



## Asset Recovery as an Effort to Restore State Losses Resulting from Corruption Cases

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**Abstract:** Eradicating corruption solely by prosecuting and imposing imprisonment on perpetrators does not fully resolve the problem if the assets obtained from corrupt practices cannot be recovered by the state for development purposes. Therefore, the recovery of assets resulting from corruption becomes a crucial aspect of combating corruption. This study uses a normative legal research method, which emphasizes document studies or literature research. The substance of the asset recovery legal system through criminal law consists of four stages: asset tracing, asset freezing or confiscation, asset seizure, and the return and transfer of assets to the victim state. Efforts to recover state losses caused by corruption cases through asset recovery include seizing and tracing the assets of defendants or convicts, ensuring that convicts pay compensation, encouraging public support for anti-corruption initiatives, improving facilities and infrastructure for corruption eradication, and clearly regulating based on applicable laws the authority of KPK prosecutors and public prosecutors appointed and dismissed by the Corruption Eradication Commission.

**Keyword:** Asset Recovery; State Losses; Corruption.

### INTRODUCTION

Corruption is a crime with far-reaching consequences, posing a threat to social stability and security, affecting sustainable development, and ultimately harming public welfare<sup>1</sup>. Corrupt practices in Indonesia occur not only within the executive branch but are also committed by individuals in the legislative and judicial branches<sup>2</sup>. On a micro level, the impact of corruption is evident in the political sphere, where it undermines the foundations of democracy and good governance. Corruption in legislative elections affects policy-making processes (accountability and representation), while corruption in the judiciary results in

<sup>1</sup> Kusnadi, 2020, "Policy Formulation of Provisions for the Return of Assets Proceeds of Corruption", Jurnal Corruptio, Vol. 1 No. 2, p. 108

<sup>2</sup> I Gusti Ketut Ariawan, 2008, "Stolen Asset Recovery Initiative: A Hope for the Return of State Assets," Kertha Patrika Journal, Vol. 33 No. 1, p. 57

injustice and legal uncertainty. Corruption in the executive branch leads to discriminatory treatment in public services<sup>3</sup>.

Corruption, both directly and indirectly, causes losses to the state's finances and economy, which simultaneously harms the people. The victims of corruption are the state and its citizens, as corruption reduces and disrupts state finances and the national economy. Corruptors turn the state into a *victim state*<sup>4</sup>.

Corruption is classified as a special crime and considered an *extraordinary crime*, requiring extraordinary efforts to eradicate it. Efforts should not only focus on imprisonment. Article 18 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law) stipulates that additional penalties may be imposed on corruptors, including confiscation, payment of compensation, partial or total closure of companies, and revocation of certain rights or privileges<sup>5</sup>.

State losses can be recovered through additional penalties as regulated in Article 18 Paragraph (1) of Law No. 31 of 1999, which concerns the recovery of state finances, as follows:

1. Confiscation of movable or immovable property, tangible or intangible, used for or obtained from corruption crimes, including companies owned by the convicted person where the corruption occurred, and any substitute assets.
2. Payment of compensation equal to the assets obtained from the corruption crime.
3. Closure of all or part of a company for a maximum of one (1) year.
4. Revocation of all or part of certain rights or the removal of certain benefits granted by the government to the convicted person.

Eradicating corruption merely through prosecution and imprisonment does not solve the problem if the assets resulting from corruption cannot be recovered by the state for development purposes. Therefore, asset recovery from corruption crimes is a crucial aspect of anti-corruption efforts, as stipulated in the *United Nations Convention Against Corruption* (UNCAC)<sup>6</sup>. Article 51, Chapter V of UNCAC states:

*"The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard."*

Substantively, asset recovery is an essential part of preventing and combating crime, especially corruption. Considering the need for adequate legal instruments to combat corruption, as well as the necessity to align national laws with international norms and instruments, a Draft Law on Criminal Asset Recovery (*Rancangan Undang-Undang Pemulihan Aset Pidana*) needs to be prepared and enacted. This law is expected to serve as a tool for the state to restore its financial position to a greater level<sup>7</sup>.

