

Asset Repair on the Corruption Eradication Commission: Strategies in the Fight against Corruption in Indonesia

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Abstract

The phenomenon of corruption as an extraordinary crime in Indonesia shows the existence of endemic corruption, which is accompanied by the emergence of significant losses to the state's finances. Efforts to enforce the law through the application of corporal punishment (prison) fines or additional punishment in the form of replacement money have not turned out to be maximal in rescuing stolen assets so that the state remains the victim. Asset recovery is one of the goals of new punishment and is one of the strategies of the Corruption Eradication Commission in dealing with criminal acts of corruption, but the implementation of asset recovery is not easy, the perpetrators always have various new and sophisticated modus operandi to hide/obscure assets resulting from corruption, so that they are not traced. . This article aims to answer research: The research method uses empirical normative juridical research, with a statute approach and a case approach.. Through the application of the Balanced Probability Principle Theory and Non Conviction Based Asset Forfeiture, the mechanism for tracking money and following assets using money laundering and civil lawsuits articles needs to be placed as the main legal remedy besides criminal law enforcement, so that the implementation of asset recovery at the Corruption Eradication Commission can be carried out maximally.

Keywords:

Corruption, Asset
Recovery Corruption
Eradication Commission



I. Introduction

Corruption in Indonesia is widespread in society. Its development continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of crimes being committed that are increasingly systematic and the scope of which enters all aspects of people's lives. Based on Corruption Perceptions Index (CPI) 2022, published by Transparency International, Indonesia ranks 110th out of 180 countries surveyed, with a score of 34. This score is down 4 points from 2021 with a score of 38, and is the most drastic decline since 1995 (Suyatmiko, 2023). This phenomenon shows that there is endemic corruption in Indonesia (Simabura & Haykal, 2022), which is exacerbated by corruption through the role of the state (Hellman, 2001, Razima, 2022).

Corruption not only violates the social and economic rights of society at large, but also harms state finances. Indonesia Corruption Watch (ICW) noted that the total state financial losses due to corruption demanded by the Corruption Eradication Commission and the Indonesian Prosecutor's Office in 2021 reached IDR 62.1 trillion, this figure increased by 19.9% compared to the previous year and was the largest in the last 5 years. Throughout 2022, corruption cases of the loss type dominate the process of handling corruption cases with 510 cases, followed by 37 cases of bribery and 22 cases of extortion.

This number increased by 8.63% compared to the previous year, which was 533 cases. From these various cases, as many as 1,396 people were made suspects of corruption. This number has increased by 19.01% compared to 2021, namely 1,173 estimates (Bayu, 2023).

Table 1. Mapping Corruption Cases Based on Modus in 2022

Modus Operandi	Amount	State Losses (Rp)	Bribery and Illegal Charges	Money laundering
Budget Abuse	303	17,857,397,845,012	49,277,300.00	724,280,000,000
Fictitious Activities/Projects	91	543,896,258,643	-	-
Raise	59	879,376,625,833	-	224,700,000,000
Fictitious Report	51	108,212,755,788	-	-
Fee Liar	24	1,758,719,325	17,544,207,750	7,000,000,000
Influence Trading	19	18,424,335,029,448	508,784,000,000	-
Budget Cuts	18	22,270,600,000	2,582,500,000	7,000,000,000
Issuance of Illegal Permits	12	4,910,300,000,000	127,097,912,284	-
Deceiving Witnesses	2	-	-	-
TOTAL	579	42,747,547,825,049	705,282,920,034	955,980,000,000

Source: Indonesia Corruption Watch, 2022

From the table above, Indonesia Corruption Watch found that there are 3 dominant modus operandi in corruption cases in 2022, namely, budget locking, fictitious activities and projects and Mark Up. This mode relates to the use of the budget that is not in accordance with its designation related to the state budget. On the other hand, from the results of the handling of corruption cases by the Indonesian Attorney General's Office in 2022, it was recorded that state and economic losses reached IDR 144.2 trillion and USD 61,948,551 (Ardiansyah, 2022).

Losses due to corruption significantly reduce the country's capacity to build the economy and provide welfare facilities (Utama, 2013). Therefore a new change is needed in eradicating corruption crimes, especially in efforts to recover stolen state assets. considering that repressive efforts against criminal acts of corruption still precipitate the follow the suspect approach (find and imprison the perpetrators), not with the follow the money and follow the assets approach.

