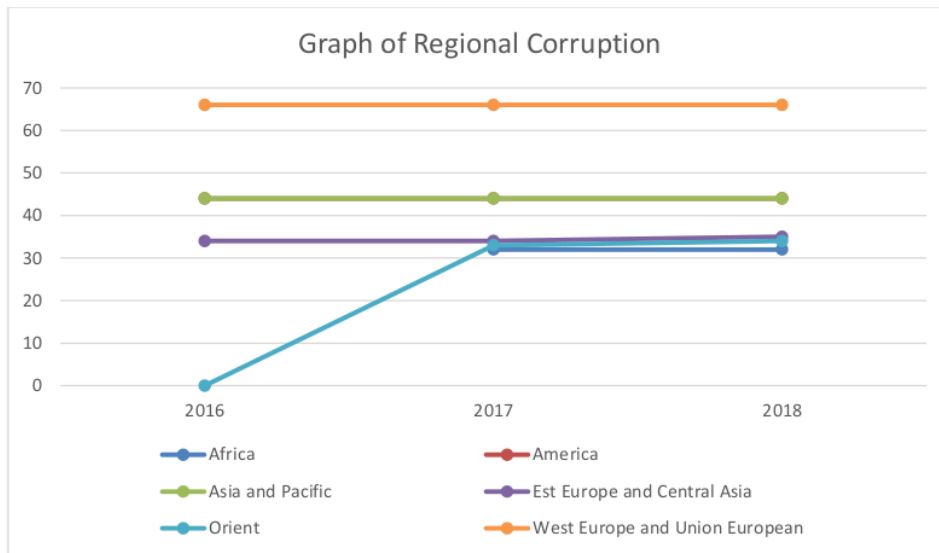
¹³ *Ibid.*



Source: World Justice Project Rules of Law index 2017/2018

Singapore and Malaysia are in the best position among ASEAN member countries in terms of law enforcement. This is also in line with the order to eradicate corruption. The scores of these two terms are not contradictory or not much different. Likewise, in the lower rank, Cambodia, Myanmar, the Philippines and Vietnam are at the bottom level in terms of law enforcement, the state of corruption in the country has been classified as very bad as can be seen in the graph of the assessment of global corruption in the last five years since 2018.

If the average of ASEAN member countries, it can be taken by summing all assessments divided by the number of countries, ASEAN will get 41.02. In other words, the state of corruption in ASEAN is still below average (less than 50, the highest value is 100). Although Singapore and Brunei Darussalam have tried to give a positive impression of the bad state of corruption in ASEAN member countries, the positive assessments set for Singapore and Brunei Darussalam have not been able to cover up the bad conditions of corruption in ASEAN. In other words, there are still many ASEAN member countries get bad ratings. Therefore, it is very important for countries with very bad corruption conditions such as Cambodia, Myanmar, Laos and Vietnam not contaminate other countries that have emerged from bad conditions such as Thailand, the Philippines and Indonesia. The effort that must be made by these countries is to build a regional cooperation among other ASEAN countries.



Source: Tranparency International, regional corruption report 2016-2018

If there is a comparison between groups in the region (as grouped in the graph), then based on a graph of the development of regional corruption in Africa, Asia and the Pacific, the Middle East, America, Eastern Europe and Central Asia, and Western Europe and European Union, then Asia ranks second after Western Europe. Nonetheless, the assessments obtained by Regional Asia are still low or below the midline (50). In other words, the Asian region is better than other regions except from regional groups incorporated in the European Union and Western Europe which occupy the first position. However, this assessment does not indicate that in Asia corruption is in good or safe condition.

Closed countries such as Russia, the Arabian Peninsula or North Korea get a bad assessment in terms of eradicating corruption (values below 50). This is why the region is not better than Asia. Seeing the conditions in Asia, especially in Southeast Asia (ASEAN member countries), it is very interesting to explore the situation of corruption deeper in the region. Specifically, the field of corruption to be presented is about the legal standard of asset recovery caused by Corruption.

