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# Efforts to Return State Asset Losses in Corruption Offenses from Abroad to Indonesia

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***Abstract***
*This research examines efforts to return state asset losses of corruption crimes from abroad to Indonesia and the obstacles faced in returning state asset losses of corruption crimes from abroad to Indonesia. This research uses normative legal research methods. The results of the discussion of this research include Efforts to Return State Asset Losses of Corruption Crimes from Abroad to Indonesia. Eradication of corruption crimes can essentially be done through three approaches, namely preventive, repressive, and restorative actions. Efforts to return losses of state assets of corruption crimes from abroad to Indonesia can be carried out in several ways, including the implementation of extradition of corruptors, asset seizure through mutual assistance agreements, and based on Indonesian national Law. The obstacles faced in returning the losses of state assets of corruption crimes from abroad to Indonesia are due to the abuse of power, which occurs by involving the upper economic class (conglomerates) and politics as the upper power class (high-ranking state officials) who conspire and aim for group economic interests.*

## I. Introduction

The relationship between Law and social science is like a currency with two sides. At the same time, the realization in life requires an independent, competent law that survives with its existence(Kusumohamidjojo, 2016). So it is not wrong if the term state of Law is used by various countries worldwide, including Indonesia, which makes Law the supreme leader in state regulation.

Talking about Law, it can no longer talk about legal arrangements in one country. Today, relations between countries, both bilateral and multilateral, can become a complex pattern of relations with the development of transnational crimes. One of the obstacles in overcoming transnational crimes

is the perpetrators of crimes that are difficult to arrest and prosecute(Yuniarti, 2010). One of the transnational crimes is corruption.

Corruption comes from the Latin and Dutch corruptibe, which means the treatment of individuals and government officials who deviate from their duties, positions and powers to achieve personal goals or protect their individual interests(Aldamia, 2022). Transnational crime has replaced national crime in corruption(Melani, 2005). Therefore, corruption is often referred to as an extraordinary crime(Setiadi, 2018).

Corruption is prevalent in Indonesia. Indonesia ranks 102 out of 180 corrupt nations(Brun & Silver, 2019). Indonesian corruption is organized, structured, and systematic using several methods. Corruption in the executive, legislative, and judicial powers system involves players of varied social, economic, and intellectual positions. Article 2 paragraph (1) of Law Number 31 Year 1999 on the Eradication of Corruption defines corruption as any illegal act of enrichment that harms public finances or the economy.

Corruption, in its many manifestations, is the seizure of governmental assets that prevents the state from fulfilling its duties to its citizens(Arifin, Utari, & Subondo, 2017). The impact of corruption is that people will lose their rights to live a prosperous life(Levi, 2004). Even more worrying is that the proceeds of corrupt assets are stored and hidden abroad.

Ethical awareness of law enforcement officials is needed to uphold Law and justice so that the Law can effectively protect victims(Taufiq, 2020). The threat of severe punishment for perpetrators of corruption will not be helpful if there is no seriousness or ethical awareness of law enforcement officials to take action against the perpetrators of crime.

Few corruptors preserve their riches in industrialized nations protected by the legal system and lawyers hired by them(Frikasari, 2005). It is also not uncommon for the proceeds of corruption to be laundered(Frikasari, 2005). Indonesia is one of the countries in the world that has made efforts to return assets from corruption by conducting various international collaborations. However, there are many obstacles, including different legal systems, strict banking and financial systems where the assets are located, practices in implementing the Law, and resistance from those who want to be taken by the government(Utama, 2008). This research aims to examine efforts to return state asset losses of corruption crimes from abroad to Indonesia and the obstacles faced in returning state asset losses of corruption crimes from abroad to Indonesia.

## 2. Research Method

This study employs a normative legal research technique to examine legal concepts, doctrines, norms, and statutory regulating regulations.

Researchers support themselves using secondary and primary legal resources. Legal materials and data connected to the difficulties are gathered and handled utilizing legal interpretation analysis to address the study's problems descriptively.