Based on the above description, the author is interested in formulating the following research problems:

1. How is asset recovery implemented in corruption crimes?

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<sup>3</sup> *Ibid.*

<sup>4</sup> Artidjo Alkostar, 2008, *State Financial Losses from the Perspective of Corruption Crimes*, Varia Peradilan No. 275, pp. 34-35

<sup>5</sup> Lutfiatul Hasanah, 2020, "Efforts to Return State Assets: A Form of Eradicating Criminal Acts of Corruption," *Anti-Corruption Journal*, Vol. 3 Issue 2, pp. 41-42

<sup>6</sup> Sylvana Agnetha Wulan Widyastuty, et al., 2022, "Recovery of Corruption Crime Assets Based on the United Nations Convention Against Corruption in the ASEAN Region," *Jurnal Legal Spirit*, Vol. 6 No. 2, pp. 167-168

<sup>7</sup> Refi Meidiantama and Cholfia Aldamia, 2022, "Asset Recovery of Corruption Perpetrators in International Law and Its Implementation in Indonesian National Law," *Muhammadiyah Law Review*, Vol. 6 No. 1, p. 56

2. What efforts are made to recover state losses resulting from corruption cases through asset recovery?

## METHOD

This research uses a normative legal research method that emphasizes document study or library research<sup>8</sup>. The normative legal approach is carried out by reviewing and examining library materials in the form of laws and regulations related to the problem being studied<sup>9</sup>. Therefore, this research places greater emphasis on the use of secondary data. Secondary data refers to research data sources obtained indirectly through library research. This data comes from research results in the form of journal articles, books, and archives, whether unpublished or publicly published<sup>10</sup>.

## RESULTS AND DISCUSSION

### Asset Recovery in Corruption Crimes

The emergence of corruption is driven by two main motivations. First, intrinsic motivation, which is the internal drive to obtain satisfaction derived from committing acts of corruption. Over time, corruption becomes a lifestyle, a habit, and a common tradition or culture. Second, extrinsic motivation, which originates from external factors not inherent to the perpetrator. This type of motivation may include economic reasons, ambition to achieve a certain position, or an obsession to improve living standards or career advancement through shortcuts.

Specifically, corruption is caused by three factors<sup>11</sup>:

1. Corruption driven by greed, committed by individuals who are not in economic need and may even be wealthy. High-ranking positions, large salaries, luxurious houses, growing popularity, and unchecked power often lead them into corrupt practices.
2. Corruption driven by necessity, which occurs due to the urgent need to fulfill basic necessities.
3. Opportunistic corruption, committed due to significant opportunities for corruption, such as the chance to become wealthy or rise in rank quickly. This type of corruption is often supported by weak organizational systems, low public accountability, lax public oversight, and fragile law enforcement, compounded by legal sanctions that fail to deter offenders.

Corruption is considered one of the most serious offenses because it harms state finances and violates the social and monetary rights of the state. In Indonesian criminal law, corruption offenses are regulated under Law No. 20 of 2001, which amends Law No. 31 of 1999 on the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law). This law is framed with public awareness, recognizing that corruption damages state finances and may hinder public development. Therefore, state administrators view the establishment of corruption eradication policies as crucial to realizing a prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia<sup>12</sup>.

The Corruption Law regulates mechanisms and procedures for asset recovery through both criminal and civil legal channels. In addition to the Corruption Law, Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption (UNCAC)

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<sup>8</sup> Peter Mahmud Marzuki, 2016, *Legal Research*, Revised Edition, 12th Printing, Prenadamedia Group, Jakarta, p. 55.

<sup>9</sup> Amiruddin and Zainal Asikin, 2010, *Introduction to Legal Research Methods*, Rajawali Pers, Jakarta, p. 118.

<sup>10</sup> Bahder Johan Nasution, 2008, *Legal Science Research Methods*, Mandar Maju, Bandung, p. 87

<sup>11</sup> Gomgom TP Siregar, 2023, "Asset Recovery for Corruption Offenders," *Unes Law Review*, Vol. 6 No. 2, p. 4564

<sup>12</sup> Zaenudin et al., 2018, "Norm of Recovery of State Financial Loss because of Criminal Law of Corruption in Indonesia," *Journal of Law, Policy and Globalization* 71, hlm.104

2003 also stipulates that asset recovery may be conducted through legal action (indirect asset recovery through criminal processes) and personal civil actions (direct asset recovery through civil proceedings). Technically, UNCAC regulates asset recovery from corruption perpetrators either directly, through judicial processes based on a “request for negotiation” or a “multiple bargaining system,” or indirectly through seizure processes based on court rulings<sup>13</sup>.