One of the objectives of the new punishment in corruption is asset recovery. Asset recovery is one of the four pillars set out in United Nations Convention Against Corruption (UNCAC) 2003, as a political criminal law for the prevention and eradication of criminal acts of corruption which is recognized internationally. Asset return has a philosophical basis *natuare aequum est, neminem cum alterius detrimento et injuria, fieri locupletiore* (no one can enrich themselves at the expense of the losses and suffering of others), which developed into the doctrine of crime does not pay/shall not pay, as spanking punishment for perpetrators of crimes, so that they cannot enjoy the proceeds of crimes or the proceeds of crimes they have committed (Mulyadi, 2020).

In essence, asset recovery is how the proceeds of criminal acts (*factum sceleris*) in the form of assets can be returned to the victim country which was stolen (Mulyadi, 2020), however, returning assets found to result of crimes is a very difficult process, even in ideal circumstances (Okonjo & Iweala; Utama, 2013). From a regulatory standpoint, asset

recovery resulting from criminal acts of corruption in the legal system in Indonesia cannot be carried out effectively (Yahya et al, 2017). Based on notes Indonesia Corruption Watch In 2021, the additional criminal amount in the form of replacement money is only IDR 1,441 trillion or around 2.2% of the total state losses (Annur, 2022). The Indonesian Corruption Law indirectly provides an opportunity for convicts of corruption cases to make a choice whether to pay criminal compensation money or choose to serve the punishment that has been determined in the judge's decision (Indriana, 2018). This illustrates that, although many corruptors have been criminally processed and have been sentenced to additional criminal penalties in the form of replacement money, the assets obtained from corruption have not been significant enough to be returned to the state, so that the state as the victim and owner of the assets remains the party that suffers losses (Sujono , 2020).

Asset recovery is one of the strategic objectives of the Corruption Eradication Commission (KPK), through optimizing the mechanism for recovering and managing assets resulting from criminal acts of corruption. . As a central government institution that has the mandate and authority to prevent and eradicate corruption in Indonesia, Bahuri (2022) claims that the Corruption Eradication Commission has succeeded in recovering state assets of around IDR 3.32 trillion in the last eight years, with asset recovery of IDR 566.97 billion from 149 submissions in 2022. This achievement has increased IDR 192.5 billion or around 34% from 2021 (Marwatha, 2022). It's just that this acquisition cannot explain how many assets should be proposed (Sujono, 2020). In addition, the state losses saved by the KPK that year were lower than 2 (two) other law enforcement agencies, namely the Attorney General of the Republic of Indonesia and the Indonesian National Police (POLRI).

The implementation of asset recovery through criminal channels by imposing corporal punishment (prison), fines, compensation money and even the death penalty has not been implemented optimally and the results are significant. Therefore Civil lawsuits need to be placed as the main legal remedy in addition to criminal remedies, not just facultative or complementary to criminal law, as stipulated in the Law on the Eradication of Criminal Acts of Corruption (Yahya et al, 2017).as well as by implementing a mechanism for reversing the burden of proof in corruption cases, such as the case set out in Law No. 8 of 2010, concerning Prevention and Eradication of Money Laundering Crimes (TPPU Law) in the stage of disclosing criminal acts of corruption. Bearing in mind, the Corruption Eradication Commission only implemented 5 (five) cases of money laundering This indicates that the Corruption Eradication Commission (KPK) is still not optimal in its efforts to recover assets.

The research method uses empirical normative juridical research, with a statute approach and a case approach. This research addresses the following question: how to increase asset recovery in the Corruption Eradication Commission? Meanwhile, the data used in this research refers exclusively to the Corruption Eradication Commission. The author is of the opinion that the implementation of asset recovery carried out by the Corruption Eradication Commission still needs to be watched out for, given that corruption is an extraordinary crime and a global problem faced by the whole world..The data sources used are primary, secondary and tertiary data. The primary data used is interviews with investigators and Corruption Eradication Commission employees as well as observations of the implementation of asset recovery at the stage of investigating corruption crimes. The secondary data used is the Law on the Eradication of Corruption, the Law on the Prevention and Eradication of Money Laundering, the Criminal Procedure Code and the Criminal Code. Meanwhile, tertiary data uses books and journals related to asset recovery.

Data analysis was carried out by conducting a search of the data obtained and then ending and describing it in a description of sentences arranged systematically.

This study contributes to the following research domains. The first focuses on the Ideal Asset Recovery Model for Corruption Offenders (Mulyadi, 2020) and the Urgency and Mechanism of Returning Assets Proceeds of Corruption Crimes (Yahya et al, 2017) In sections 2 and 3, corruption crimes and state financial losses in criminal acts corruption is conceptualized. The next section provides an overview of asset recovery. Results and data are presented in Section 5. Section 6 introduces the theoretical framework and theoretical approach to reversing the burden of proof of probable balance (Balanced Probability Principle) and Non Conviction-Based Asset Confiscation (NCB-Asset Forfeiture) to then be reviewed with the implementation of asset recovery. The last part ends.