Seeing the fact that corruption that occurs in ASEAN member countries is still at 'alarming' level (getting an assessment below the middle to lower level) then the question arises such as what is the legal standard for law enforcement on corruption that has been committed by ASEAN member countries? Furthermore, this paper seeks to describe what are the obstacles in asset recovery in ASEAN?

II. Analysis and Discussion

Corruption, based on language terminology, is known by several countries with different terms: Thailand uses the term "*gin moug*" which means "eat the nation" or an act that harm the nation. In Chinese it is known as "greed of the greed» and in Japanese uses the term "*oshoku*" or can be interpreted as "dirty /unclean work".¹⁴

Asset recovery is an efforts made by a country through law enforcement in order to return money or goods obtained from criminal or civil actions by person (who has the rights and obligation) in a country. Asset recovery becomes complex if it involves more than one country. The complexity arises if the state relations between related parties are not well established.

The ⁷ United Nations Convention Against Corruption (UNCAC) created as an international agreement in combating corruption eradication and it' become an important step. This convention is the first step that can ensure that corruption become a national responsibility as well as international criminal liability.¹⁵

The recovery of assets mention particularly in the chapter V of the Convention. This part can clearly be classified or divided into several sub-topics which can be concluded as follows: a) The state is obliged to provide or create the widest possible cooperation and assistance for the recovery assets ; b) Cooperation between countries in the framework to prevent the transfer of proceeds of crime which must be carried out by all financial institutions of each member country; c) ⁶ Provide measures for direct recovery of; d) Facilitate the mechanisms for recovery of property through international cooperation in confiscation; e) International cooperation for the purpose of confiscation; f) Special cooperation by taking actions outside the provisions without carrying out an existing legal process; g) The return and disposal of ¹⁸ assets is an obligation for all uncac member countries by adopting the due process of law; h) ¹⁸ Establishing a financial intelligence unit to be responsible for receiving, analyzing, and disseminating to the competent authorities reports of suspicious financial transactions; ⁸ I)States parties shall consider concluding bilateral or multilateral agreements or arrangement ton enhance the effectiveness of international cooperation.

These nine main ideas contained in UNCAC is relating to asset recovery. By increasing number of countries signatures to the Convention, these will be more reasonable to eradicate corruption in particular the process of asset recovery. In order to recover the assets, Hiariej states that the political will of a country plays an important role and is the starting point of the

¹⁴ *Ibid.*

¹⁵ *Ibid.*

movement needed in eradicating each country. After political will arises then the next step is to set up the legislation these could be start from asset tracking, asset freezing, confiscation of assets, confiscation of assets, asset management, transfer of assets till its utilization and supervision of assets that have been submitted.¹⁶ Furthermore, Hiariej declare that if the parliament and the judiciary have a political will, then the next step needed is legislation arrangement. This is the main guarantee for law enforcement officials to act freely according to the existing set of rules without any psychological pressure or burden.¹⁷

As mention by Hiariej, this should also be applied at the regional level. If ASEAN has a commitment, that asset recovery in the corruption cases is an important thing, then the political will¹⁸ should be implemented. How far the willingness is raised, it could be seen in the seriousness of ASEAN member countries wanting to commit themselves to UNCAC which can be seen in the table below:

Table UNCAC Signature and Ratification Status by ASEAN member countries

No	State	⁶ Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
1	⁹ Brunei Darussalam	11 Dec 2003	2 Dec 2008
2	Cambodia		5 Sep 2007 a
3	²⁵ Indonesia	18 Dec 2003	19 Sep 2006
4	Lao People's Democratic Republic	10 Dec 2003	25 Sep 2009
5	⁹ Malaysia	9 Dec 2003	24 Sep 2008
6	Myanmar	2 Dec 2005	20 Dec 2012
7	⁹ Philippines	9 Dec 2003	8 Nov 2006
8	Singapore	11 Nov 2005	6 Nov 2009
9	Thailand	9 Dec 2003	1 Mar 2011
10	Viet Nam	10 Dec 2003	19 Agu 2009

Source: United Nation Office on Drugs and Crime¹⁹

The table inform, ²⁶ based on information from the United Nations Office on Drugs and Crime (UNODC), all ASEAN member countries have ratified²⁰ UNCAC and only Cambodia

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ United Nations Office on Drugs and Crime. <https://www.unodc.org/unodc/en/corruption/ratification-status.html> accessed on 5 October 2019.