## 3. Results and Discussion

### Efforts to Return State Assets Losses of Corruption Crimes from Abroad to Indonesia

The corruption crime makes the corruptor a criminal and the state a victim state(Artidjo Alkostar, 2008). The state is the victim because state assets are misused, so the state's economy is disrupted, impacting people's welfare. The legal approach and the recovery of criminal assets are still minimal, evident in the calculation of crimes that are increasingly rampant in corruption.

Corruption offences may be eliminated by preventative, repressive, and rehabilitative measures. The goal of preventive action is to deter public corruption by regulating it. Repressive action is a method of action, namely the existence of sanctions and / or penalties against a perpetrator of corruption. At the same time, restorative action is a method where all parties are involved in eradicating corruption. As discussed in this research, restorative action is the return of assets of the perpetrators of corruption in the form of criminal Law and civil law actions(Erna, 2013).

Efforts to combat corruption have been made by the United Nations by establishing the United Nations Convention Against Corruption (UNCAC) in 2003, with several conferences held, namely in 2005 in the Dead Sea, Jordan, in 2008 in Bali, Indonesia, and in 2009 in Doha, Qatar. Indonesia is a signatory to the UNCAC conference in global eradication cooperation both bilaterally and multilaterally. This asset recovery effort is carried out to confiscate and return assets from corruption laundered abroad. The repatriation of corrupted governmental assets may heal the country's economy. The state can confiscate the assets of the corrupt by:

1. Wealth obtained by corruptors is the result of corrupt efforts or activities.
2. The wealth obtained by corruptors is the result of efforts or activities resulting from corruption
3. Wealth is obtained from the proceeds of business or corrupt activities that generate profits from providing false information, misleading, or omitting untrue information(Musahib, 2015).

The Law on the Eradication of Corruption explains the return of corruption earnings in Article 4 without reducing the penalties from Articles 2 and 3. Return of state financial losses can be done by:

1. Article 18 paragraph (1) letter an of Law No. 31 of 1999 and Law No. 20 of

2001 allow for confiscation of goods used in corruption crimes, including companies owned by the convicted person, and the price of replacement goods.

2. Law No. 31 of 1999 and Law No. 20 of 2001 require reparation equivalent to the property gained via corruption, as stated in Article 18 paragraph (1) letter b, paragraph (2), and paragraph (3).
3. The Eradication of Corruption Crimes Law establishes cumulative and cumulative-alternative criminal punishments, as well as determinable sentence lengths.
4. Article 38 paragraphs (5) to (7) of Law No. 31 of 1999 and Law No.20 of 2001 allow for confiscation of goods if the defendant dies before the verdict and there is sufficient evidence of corruption.

Efforts to return losses of state assets of corruption crimes from abroad to Indonesia can be carried out in several ways, including the extradition of corruptors, asset seizure through mutual assistance agreements, and based on Indonesian national Law. These three methods will be discussed one by one by the researcher.

1. Extradition of corruptors

Almost all countries in the world implement foreign policy, where the state can take policies or regulations of a country in regulating relations with other countries to develop the country(Asshiddiqie, 2006). An extradition treaty is a legal procedure in which a nation's government detains a criminal suspect and sends him to another country to be prosecuted or processed according to local law. The consensus in international law is that a sovereign state has legal power over its citizens and does not have to give over a criminal suspect to a foreign state. Because of this lack of international commitment and the desire to pursue offenders from other nations, most governments have signed bilateral extradition treaties(Agusman, 2017).

International law defines extradition as a state's effort to preserve peace and security, and the wish for secure, peaceful cohabitation. Meanwhile, transnational crimes threaten all countries in upholding justice not limited to the country's territorial jurisdiction. Extradition is a moral obligation for the state to hand criminals to the perpetrator's country. So that criminals can and can take responsibility for their legal actions.

International treaties related to political issues, peace, defense, and security of the state, changes in territory or determination of territorial boundaries, sovereignty or sovereign rights of the state, human rights and the environment, new legal rules, foreign loans, and subsidies are ratified through legislation(Sunyowati, 2013).