II. Review of Literature

2.1 Corruption Crime

The word corruption comes from the Latin word "corruptio" or "corruptus"; in English known as corruption or corrupt. Literally, the term is defined as ugliness, rottenness and dishonesty. Black's Law Dictionary (Amiruddin, 2010) defines it as an act with the intention of obtaining an advantage that conflicts with the rights and obligations of other people. Meanwhile, in the Big Indonesian Dictionary (KBBI), corruption is defined as misappropriation or robbery of state funds (companies and so on).

Philips(Yahya et al, 2017)identifying the three broad meanings most often used in various discussions of corruption:

- a. Corruption is commemorated in public offices, as the behavior and actions of public officials who deviate from the duties of formal functions for personal gain, or certain people who are closely related to them, such as family, relatives and friends. This definition also includes collusion and nepotism: granting patronage for reasons of kinship, (ascriptive), not merit.
- b. Corruption is accounted for in its impact on the public interest. Within this framework, corruption has occurred when power holders or functionaries in public positions, carry out certain actions of people with imbalances. As a result, the action damaged his position and the public interest.
- c. Corruption is recorded in the market, which is based on an analysis of corruption using public and social choice theory, and an economic approach within the framework of political analysis. According to this understanding, individuals or groups who use corruption as an extra legal "institution" to influence bureaucratic policies and actions. Only individuals and groups involved in the decision-making process are more likely to engage in corruption than others.

Corruption occurs through weaknesses in the public service bureaucracy system and weaknesses in the control system in work relations which bring in financial resources by taking advantage of certain situations from the country's growth cycle, development of social systems and harmony of government structures (Samudera, 2018). Corruption creates a misallocation of resources, and the social burden of corruption is not only a burden for the current generation but also for generations to come (Mulyadi, 2020).

2.2 State Finances and State Financial Losses in the Concept of Eradicating Corruption Crimes

State finances are all state assets in whatever form, separated or not separated, including all parts of state assets and all rights and obligations arising from:

- a. Being in the management, management and accountability of institutional officials both at the central and regional levels;
- b. Is in the control, management and responsibility of State/Regional Owned Enterprises, Foundations, legal entities and companies which include third party capital based on state companies.

State finances are state rights and obligations that can be valued in money, as well as everything either in the form of money or in the form of goods that can be state property in connection with the implementation of the rights and obligations carried out by the state. Meanwhile, state losses are a real and definite lack of money, securities and goods, as a result of unlawful acts, either intentionally or negligently. Setyawan (Samudera, 2022), argues that, financial state losses are all expenditures or uses that become a burden on state finances which are the basis for unlawful acts, all forms of state losses must be caused by acts that are against criminal law (*wederrechtelijk*), not caused by by acts that are against the law and state administrative law. Thus, state financial losses can be interpreted as reduced state assets in any form that can be valued in money; reduced state assets caused by criminal acts of corruption that do not have elements or require state losses (Supardi, 2018).

2.3 Asset Repair

According to Black's Legal Dictionary, assets are financial contracts or physical objects with value that are owned by individuals, companies or countries, which can be used to generate added value or provide liquidity. Assets are all objects, both material and immaterial, movable or immovable, tangible or intangible and documents or legal instruments that have economic value. Smitch further (Utama, 2013), defines assets as, "the result of corruption or embezzlement of public money that can be taken and returned to their country of origin".

Fleming (Mulyadi, 2020) argues that, in the international world, there is no mutually agreed upon definition of return on assets. In the context of criminal acts of corruption, returning assets is a process of revocation, deprivation, removal of rights to proceeds or virtues from criminal acts so that perpetrators of criminal acts cannot use the proceeds or benefits as tools or means of committing other crimes (Mulyadi, 2020).