²⁰ Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for

do **the** accession.²¹ By engaging to the Convention, it means that most ASEAN member countries have tried to commit themselves to the Convention and this can be seen as seriousness in eradicating corruption. Then the next question is how far these countries implemented UNCAC in their respective national legislation?

Agreements between ASEAN member countries have been initiated since 2003 by the establishment the **South East Asia Parties Against Corruption (SEA-PAC)** which is an agreed cooperation to enhance international cooperation and **mutual legal assistance** between countries **in criminal matters or Mutual Legal Assistance (MLA)**. The SEA-PAC member are the ASEAN member countries exclude Myanmar.

It is stated in **the** agreement that there are two objectives of the agreement between countries, namely : 1) To establish and strengthen collaboration efforts against corruption among the parties; and 2) To increase capacity and institutional building among the parties in preventing and combating corruption.

Some acts could be done to achieve this goal: *first*, exchange and share information and work together on anti-corruption ; *second*, cooperate in training and professional skills development; *third*, exchanging expertise and personnel in to anti-corruption fields; *fourth*, host and participate in meetings, forums, workshops and conferences; and *finally*, providing technical assistance in operational activities.²²

The implementation of the international instruments and the agreements could be proven by analyzing the national legislation from each member of ASEAN.

National Legal Instruments of SEA PAC Member Countries

No	Member of ASEAN	Legislation
----	-----------------	-------------

² the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. [Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]. <https://ask.un.org/faq/14594> accessed on 5 October 2019.

²¹ "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question. [Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]. <https://ask.un.org/faq/14594> accessed on 5 October 2019.

²² Official website of *South East Asia Parties Against Corruption*. https://www.sea-pac.org/?page_id=4018 accessed on 10 October 2019.

Countries		
1	Brunei	<ul style="list-style-type: none"> • Prevention of Corruption Act (Cap 131) • Criminal Procedure Code (Cap 7) • Penal Code (Cap 22) • Criminal Asset Recovery Order 2012 • Mutual Assistance in Criminal Matters Order 2005 • Extradition Order 2006
2	Cambodia	<ul style="list-style-type: none"> • Constitution of the Kingdom of Cambodia (1993) • Law on Anti-Money Laundering and combating the financing of terrorism (2007) • Law on Auditing (2000) • Criminal Procedural Code (2009) • Criminal Code (2009) • Law on Anti-Corruption (ACL) (2010) • Law on the amendment of ACL (2011) • Law on Public Procurement (2013)
3	Indonesia	<ul style="list-style-type: none"> • Law No. 30/2002 Commission for the Eradication of Criminal Acts of Corruption • Law No. 31/1999 Eradication of the Criminal Acts of Corruption
4	Lao PDR	<ul style="list-style-type: none"> • Constitution of the Lao People's Democratic Republic • Penal Law • Law on Criminal Procedure • The Anti-Corruption Law • Decree on Nationality • Law on the Investment Promotion • Contract Law • Law on the Oversight by the National Assembly • Law on State Inspection • Law on the Handling of Petitions • Law on Illicit Drugs • Law on People's Court • Law on Judgment Enforcement of the Court • Law on the Oversight by People's Prosecutors • Law on Civil Aviation • Law on the Bank of the Lao People's Democratic Republic • Law on Anti-Money Laundering • Law on Extradition • Decree and Instruction on the Regulation of Government Official of the Lao PDR • Treaties on civil justice assistance • MOUs on the Mutual Legal Assistance and other legislations • Decree on Declaration of Asset
5	Malaysia	<ul style="list-style-type: none"> • Malaysian Anti-Corruption Commission Act 2009 (Act 694) • Anti-Corruption Act, 1997 (Act 575) • Emergency (Essential Powers) Ordinance No.22, 1970