According to Purwaning M. Yanuar, asset recovery is a legal enforcement system carried out by a state victim of corruption to revoke, confiscate, and remove rights over assets obtained from corruption through a series of legal processes and mechanisms, both criminal and civil. Assets resulting from corruption, whether located domestically or abroad, are first traced, then frozen, confiscated, seized, handed over, and returned to the victim state. Asset recovery can address state losses caused by corruption crimes and prevent perpetrators from using these assets as tools or means to commit further crimes. It also serves as a deterrent to perpetrators and potential offenders<sup>14</sup>.

The moral foundations for recovering assets from corruption crimes, as proposed by Michael Levi, include:

1. Prophylactic, the preventive reason — to prevent perpetrators from controlling illegally obtained assets that could be used for future crimes.
2. Propriety, the appropriateness reason — to prevent perpetrators from having rights over illegally obtained assets.
3. Priority, the precedence reason — because the state has priority over the perpetrator in claiming illegally obtained assets.
4. Property, the ownership reason — because the assets were obtained unlawfully, the state has an interest as the rightful owner.

The implementation of restorative justice theory in criminal law, particularly in corruption cases, can involve asset recovery actions such as<sup>15</sup>:

1. Criminal sanctions;
2. Civil lawsuits, such as *in rem* confiscation, where the state takes legal action to seize assets through civil court decisions based on strong evidence that the assets were derived from or used in criminal activities; and
3. International cooperation through *mutual assistance in criminal matters* between the victim state or country of origin and the country where the assets from corruption crimes are stored (the custodial state).

Furthermore, a theory that can serve as the basis for asset recovery is the theory of social order or the theory of social defence<sup>16</sup>. The substance of the legal system for asset recovery through criminal law follows four (4) main stages<sup>17</sup>:

1. Asset Tracing

This stage is crucial and determines the success of subsequent steps. The purpose of asset tracing is to identify the assets, their storage locations, proof of ownership, and their connection to the criminal offense committed, while simultaneously gathering evidence. For the purpose of asset tracing, it is presumed that the perpetrators of criminal acts will

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<sup>13</sup> Ade Mahmud, 2018, “Problems of Asset Recovery in Recovering State Losses Due to Corruption. Judicial Journal”, Vol. 11 No. 3, p. 355.

<sup>14</sup> Robert Kennedy, 2017, Return of Criminally Proceeded Assets from the Perspective of the Anti-Money Laundering Regime, Rajawali Press, Jakarta, p. 31

<sup>15</sup> Ade Mahmud, Op. Cit., p. 347

<sup>16</sup> H. P. Panggabean, 2020, Recovery of Assets from Corruption Crimes: Theory - Practice and Jurisprudence in Indonesia, Bhuana Ilmu Populer, Jakarta, p. 21

<sup>17</sup> Ulang Mangun Sosiawan, 2020, "Handling of the Return of State Assets Proceedings of Corruption and the Implementation of the UN Anti-Corruption Convention in Indonesia," Journal of Legal Research: De Jure, Vol. 20 No. 4, pp. 596-597

use the unlawfully obtained funds for their personal and family interests. All facts are cross-checked and combined with research from global databases, public records, and examinations of corporate documents. This initial information is then used to determine the next investigative steps.

A second presumption is that third parties will be used in the process of concealing these assets. Alongside the investigation, efforts are made to develop relevant intelligence sources expected to enhance knowledge and confirm the accuracy of targets — both for investigative and legal purposes. At the end of the investigation, all elements of data and information will be tested for their admissibility as legal evidence.

## 2. Freezing or Seizure of Assets

Successful investigation and tracing of unlawfully obtained assets enable the next stage of asset recovery: asset freezing or seizure.