Utama (2013), the formula for returning assets resulting from criminal acts of corruption as: "A law enforcement system carried out by countries victims of corruption to revoke, seize, eliminate rights over assets resulting from criminal acts of corruption from perpetrators of criminal acts of corruption through a series of processes and mechanisms, both criminally and civilly, assets that are inside or stored abroad, containing, frozen, confiscated, confiscated, and returned to the country of the victim of corruption, so that it can provide a deterrent effect on perpetrators and/or potential perpetrators of corruption. Whereas Adjii (Mulyadi, 2020) provides a definition of asset recovery for perpetrators of corruption, namely "a law enforcement system that requires a process to abolish the rights to the assets of the perpetrators from the victim country by eliminating the rights to the assets of the perpetrators in civil and criminal terms, carried out by means of confiscation, freezing, confiscation, both in local, regional and international competence, so that wealth can be returned back to the legitimate victim country. and returned to countries victims of corruption, so that it can provide a deterrent effect on perpetrators and/or potential perpetrators of corruption. Whereas Adjii (Mulyadi, 2020) provides a definition of asset recovery for perpetrators of corruption, namely "a law enforcement system that requires a process to abolish the rights to the assets of the perpetrators from the victim country by eliminating the rights to the assets of the perpetrators in civil and criminal terms, carried

out by means of confiscation, freezing, confiscation, both in local, regional and international competence, so that wealth can be returned back to the legitimate victim country. and returned to countries victims of corruption, so that it can provide a deterrent effect on perpetrators and/or potential perpetrators of corruption. Meanwhile Adji (Mulyadi, 2020) provides a definition of asset recovery for perpetrators of corruption,

Levi (Mulyadi, 2020), states that the justification for returning assets is directed at 4 (four) aspects, namely:

1. Reasons for prevention (prophylactic), namely preventing perpetrators from exercising control over assets resulting from corruption, either for other crimes or to hide them;
2. Reasons for propriety, i.e. the perpetrator does not have proper rights to control the property obtained illegally;
3. The reason for priority (priority), namely because the crime gives priority to the state as the victim to sue the assets illegally obtained by the perpetrator;
4. The reason for ownership (proprietary) is that the property belongs to the state which has been illegally controlled or taken

III. Results and Discussion

3.1 Results

The formulation of criminal threats related to asset recovery as stipulated in Book I of the Criminal Code, refers to the sentencing norms based on the formulation of Article 10 of this Law, one of which is the confiscation of certain items. Furthermore, in the formulation of Article 18 paragraphs (2) and (3) of Law No. 31 of 1999 it explains that, if the convict does not pay the replacement money, his property can be confiscated by the prosecutor to be auctioned in order to cover the replacement for the money, or if the convict does not have sufficient assets to pay for the additional sentence, then there is an additional prison term not exceeding the maximum threat. However, this law indirectly provides an opportunity for convicts of corruption cases to make a choice, whether to pay a replacement sentence or choose to serve the punishment that has been determined in the judge's decision (Indriana, 2018).

This fact can be seen from several from the results of the author's research on several court decisions on corruption crimes that have been carried out by the Corruption Eradication Commission, with the following table:

Table 1. Decisions of the Corruption Court & Supreme Court
Relating to Criminal Compensation Money

NO	Court ruling	Convict Name	State Losses	Criminal & Fines	Additional Criminal	Status Returns
(1)	(2)	(3)	(4)	(5)	(6)	(8)
1.	PT: 57/PID/TPK/2014/PT.DKI	Andi Alfian Mallarange ng	IDR 706 Billion	4 years & IDR 200 million subsidiary 2 months	-	-
2.	MA:246 PK/Pid. Su/2018	Anas Urbaningrum	IDR 706 Billion	8 years & a fine of IDR 300 million, a subsidiary of 3 months	IDR 57,592,330, 580 and US\$ 5,261,070 for 2 years	Don't pay

					subsidies	
3.	MA:197PK/Pid. Sus/2015	Angelina Patricia Pingkan Sondakh		10 years & a fine of IDR 500 million, a subsidiary of 7 months	Rp. 2.5 billion and US\$1.2 million, a subsidiary of 1 year in prison	Pay Part
4.	MA:430K/Pid. Su/2018	Imron	IDR 2.3 trillion	15 years & a fine of Rp. 500 million, a subsidiary of 8 months	US\$ 500,000 and IDR 1 billion, a 5 year subsidiary	Pay Part
		Sugiharto	IDR 2.3 trillion	15 years & a fine of Rp. 500 million, a subsidiary of 8 months	US\$ 450,000 and Rp. 460 million, 2 years subsidy	Pay Part
5.	PN: 130/Pid.Sus/TPK/2017/PN.Jkt.Pst	Setya Novanto	IDR 2.3 trillion	15 years & a fine of Rp. 500 million, a subsidiary of 8 months	US\$7,300,000 2 year subsidy	Pay Part
6.	MA:1636K/Pid. Su/2020	M. Nasir	IDR 105,881 Billion	10 years 6 months & a fine of IDR 600 million, a subsidiary of 6 months	IDR 2 Billion 1 year subsidiary	No Pay
7.	PT: 18/PID.SUS-TPK/2020/PT. PBR	Makmur alias Aan	IDR 105,881 Billion	13 years & a fine of IDR 650 million, a subsidiary of 6 months	IDR 60.5 billion, a 3-year subsidiary	No Pay
8.	MA:2162K/Pid. Sus/2022	Melia Boentaran	IDR 114,594 Billion	4 (four) years & a fine of IDR 200 million, a subsidiary of 6 months	IDR 114,594 billion 1 year subsidiary	No Pay
		Handoko Setio	IDR 114,594 Billion	4 (four) years & a fine of IDR 200 million, a subsidiary of 6 months	-	-