One of the most important issues in Law is its application or implementation. In this case is the case of corruption. Through the extradition

system of international Law, several efforts can be taken by the international community, including:

a) The individual or group concerned can be held directly responsible at the international level
b) The settlement or application of laws and sanctions is left to each country concerned primarily if the convention that regulates the type of international crime determines the settlement.
c) Concerning national criminal issues with an international dimension, with the understanding that there is a case in federal criminal Law involving more than one country, international cooperation is needed to prevent, eradicate, and prosecute it(Kalalo, 2016).

One of the collaborations is with the International Criminal Police Organization (INTERPOL), an international organization between national police from member countries that plays an essential role in preventing, eradicating, and punishing transnational criminals. The cooperation carried out includes efforts to eliminate cross-border criminals(Hartono, 1991).

In addition to Interpol, Indonesia also has an extradition agreement with the ASEAN Chief of Police (ASEANPOL) that covers strategies and operations that include exchanging information relating to law enforcement and financial institutions(Sudirman & Sari, 2017). These include asset freezing and extradition treaties(Maringka, 2022).

The procedures for implementing the extradition process that must be followed in enforcing transnational crime laws have different approaches. The implementation of extradition discussed here is where Indonesia is the Requested State, and Indonesia is the Requesting State. The existence of an extradition treaty will facilitate the implementation of reasonable justice.

As a requested country, the WINA Convention has regulated international treaties where the state may not refuse the implementation of an agreement because it is contrary to the national legal system, so extradition must be fulfilled as an absolute obligation for the country requested for extradition.

As a requesting country, Indonesia will investigate the issue of requests for the search and arrest of criminals, specifically in corruption cases. The implementation of extradition asset recovery is based on four stages in the process of returning assets, namely:

a. Phases of Receipt of Extradition Request

This stage includes the receipt of extradition requests from the state through diplomatic channels to the minister of justice, followed by research on the completeness of documents and extradition requirements by the minister of justice.

b. Extradition Case Examination Stage

This stage includes receiving extradition requests from States through diplomatic channels to the Minister of Justice, followed by

examining the completeness of extradition documents and requirements by the Minister of Justice.

c. Presidential Approval Stage

Included in this stage is the receipt of the court decision by the minister of justice and the inclusion of considerations from various related agencies, namely the minister of foreign affairs, the chief of police, the attorney general, and the minister of justice himself, which are then submitted to the president for a decision on whether the extradition request can be raised or rejected(Jan S. Marinka, 2018).

2. Asset forfeiture through mutual assistance agreements

In addition to the extradition process, UNCAC regulates state assets' return from corruption through Mutual Legal Assistance. According to Article 46, paragraph (1), UNCAC controls that there is an easy way out for the victim country in returning assets. UNCAC obligates each participating nation to provide Mutual Assistance to victim countries in need.

This arrangement regarding Mutual Assistance provides a breakthrough for victim countries to penetrate conventional boundaries that have been an obstacle in returning assets. Suppose there are countries with very closed banking systems. In that case, UNCAC makes it easy for victim countries to trace or access a country's banking system to obtain information on assets resulting from corruption. This is based on Article 46, paragraph (8) of UNCAC. Each member nation cannot reject Mutual Legal Assistance due to bank secrecy. Article 46 paragraph (2) of UNCAC states that Mutual Legal Assistance should be given to the fullest degree practicable under the requested State Party's applicable laws, treaties, and procedures for investigations, prosecutions, and court processes.

Meanwhile, according to Article 46 paragraph (3) UNCAC, Mutual Assistance can be requested for:

a. Obtaining evidence or statements from persons;
b. Delivering court documents;
c. Conducting investigation and, confiscation and freezing;
d. Inspecting goods and places;
e. Providing information, evidence, and expert judgment;
f. Provide originals or certified copies of relevant documents and records, including government, bank, financial, corporate, or business records;
g. Identify or trace the proceeds of crime, property, instrumentalities, or other things for evidentiary purposes;
h. Facilitate the voluntary presence of persons in the requesting State Party;
i. Other assistance not contrary to the national laws of the requested State Party;
j. Identifying, freezing, and tracing the proceeds of crime following the provisions of Chapter V of this Convention; and

k. Returning assets, following the provisions of Chapter V of this Convention.