According to the KAK 2003, freezing or seizure of assets means a temporary prohibition against transferring, converting, disposing of, or moving property, or temporarily placing it under trusteeship or supervision based on a court order or the order of another competent authority. This may include law enforcement agencies such as the police, prosecutor's office, or other state bodies authorized to take such actions, such as the Corruption Eradication Commission (KPK).

An order to freeze or seize property from a competent authority must meet two conditions: The order must be based on reasonable grounds, such that the competent authority of the recipient country is convinced that there are sufficient reasons to carry out the action. The assets subject to freezing or recovery must be the object referred to in the order issued by the competent authority.

## 3. Confiscation of Assets

The KAK 2003 defines confiscation, including surrender when necessary, as the permanent deprivation of property based on a court order or another competent authority. Thus, confiscation is an order from the court or competent authority to revoke the rights of perpetrators of corruption crimes over assets resulting from corruption after a court has issued a conviction.

Typically, confiscation orders are issued by the court or competent authority of the recipient country after a conviction has been handed down in the victim country. Confiscation may also occur without a court ruling in cases where the perpetrator has died, disappeared, or when there is no possibility for the prosecutor to pursue prosecution.

## 4. Return and Transfer of Assets to the Victim State

In this stage, to enable the return of assets, both the recipient and victim countries must undertake legislative and other actions in accordance with the principles of their respective national laws, allowing the competent authorities to return the assets.

One major issue in the return of confiscated assets is the distribution of assets between the recipient country and the victim country. Most countries do not have specific legal provisions permitting or prohibiting the distribution of confiscated assets.

Such countries usually regulate the distribution and receipt of assets based on mutual legal assistance treaties. Several conditions that must be agreed upon before asset distribution include:

1. Distribution and receipt of assets apply only in cases where assistance is provided upon the request of the victim country to freeze and seize the assets. Asset distribution does not apply in cases where the assistance is limited to investigation.
2. It is determined that a country may only establish asset distribution in cases involving total asset values exceeding US \$1.3 million.
3. Asset distribution can only be conducted for confiscated property and not in connection with the seizure of cash value.



### **Efforts to Recover State Losses Due to Corruption Cases Through Asset Recovery**

Asset recovery is a process of handling crime-generated assets in an integrated manner at every stage of law enforcement so that the value of those assets can be preserved and fully returned to the victims of the crime, including the state. Asset recovery also includes all preventive measures aimed at ensuring that the value of such assets does not decrease.

The recovery of stolen state assets is crucial for the development of developing countries, as returning stolen assets not only restores state property but also upholds the rule of law, ensuring that no one is above the law. The principle of asset recovery is explicitly regulated in the United Nations Convention against Corruption (UNCAC). Article 51 of the Convention technically enables claims for the return of state assets obtained through acts of corruption, either through civil proceedings (lawsuits) or criminal proceedings<sup>18</sup>.

The Anti-Corruption Law imposes penalties on perpetrators of corruption crimes in the form of imprisonment, fines, and payment of compensation (replacement money). Specifically, if the convicted person fails to pay the replacement money, the confiscation of the convict's wealth or assets will be carried out. Furthermore, if fines are not paid by the convict, imprisonment will be imposed as a substitute. In addition to these three types of sanctions, the Anti-Corruption Law also regulates the possibility of asset confiscation for assets or proceeds of corruption crimes as stipulated in Article 18 paragraph (1)(a) of the Anti-Corruption Law.

Efforts to recover state losses through civil legal instruments are regulated in Articles 32, 33, and 34 of Law No. 31 of 1999 on the Eradication of Corruption Crimes and Article 38C of Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999. These civil lawsuits can be filed by the Prosecutor's Office or the affected institution.

Civil lawsuits in corruption cases have distinctive features: they are filed after criminal proceedings can no longer be pursued due to specific circumstances as referred to in Articles 32, 33, 34, and 38C of the Anti-Corruption Law, even though certain conditions still indicate state financial losses. Efforts to recover state losses are carried out through standard civil procedures, meaning that civil cases filed against corrupt individuals (suspects, defendants, convicts, or their heirs) must follow the usual formal legal processes.