The table above shows that, of the 7 (seven) decisions of the High Court for Corruption Crimes and the Supreme Court which imposed replacement money as an attempt to recover the losses incurred, 2 (two) convicts were not sentenced to additional replacement money, 3 (three) convicts paid part of the money replacement and 4 (four)

convicts did not pay any obligation for the replacement money contained in the decision and more. In addition, there is a disparity of judges in rulings on corporal punishment, fines, replacement or subsidiary payments between one decision and another, as well as the issue of not commensurate with the value of replacement punishment that must be closed, does not show a proportional sentence.

Provisions of Article 4 Law Number 31 of 1999 which explains that, returning losses to the state or the state's economy will not eliminate the criminal offenses referred to in Article 2 and Article 3 (corruption related to state losses), however, in the explanation of Article 4, it was stated that, financial return or the country's economy is

one of the factors that can mitigate the punishment that can be imposed on perpetrators of corruption (Yahya et al, 2017). The existence of a policy that has served at least two-thirds of their criminal term can obtain parole, freely dressed leave and conditional leave based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 of 2022, is one of the reasons for convicts to further choose to undergo subsidies (substitute imprisonment), because this option is considered more economical and profitable for the convict.

It was noted that 23 years of conditional corruption preparation as of September 2022 with reference to Article 10 of the Correctional Law Number 20 of 2022 concerning Corrections In 2023, as many as 271 corruption cases also received remissions (reduced criminal sentences) during the Eid al-Fitr celebration, including [Setya Novanto](#) who was convicted of a corruption case at the KPK This of course has implications for the decline of public trust in the government for the concept of "zero tolerance" for perpetrators of corruption and of course the state as the victim continues to suffer losses. Thus, the implementation of asset recovery through the criminal mechanism of additional replacement money does not run optimally.

3.2 Discussion

Asset repair has urgency as a capital for sustainable development as well as aspects of law enforcement (Mulyadi, 2020). According to Yanuar (in Mulyadi, 2020), the Government of Indonesia continues to carry out asset recovery, due to 5 (five) reasons, namely:

1. Based on data on state financial losses, it is very appropriate to call Indonesia a victim of corruption;
2. The corrupted funds or assets are Indonesia's assets which should be allocated for development in an effort to increase the prosperity and welfare of the Indonesian people. The criminal act of corruption has resulted in the loss of opportunities for the Indonesian people to enjoy their rights, and has placed most of the people living below the poverty line;
3. The state has an obligation to protect and create prosperity for its people through alternative sources of funding. One of the sources of funds must be taken from funds or assets of corruption crimes;
4. Asset recovery efforts have a preventive meaning (prevention) and a repressive meaning (eradication). The preventive meaning lies in disclosing to the public that there is no safe place in the world for perpetrators of corruption to hide assets resulting from corruption. The repressive meaning lies in the punishment of the perpetrators of corruption;
5. Indonesia has ratified the 2003/UNCAC 2003 CAC so that an international legal basis is available to carry out international cooperation in efforts to recover assets resulting from criminal acts of corruption.

Mahmud (2020) explains that, there are important elements of asset recovery, returning assets resulting from corruption:

1. Asset repair(asset return) is a law enforcement system;
2. Law enforcement is carried out through criminal and civil channels;
3. Through the second line, the article on corruption, prevention, freezing, confiscation, confiscation, surrender and return to the country of crime;
4. Tracking, freezing, confiscation, confiscation, returns and refunds are carried out on assets resulting from corruption crimes placed inside or outside the country;
5. The law enforcement system is carried out by countries that are victims of criminal acts of corruption committed through law enforcement agencies;
6. This system has the following objectives:
 - a. Return state losses;
 - b. Preventing the use or utilization of these assets as tools or facilities by perpetrators of criminal acts of corruption to commit other crimes, such as money laundering, terrorism and narcotics;
 - c. Providing a deterrent effect for other parties who intend to commit acts of corruption.