		<ul style="list-style-type: none"> • Penal Code (Act 574) • Criminal Procedure Code (Act 593) • Police Act, 1967 (Act 344) • Evidence Act (Act 56) • Customs Act (Act 235), 1967 • Election Offences Act 1954 (Act 5), 1954 • Anti-Money Laundering And Anti-Terrorism Financing Act 2001 (Act 613)
6	Philippines	<ul style="list-style-type: none"> • Republic Act No. 1379, An Act Declaring Forfeiture in Favor of the State Any Property Found to have been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor • Article XI, 1987 Philippine Constitution (Accountability of Public Officers) • Republic Act No. 6770, Ombudsman Act of 1989 • Republic Act No. 3019, Anti-graft and Corrupt Practices Act • Republic Act No. 6713, Code of Conduct and Ethical Standards for Public Official and Employees • Implementing Rules of RA 6713, Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) • Revised Penal Code (Title II), Crime Against the Fundamental Laws of the State Revised Penal Code (Title VII) • Republic Act 7080, An Act Defining and Penalizing the Crime of Plunder • Republic Act 10589, An Act Declaring December of Every Year as “Anti-Corruption Month” in the Entire Country
7	Singapore	<ul style="list-style-type: none"> • Prevention of Corruption Act (Chapter 241) • Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A), 1999
8	Thailand	<ul style="list-style-type: none"> • Constitution of the Kingdom of Thailand B.E. 2550 (2007) • Criminal Code B.E. 2499 (1956) • Criminal Procedure Code B.E. 2477 (1934) • Organic Act on Counter Corruption B.E. 2542 (1999) • Organic Act on Criminal Procedure for Holders of Political Offices, B.E. 2542 (1999) • Organic Act on Criminal Procedure for Holders of Political Offices (Amendment) B.E. 2550 (2007) • Mutual Assistance in Criminal Matters Act B.E. 2535 (1992) • The Procedure for Cooperation between States in the Execution of Penal Sentences Act, B.E 2527 (1984) • Extradition Act B.E. 2551 (2008) • Anti-Money Laundering Act B.E. 2542 (1999) • The Special Case Investigation Act B.E. 2547 (2004) • Witness Protection Act B.E.2546 (2003) • Act on the Offences Committed by Officials of State Organizations or

		<ul style="list-style-type: none"> Agencies, B.E. 2502 (1959) Act on Offences Relating to the Submission of Bids to Government Agencies B.E. 2542 (1999) Management of Partnership Stakes and Shares of Ministers Act B.E. 2543 (2000) Bank of Thailand Act B.E. 2485 (1942) Financial Institution Business Act B.E. 2551 (2008)
9	Vietnam	<ul style="list-style-type: none"> Constitution 2013 Law on Inspection 2010 Law on Complaints 2010 Law on Denunciations 2011 Law on Preventing and Combating corruption 2005 (amended in 2007 and 2012) The Criminal Code 1999 (amended in 2009) The Code on Criminal Procedures 2003 Law on receiving citizen's reports 2013 Law on Public servants 2012 Law on Practice of Thriftiness and anti-wastefulness 2013
10	Myanmar	<ul style="list-style-type: none"> 1861 Penal Code 1898 Criminal Procedure Code 1959 Defense Services Act 1974 Income Tax Law 1990 Commercial Tax Law 1992 Forest Law 1993 Narcotic Drugs and Psychotropic Substances Law 1995 Myanmar Police Force Maintenance of Discipline Law 1997 Fire Service Law 2005 Anti-Trafficking in Persons Law 2010 Pyithu Hluttaw Election Law 2010 Amyotha Hluttaw Election Law 2010 Region Hluttaw or State Hluttaw Election Law 2013 The Anti-Corruption Law 2014 Anti-Money Laundering Law 2015 The Anti-Corruption Rules