Efforts to recover state losses from corruption through asset recovery that can be undertaken by law enforcement agencies include the following<sup>19</sup>:

#### **1. Maximizing State Loss Recovery Through Seizure and Tracing of the Convict's Assets**

The primary goal of eradicating corruption should not only be to imprison corrupt individuals but also to prioritize the recovery of state losses. Law enforcement authorities can cooperate with local governments and village administrations where the convict resides to identify and trace their assets including land, buildings, businesses, workplaces, or other valuable property.

The Prosecutor's Office, the Corruption Eradication Commission (KPK), and the Police must also collaborate with banks to trace the convict's deposits and with SAMSAT and the Department of Transportation to investigate ownership of motor vehicles.

Asset tracing should also extend to the convict's relatives, family members, and associates who may have knowledge of their assets. Investigators may only seize property directly linked to or derived from corruption, while unrelated property may be temporarily frozen

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<sup>18</sup> Darmadi Djufri, et al., 2020, "Asset Recovery Model as an Alternative to Recovering State Losses in Corruption Cases", Discipline: Academic Community Magazine of the Youth Pledge School of Law, Vol. 26 No. 2, p. 129

<sup>19</sup> Sandi Herintus Kabba, et al., 2021, "Procedures for the Return and Recovery of State Losses Due to Corruption," Journal of Legal Interpretation, Vol. 2 No. 3, pp. 577-578

and later seized during execution if the convict fails to pay the replacement money. Such frozen or seized assets may be auctioned if the convict refuses to pay or opts for a substitute sentence instead of reimbursing state losses.

2. Ensuring the Convict Pays the Replacement Money

Although legislation provides that a convict who fails to pay replacement money may face imprisonment, and prosecutors may auction off confiscated assets to compensate the state, challenges arise if the auctioned assets do not cover the total losses. In such cases, the convict must serve a substitute prison sentence. If the convict prefers serving this substitute sentence over paying the replacement money, the prosecutor faces difficulties in recovering state losses if there are no assets to seize.

3. Encouraging Public Support for Corruption Eradication

One crucial factor in law enforcement is public involvement. Effective law enforcement must engage the public, as even the best laws, well-trained officers, and adequate facilities are ineffective if society lacks awareness and willingness to comply with legal norms. Without public support, legal enforcement cannot be fully effective.

4. Enhancing Infrastructure and Facilities for Corruption Eradication

One of the key factors affecting law enforcement is infrastructure or facilities, which include a skilled and educated workforce, organized systems, adequate equipment, sufficient financial resources, and more.

For example, the Prosecutor's Office lacks wiretapping tools and authority, which only the KPK currently possesses. Without such tools, law enforcement efforts cannot reach their full potential. Therefore, the Prosecutor's Office must collaborate with the KPK to leverage its wiretapping capabilities and enhance corruption eradication efforts.

Regarding physical project inspection tools, the Prosecutor's Office does not yet own such equipment and often borrows it from private parties or relevant agencies, relying on experts to help uncover irregularities. Additionally, the Prosecutor's Office should coordinate early with banks to freeze accounts and block financial transactions of individuals suspected of corruption.

5. Clearly Defining the Authority of KPK Prosecutors and Public Prosecutors Appointed and Dismissed by the KPK Based on Applicable Law

The KPK's authority is currently limited to investigation, inquiry, and prosecution. This creates a normative gap because the execution of court decisions in corruption cases is not explicitly regulated, including whether the KPK prosecutors or public prosecutors appointed and dismissed by the KPK have the authority to carry it out. Therefore, the roles and powers of KPK prosecutors and public prosecutors must be clearly defined, particularly regarding the execution of court decisions in corruption cases, which are not yet explicitly regulated in existing laws.

## CONCLUSION

The substance of the legal system for asset recovery through criminal law is carried out through four stages: asset tracing, freezing or confiscation of assets, confiscation of assets, and return and transfer of assets to the victim state.

Efforts to recover state losses due to corruption cases through asset recovery that can be implemented by law enforcement officers in recovering state losses due to corruption include maximizing the recovery of state losses by confiscating and tracing the assets of the Defendant or Convicted, convincing the Convict to pay compensation, encouraging public support for corruption eradication, providing facilities and infrastructure for corruption eradication, and the authority of the Corruption Eradication Commission (KPK) Prosecutor and Public Prosecutor appointed and dismissed by the KPK must be strictly regulated and based on applicable laws.

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