Implementation of asset recovery at the Corruption Eradication Commission, started from the investigation stage criminal act. The investigation process is one of the opening gates in recovering assets, where in a series of law enforcement implementations at this stage it is already a legal action and has legal force carried out for the sake of justice (pro justitia) and for the sake of law enforcement. In its implementation, the investigation at the KPK refers to the Law of the Republic of Indonesia Number 20 of 2001 jo. Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crimes.

The provisions of Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, the offense of "harming state finances" is the most dominant element in proving corruption. Any element of "harmful to the financial state contributes greatly to the fulfillment of the element of corruption, because "deliberately harmful acts" by way of breaking the law (strafbaar feit or criminal action) and the consequences of "state financial losses" (natuur feit or een positive element), which ultimately enrich themselves, other people or corporations that are not their right but are "financial rights by the state" (Makawimbang, 2014). Thus, the state that lost the element must first be able to prove it so that it can be known how much the value of the assets obtained is then carried out for asset recovery.

To calculate state financial losses, the KPK coordinates with the Indonesian Supreme Audit Agency (BPK RI) and the Financial and Development Supervisory Agency (BPKP).asthe formulation of Article 18 paragraph (1) letter b of the Law of the Republic of Indonesia Number 31 of 1999, concerning the Eradication of Criminal Acts of Corruption states that, "Payment of replacement money in the maximum amount equals to the property obtained from criminal acts of corruption." Therefore, the process of resolving state losses has a central role so that it can be determined how many assets are generated or enjoyed from the proceeds of corruption and how much value assets should be returned to the state. However, it should be explained below that the process of calculating state losses takes a lot of time, sometimes the investigation process lasts for years so that real and definite state losses can be obtained.

In general, the stages of asset recovery are divided into several stages, namely: asset tracing, asset freezing, confiscation, asset management & maintenance, and repatriation (Utama, 2013).

1. Asset Tracking

Based on the Attorney General's Regulation of the Republic of Indonesia Number 7 of 2020 Jo. Attorney General Regulation Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery, asset tracing is a series of actions to seek, request, obtain and analyze information to find out or reveal the origin, whereabouts and ownership of assets.

2. Freezing Assets

Indonesian legal provisions do not use the word "freezing" as a term in asset recovery. The same understanding used by Indonesian legal provisions is blocking and delaying transactions (Utama, 2013). The basic provisions used by the KPK in implementing asset blocking are as follows:

- a. Article 29 paragraph (4) of the Law on the Eradication of Corruption Crimes: investigators, public prosecutors or judges can ask the bank to block the savings account belonging to the suspect or the alleged corruption proceeds.
- b. Article 71 paragraph (1) of the Money Laundering Act: investigators, public prosecutors or judges order the reporting party to block assets known or suspected to be the proceeds of crime from any person who is reported by the Financial Transaction Reports Center to investigators, accusations or crime.
- c. Article 12 Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets: Blocking and or confiscation of deposits in the name of a depositing customer who has been found to be a robbery or theft by the police, prosecutor or judges may act in accordance with applicable laws and regulations without requiring permission from the Management of Bank Indonesia.
- d. Articles 14 and 15 of the Decree of the Chairman of the Corruption Eradication Commission of the Republic of Indonesia Number: KEP-562/01-20/05/2016 concerning Standard Operating Procedures of the Deputy for Enforcement, concerning Blocking and Unblocking

3. Confiscation (Seizure)

The terminology of confiscation in the Criminal Code is regulated in Article 194 paragraph (1) of the Criminal Procedure Code, that in the event of a conviction or acquittal or acquittal from all lawsuits, the court determines that the evidence handed over to the party entitled to receive it back, whose name is listed in the decision unless according to the provisions of the law the evidence must be confiscated for the benefit of the state or destroyed or damaged so that it can no longer be used.