UNCAC controls asset recovery under Chapter V (Articles 51–58) and Chapter VII (Implementation Mechanisms). UNCAC has achieved great progress in Asset Recovery, including preventing and detecting proceeds of corruption, direct asset return, and international forfeiture cooperation. The crucial rules in this context attempt to repatriate corrupt assets from the custodial state to the nation of origin. In principle, the handling of transnational crimes requires cooperation with other countries. The prerequisite of the agreement is not absolute because, without a Mutual Assistance agreement, law enforcement cooperation can be carried out based on the principle of reciprocity(Susilawati, 2016).

3. Based on Indonesian National Law

It's generally accepted that a jurisdiction's national and legal level determines its freezing order power. In several civil law countries, prosecutors, investigative judges, and law enforcement agencies may freeze suspected assets without court authorisation. In common law nations, asset freezing needs court authorisation. Mutual legal aid, extradition treaties, and court rulings may help overcome technical and jurisdictional challenges(Arifin et al., 2017).

In terms of freezing, Indonesia often uses criminal law channels. The stage of the legal process in asset recovery efforts depends on the jurisdiction of the national Law of the country concerned as well as international conventions or bilateral agreements between Indonesia and that country. Using formal and informal channels through diplomatic relations between Indonesia and the government involved is possible.

Corruption is the worst crime since it drains the state's coffers and violates its social and financial rights. The Indonesian criminal law regulates defamatory demonstration under Law Number 31 of 1999 on the Eradication of Corruption, as modified by Law Number 20 of 2001 on the Amendment. The Anti-Corruption Law raises awareness since it may undermine state finances and growth. Thus, state leaders recognize the need of setting defamation norms to build a flourishing society based on Pancasila and the 1945 Constitution(Zaenudin, Sudarsono, Budiono, & Winarno, 2018).

According to the Eradication of Corruption Law, corrupt assets may be confiscated. These regulations require the culprit to be convicted of a crime before confiscation may recover assets. The criminal law method only allows the condemned to surrender assets via confiscation. If other parties are responsible, the Public Prosecutor may sue them in civil court on behalf of the state(Gumbira & Tejomurti, n.d.).

The implementation of asset recovery is based on four stages in the process of returning assets, namely:

a. Identify assets, ownership, and storage locations related to the criminal act using asset tracking;
b. Asset freezing or confiscation, including temporary restrictions on transfers, conversions, disposals, or moves, or temporary management and supervision based on court or competent authority judgments.
c. Confiscation of assets
d. Return and transfer of assets to the victim country.

Law 31 of 1999 on the Eradication of Corruption, as revised by Law 20 of 2001 (UU PTPK), threatens corrupt individuals with jail, penalties, and reparations. If a convicted individual does not pay restitution, their assets will be taken. If the guilty fails not pay the fee, they will be imprisoned. The PTPK Law also controls asset forfeiture, which is an asset or the profits of a corruption offense, under Article 18 Paragraph (1) letter a(Yusuf, 2013). The Law on the Eradication of Corruption governs criminal and civil asset recovery. Additionally, Law No. 7/2006 on the Ratification of the 2003 Anti-Corruption Convention allows asset recovery by legal action (indirect asset recovery through criminal recovery) and civil personal action. Technically, UNCAC supervises the restoration of corrupt criminals' assets via immediate court procedures based on negotiated demands or numerous negotiating mechanisms and indirect confiscation based on court rulings(Mahmud, 2018).