Source: SEA-PAC Official Portal

Based on domestic legal instruments owned by ASEAN members, it can be concluded that each ASEAN member country has a legal instrument regarding the corruption crime. In other words, there is no legal vacuum in ASEAN member countries and this paper will not analyze the implementation and its effectiveness the extent to which each of these provisions has been effectively enforced

To strengthen the eradication of corruption, each member ASEAN country have also its institution particular on corruption cases. Indonesia has an Indonesian Corruption Eradication

Commission (*Komisi Pemberantasan Korupsi*),²³ Brunei has a Brunei Anti-Corruption Bureau,²⁴ Vietnam has a The Government Inspectorate of Vietnam,²⁵ Thailand has a Thailand National Anti-Corruption Commission,²⁶ Singapore has a Singapore Corrupt Practices Investigation Bureau,²⁷ Malaysia has a Malaysian Anti-Corruption Commission,²⁸ Laos has the LAO PDR State Inspection and Anti-Corruption Authority, Myanmar has the Myanmar Anti-Corruption Commission,²⁹ and the Philippines has the Philippines Office of The Ombudsman.³⁰ Observing the seriousness of each country by giving special authority to the agency or commission this proves that ASEAN member countries have a strong commitment to the eradication of regional corruption.

The establishment of ⁷ the South East Asia Against Corruption (SEA-PAC) two years after the enactment of UNCAC is no accident. This is a positive response from ASEAN as a regional organization that has a general purpose. Observing after 15 years of collaborative efforts to eradicate corruption carried out between ASEAN member countries and compared with the Corruption Index report presented by Transparency International (Regional Corruption Chart), it can be concluded that the SEA-PAC has not optimally supported ²⁰ corruption eradication. At least according to the author there are two major things that hinder regional cooperation in the eradication of corruption in ASEAN: first, the existence of the principle of non-intervention which is interpreted incorrectly so that it becomes an obstacle for a country to interfere in the internal affairs of other countries. Even though if there is already a commitment in terms of cooperation in eradicating corruption, then a country must open the door to other countries to provide an assessment. Second, because the recovery of assets is dealing with more than the legal system, each ASEAN member state should be aware that the judicial system used is universally acceptable, namely due process due law.³¹

The recovery asset is more complex if the assets are outside the jurisdiction of the country. Therefore, a solution that can be taken to facilitate it is by conducting international

²³ <https://www.kpk.go.id/id> accessed on 30 September 2019.

²⁴ <https://www.bmr.gov.bn/Theme/Home.aspx> accessed on 30 September 2019.

²⁵ <https://www.thanhtra.gov.vn/en/Pages/Home.aspx> accessed on 30 September 2019.

²⁶ <https://www.nacc.go.th/main.php?filename=index> accessed on 30 September 2019.

²⁷ <https://www.cpib.gov.sg/> accessed on 30 September 2019.

²⁸ <https://www.sprm.gov.my/en/> accessed on 30 September 2019.

²⁹ <https://www.accm.gov.mm/acc/> accessed on 30 September 2019.

³⁰ <https://www.ombudsman.gov.ph/> accessed on 30 September 2019.

³¹ *Ibid.*

cooperation³² and strengthening the commitment of each country in combating corruption. Each country must uphold the principle of having good faith and being able to coordinate.

Learning from Indonesia failed, as one of the countries that has been fully committed to the implementation of UNCAC at the national level, although Indonesian government has ratified UNCAC 2003 through Law No. 1 of 2006, the principles set out in UNCAC have not yet been fully implemented. Although this opinion was expressed in a paper published in 2011 by Ginting in his article entitled "International Convention in Returning Corruption Assets in Indonesia", it is still relevant today. Based on information from CNN Indonesia in 2019 this was justified by a spokesman for the Corruption Eradication Commission (KPK) Febri Diansyah.³³ In connection with this paper, namely regarding the return of assets, there has not been the establishment of a special institution in managing and administering assets originating from criminal acts of corruption. In addition, the central authority institution has not yet focused on increasing cooperation in bilateral and multilateral agreements.³⁴