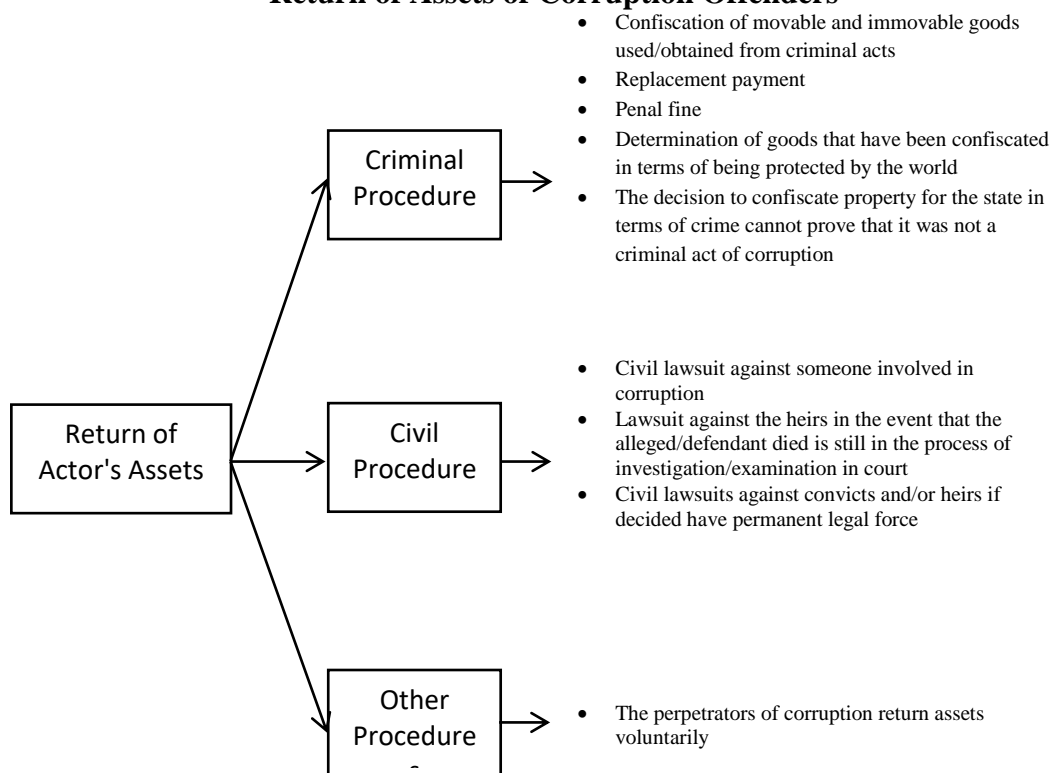
In an effort to confiscate criminal assets, there are two mechanisms that can be used, namely the mechanism for confiscation of assets based on criminal charges (conviction based asset forfeiture) and forfeiture of assets without being based on criminal charges (non-conviction based asset forfeiture).

- a. The sentencing mechanism is based on the confiscation of criminal assets (in private pictures) carried out by first proving the guilt of the perpetrators of criminal acts through indictments in court which are carried out based on the principle of material evidence and carried out within the framework of criminal law. In contrast to the belief-based mechanism,
- b. the non-conviction based mechanism in confiscating criminal assets is carried out without first proving the guilt of the perpetrators of the crime. The trial was conducted without having to go through indictments against the perpetrators of the crime but only by proving assets as the result of a crime. The non-conviction based mechanism is carried out based on the principle of formal proof and carried out

within the framework of civil law(in brake confiscation)(Main, 2013,Full Moon, 2021).

Both the first and second mechanisms have actually been accommodated within the current legal framework. The non-conviction based mechanism has basically been made possible in the Criminal Procedure Code through the in rem forfeiture mechanism. However, according to the provisions stipulated in the Criminal Procedure Code, the in rem confiscation mechanism can only be carried out after the assurance based mechanism has been carried out first. the non-conviction based mechanism in which criminal acts are committed without material evidence in court is considered to have the potential to violate individual property rights that protect the constitution, the principles of justice and equality before the law, and the principle of the presumption of innocence. (Full Moon, 2021).

Return of Assets of Corruption Offenders



4. Asset Management and Maintenance

It is an activity of storing, maintaining, securing, transferring, appraising, using, utilizing, and supervising assets.

5. Return

Assets found as proceeds of crime, means or instruments of crime that were or were confiscated must be returned to the previous owner.

At the stage of investigating corruption, the role of confiscation assets that are very important in the process of paying replacement money, namely to lock up the perpetrator's assets, so that they are not transferred until the inkraht decision (Yahya et al, 2017) This confiscation action is one of the forced efforts (dwang middelen) owned by investigators, besides search and asset blocking activities. As part of a coercive effort, its existence is very sensitive and has the potential to be misused or excessive in its use, thus causing disruption of the human rights of the suspect or defendant (Yahya et al, 2017). For this reason, this law stipulates that confiscation is only carried out by investigators with a

permit from the head of the local district court, but if in a very necessary and urgent situation, where the investigator must act immediately and it is not possible to obtain a permit in advance, then the investigator can only confiscate movable objects and is obliged to im The mechanism for confiscating the proceeds of corruption through confiscation procedures and blocking assets and accounts belonging to corruption suspects will not run optimally without the participation of the tracking set. The asset tracing process begins with searching/profileing/searching people suspected of committing corruption, by collecting all data and searching for basic information related to the target of the investigation, both directly and those who have detention with arrest. After that, verification, documentation and tracing (nexus mapping) of the results of assistance to dai assets were carried out, ending with an analysis of the time between the scorched tempus of the results of corruption, and the time the corruption occurred and the method of acquiring assets and analysis of related documents (Utama, 2013).