**Obstacles faced in Returning State Assets Losses of Corruption Crimes from Abroad to Indonesia**

Obstacles in returning assets from corruption are also caused by the abuse of power, which involves the upper economic class (conglomerates) and politics as the upper power class (high-ranking state officials) who conspire and aim for group economic interests. Conceptually, the idea that corruption is part of power, even part of the system itself, is not in doubt in developing countries. Therefore, some argue that an integrated countermeasure is improving the existing system. Based on the theory of legal effectiveness(Soekanto, 2004), whether or not a law is effective is determined by five factors, including the following:

1. Legal Factors (Law)

Among the legal factors themselves, referring to the eradication of corruption include :

a. The absence of reparation requirements in Law 31 Year 1999 jo. Law 20 Year 2001 complicated its implementation. As it is known, Corruption Eradication Law Number 31 of 1999, as amended by Law Number 20 of 2001, only regulates additional punishment of restitution payment in Article 18, with points of regulation covering only three (three) matters: how to calculate the amount of restitution, when it should be paid, and what happens if it is not paid. The state is less favored by Article 18 paragraph (3) of Corruption Eradication Law Number 31 Year 1999's

criminal consequences for repayment. The whole amount of restitution under Corruption Eradication Law Number 3 of 1971 and Law Number 31 of 1999 is equivalent to the property gained via corruption. The absence of reparation rules affects who may handle corruptors' cash. The lack of transparency about how this money is managed has led to suspicions that the Attorney General's Office corrupts the saved funds again. In corruption cases involving compensation money, Article 18 paragraph 3 should be annulled by not imprisoning convicts but still giving the burden of compensation money to children, wives, or anyone involved in the state debt, which minimizes state losses.

b. The regulation in Article 18 of the Corruption Eradication Law is not firm in its application. The regulation in article 18 paragraph (2) is a phrase that reads "can be confiscated by the prosecutor and auctioned off to cover the restitution" the word "can" should be replaced by the word "shall" so that the prosecutor in carrying out the execution can immediately carry out confiscation and auction so that the rescue of state losses can be maximized.

c. Corruption laws don't cover seizure. The Corruption Eradication Law 31 of 1999 governs seizure. Article 26 of Jo legislation Number 20 of 2001 states that criminal process legislation governs investigation, prosecution, and court examination, unless otherwise stated. Corruption Eradication Law 31 (1999) Even because Jo Law Number 20 Year 2001 is Lex Specialis, it does not control confiscation, hence the Criminal Procedure Code is Lex Generalis.

2. Law Enforcement Factors

Lack of coordination between prosecutor's office investigators and the KPK where the perpetrators of corruption are increasingly observant and cunning to be aware of the investigation so that they can quickly save property from corruption cases. In addition, investigators did not carry out the asset tracing process first before all the defendant's assets were swiftly transferred.

3. Facility Factors or Facilities that support Law Enforcement

The inhibiting factors are operational factors regarding the completeness of tools (tapping devices, tracking devices) and funds for handling corruption cases far less than those owned by the Corruption Eradication Commission. In addition, difficult permits and very long procedures to penetrate bank secrecy before confiscating money/funds in a suspect's account at a bank are also factors that are the reason for the lack of maximum recovery of state losses from corruption cases.

4. Community Factors

Community participation is a little apathetic by not caring if around them there is behavior that indicates corruption cases they are reluctant to report.

Then the public assumption that perpetrators of corruption must be punished as severely as possible without knowing and thinking about the state financial losses from the results of the corruption crime.

5. Cultural Factors

As the result of work, creation and taste based on human spirit in the association of life. Corruption is considered normal and has become a culture in life.

## 4. Conclusion

The conclusion of the discussion of this research is the effort to return state assets seized from corruption crimes from abroad to Indonesia. The eradication of corruption can basically be done through three approaches, namely preventive, repressive, and restorative efforts. Efforts to return losses of state assets resulting from corruption crimes from abroad to Indonesia can be carried out in several ways, including the extradition of corruptors, seizure of assets through mutual assistance agreements, and based on Indonesian national law. The obstacles faced in the return of state asset losses from corruption crimes from abroad to Indonesia are due to the abuse of power, where this occurs by involving the upper economic class (conglomerates) and politics as the upper power class (high-ranking state officials) who conspire and aim for group economic interests

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