Toetik Rahayuningsih in 2015 also wrote about deficiencies in the legal system in Indonesia. She concluded, in his writing about the seizure of the assets resulting from the legislation in Indonesia, that the provisions of the legislation governing the seizure of assets resulting from criminal acts of banking which were hidden abroad were not sufficient enough.³⁵ Therefore it is necessary to create a special regulation relating to the confiscation and seizure of assets, in which regulate the seizure of assets, both assets used to commit crimes (as tools) and assets obtained from the proceeds of crime (as a result), and the mechanism.³⁶

From several opinions as described above, it can be conclude that the factors that influence the implementation of a corruption eradication cooperation agreement in the form of returning assets of corruption crimes hidden abroad include : a) Different legal system from one country to another; b) Banking and financial system factors where the asset is (because the asset can be in another country); c) The practice in carrying out the laws of each country is different; d) The factor of whether or not a resistance from the party whose assets will be taken; and e) Political factors.

³² *Ibid* 13

³³ KPK Sampaikan Kendala dan Strategi Penanganan Kasus Korupsi. <https://www.cnnindonesia.com/nasional/20190129002035-12-364583/kpk-sampaikan-kendala-dan-strategi-penanganan-kasus-korupsi> diakses 13 Oktober 2019.

³⁴ Jamin Ginting, Perjanjian Internasional dalam Pengembalian Aset Hasil Korupsi di Indonesia, *Op. cit.*, p. 457.

³⁵ *Ibid.*, p. 16.

³⁶ *Ibid.*, p. 17.

According to the factors above, we can conclude that returning assets across countries is not a simple and easy matter to do. There is a need for legal adjustments and legal terms, the need for agreement on the banking system, and the political stability of a country.

Conclusion

Based on the explanation of the discussion above, it can be concluded :

1. All ASEAN member countries have ratified the United Nations Convention Against Corruption (UNCAC), they have their own national legal instruments and each country have a special body that handles corruption eradication. This is one positive step that has been taken to improve the assessment of regional corruption in Southeast Asia. Based on a report from Transparency International, law enforcement carried out by ASEAN member countries is still relatively feeble. Therefore, there needs to be a strong commitment so that the application of the law is carried out indiscriminately.
2. The return of assets caused by corruption requires improvement in international cooperation and also political will. There have been a number of state agreements to work together in eradicating corruption, especially those relating to asset recovery, but this has not been optimally carried out by ASEAN countries. Good international cooperation must begin with the political will of each country.

REFERENCES

JOURNAL

- Garimella, Sai Ramani. Normative Structure for Criminalising Corruption the South Asian Experience International Journal of Human Rights and Constitutional Studies. Volume 2 Issue 1 2014.
- Ginting, Jamin. *Perjanjian Internasional dalam Pengembalian Aset Hasil Korupsi di Indonesia*. Jurnal Dinamika Hukum, Volume 11 Issue 3 2011.
- Maskun. *Combating Corruption Based on International Rules*. Indonesia Law Review, Volume 4 Issues 1 January 2014.
- Rahayuningsih, Toetik. *Perampasan Aset Hasil Tindak Pidana Perbankan Dalam Rangka Pemberantasan Tindak Pidana Pencucian Uang*. Rechtide, Volume 8 Nomor 2 Tahun 2015
- Yasmirah, Saragih dan Berlian Mandasari. *The Enforcement of the 2009 Law Number 46 on Corruption Court : The Role of Special Corruption Court*. Sriwijaya Law Review, Volume 2 Issues 2 July 2018.
- Siswanto, Heni. *Pembangunan Penegakan Hukum Pidana yang Mengefektifkan Korporasi Sebagai Subjek Tindak Pidana Korupsi*. Fiat Justitia Volume 9 Nomor 1 April 2016.