The KPK itself has a special unit for tracking assets, but in practice Budi (personal communication, 12 March 2023) said that the asset tracking unit can only carry out its work when a disclosure order is issued and there is a written request from KPK investigators. On the other hand, after the investigation warrant has begun, sensory is obliged to send the initial notice of encoding to the Public Prosecutor as well as to the reported party and the victim/reporter. This situation can become a legal loophole for the suspect to immediately divert/obliterate the assets resulting from corruption in his possession, so that they cannot be confiscated at the investigation stage, at any time after receiving the notification of the investigation. In response to this, it is hoped that the tracking device can be implemented as soon as possible, even starting from the corruption investigation stage.

The problem faced in the process of confiscating assets resulting from corruption is the decline in the value of confiscated corrupt assets from the initial acquisition value at the time of purchase, such as movable assets/two-wheeled and four-wheeled vehicles in evidence management activities. This of course also has an impact on the decline in the acquisition value of asset recovery in the cases being handled. To anticipate this, based on Government Regulation of the Republic of Indonesia Number 105 of 2021 concerning Auctions for Confiscated Objects by the Corruption Eradication Commission. Confiscated objects can be auctioned at the stage of investigation, prosecution or cases that have been transferred to court, by fulfilling the following criteria: injuries are damaged, dangerous or the cost of storing them will be too high. Sociologically, the auction of KPK confiscated objects is an urgent need. bearing in mind that the process of investigating the problem took a long time, while the condition of the confiscated objects was easily damaged resulting in a decrease in the economic value of the confiscated objects. In addition, the cost of storing confiscated objects will be too high and can actually burden the state's finances.

It needs to be understood, that before the corruption/money laundering criminal case is decided on the basis of the case, even though legally it has been confiscated and is in the management of the Corruption Eradication Committee, the confiscated objects are still legal property and are the right of ownership from ownership or the judiciary which of course must be protected. Therefore, as far as possible, the Auction of Confiscated Objects obtains written approval from the accused or their attorney, or in the event that the case has been transferred to the court, the Auction of Confiscated

Objects in question must first obtain permission from the Panel of Judges who hears the case. what if the suspect or his attorney does not give his consent? Even so, investigators or public prosecutors can continue the auction process.[Risman, 2021](#)).

However, in practice, based on the author's observations, auction activities at the investigation stage are rarely carried out. This is due to the limited time investigators have in coordinating with related parties, given the large number of corruption cases being handled.

Raharjo (in Mulyadi, 2020) said that the essence of legal issues that should be a concern in eradicating criminal acts of corruption is how law enforcers are able to respond to the needs of countries that suffer economic losses, where law enforcers are able to actualize substantive justice that pays attention to the interests of the people, by leaving a legalistic attitude - Rigid formalistic, procedural and anti-rule breaking initiation (legal breakthrough). by using the progressive law rule breaking concept approach, by applying the Theory of Reversal of Proof of Probability Equilibrium (principle of balanced probability) and Non-belief Based Asset Confiscation.

IV. Conclusion

Efforts to enforce repressive law against criminal acts of corruption are currently not only focused on arresting and imposing punishments on perpetrators of criminal acts, but special efforts are needed to recover losses arising from corruption itself. Additional criminal penalties in the form of replacement money, which have so far been carried out through the judicial mechanism, have not been effective. Therefore, the implementation of asset recovery execution must be carried out as early as possible since the implementation of the investigation or investigation of corruption. so that corruptors do not have the opportunity to move/obscure/hide assets obtained from corruption. The stages of asset recovery through asset tracking, asset freezing, confiscation, asset management & maintenance and repatriation are an integral part that cannot be separated. If one of the stages cannot be carried out optimally, either directly or indirectly it can affect the implementation of the asset recovery itself or can even reduce the recovery value. In addition, the implementation of asset recovery needs to be carried out as soon as possible from the start of the investigation or investigation.

The nature and implementation of asset recovery for criminal acts of corruption has an important existence as one of the main goals in eradicating corruption. It is hoped that the Corruption Eradication Commission will be able to implement it moreThe mechanism of proof in reverse is balanced, through the application of articles on money laundering crimes and carrying out civil lawsuits against the assets of the perpetrators, if the perpetrators of corruption die or their whereabouts are unknown. Considering that these two systems have a big impact in seizing more "polluted" assets of corruptors, so that efforts to recover state financial losses can run optimally.

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