MAKALAH / PROCEEDING

- Nandyatama Randy Wirasta, Amalia Ezka, Dinarto Dedi. *Political and Security Issues in ASEAN*. International Conference on ASEAN Studies, Universitas Gadjah Mada et Pusat Studi ASEAN, Yogyakarta, 2014.

INTERNET

- Hiariej, Eddy O.S.. Pengembalian Aset Kejahatan, https://pustakahpi.kemlu.go.id/dir_dok/OPINIO%20JURIS_vol_13d.pdf#page=9 diakses 5 Oktober 2019.
- KPK Sampaikan Kendala dan Strategi Penanganan Kasus Korupsi, <https://www.cnnindonesia.com/nasional/20190129002035-12-364583/kpk-sampaikan-kendala-dan-strategi-penanganan-kasus-korupsi> diakses 13 Oktober 2019.
- South East Asia Parties Againts Corruption*. https://www.sea-pac.org/?page_id=4018 accessed on 10 October 2019.

United Nations Office on Drugs and Crime
<https://www.unodc.org/unodc/en/corruption/ratification-status.html> on 5 October 2019.

<https://www.transparency.org/> accessed on 1 October 2019.

<https://ask.un.org/faq/14594> on 5 October 2019.

<https://www.kpk.go.id/id> accessed on 30 September 2019.

<https://www.bmr.gov.bn/Theme/Home.aspx> accessed on 30 September 2019.

<https://www.thanhtra.gov.vn/en/Pages/Home.aspx> accessed on 30 September 2019.

<https://www.nacc.go.th/main.php?filename=index> accessed on 30 September 2019.

<https://www.cpib.gov.sg/> accessed on 30 September 2019.

<https://www.sprm.gov.my/en/> accessed on 30 September 2019.

<https://www.accm.gov.mm/acc/> accessed on 30 September 2019.

<https://www.ombudsman.gov.ph/> accessed on 30 September 2019.

Asset Recovery in the Criminal Act of Corruption in ASEAN

ORIGINALITY REPORT

20%
SIMILARITY INDEX

20%
INTERNET SOURCES

12%
PUBLICATIONS

14%
STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to University of Sydney Student Paper	3%
2	wiredspace.wits.ac.za Internet Source	2%
3	Submitted to NALSAR University of Law Hyderabad Student Paper	2%
4	www.aca-forum.org Internet Source	1%
5	www.dailymail.co.uk Internet Source	1%
6	www.unodc.org Internet Source	1%
7	www.cpib.gov.sg Internet Source	1%
8	www.fdrindia.org Internet Source	1%
9	treaties.un.org Internet Source	1%

10	Submitted to University of Wales Institute, Cardiff Student Paper	1 %
11	pdfs.semanticscholar.org Internet Source	1 %
12	www.burmalibrary.org Internet Source	<1 %
13	www.cnnindonesia.com Internet Source	<1 %
14	attylaserna.blogspot.com Internet Source	<1 %
15	core.ac.uk Internet Source	<1 %
16	en.wikipedia.org Internet Source	<1 %
17	www.kas.de Internet Source	<1 %
18	www.lcilp.org Internet Source	<1 %
19	www.wildlex.org Internet Source	<1 %
20	docplayer.net Internet Source	<1 %
21	thailaws.com Internet Source	

<1 %

22

worldwidescience.org

Internet Source

<1 %

23

www.sarawakreport.org

Internet Source

<1 %

24

hdl.handle.net

Internet Source

<1 %

25

Submitted to The University of the South Pacific

Student Paper

<1 %

26

cdn.ideaspaz.org

Internet Source

<1 %

27

www.zawya.com

Internet Source

<1 %

28

Submitted to University of Greenwich

Student Paper

<1 %

29

"The Fight Against Poverty and the Right to Development", Springer Science and Business Media LLC, 2021

Publication

<1 %

30

www.enviroliteracy.org

Internet Source

<1 %

Exclude quotes On

Exclude matches < 9 words

Exclude bibliography On