

Conference Paper

Legal Construction of Asset Recovery for Crime of Corruption in Indonesia

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Indonesia has made efforts to prevent and eradicate criminal acts. However, the reality is that corruption is still a problem in Indonesia. Corruption occurs in various aspects of state life and institutions, not only central government institutions but also regional governments. Corruption has bad impacts ranging from lowering the level of people's welfare, destroying morality, and the foundations of national resilience. As time goes by, acts of corruption are carried out in various ways and are increasingly organized. More strategic efforts are needed to deal with this because corruption does not only talk about criminal acts and the perpetrators but is also related to the results of that corruption. The first question is how is corruption in Indonesia today? Second, what is the proper legal reconstruction to deal with it? Then to answer these problems, this research was made using an analytical descriptive method and a normative juridical approach by adding a set of data, one of which was from the n Vivo application. According to this study, there is still a lot of corruption in Indonesia, and because the state must also receive the benefits of criminal acts of corruption, there is a need for special rules that can carefully monitor in order to carry out asset recovery.

Keywords: construction, corruption asset recovery

1. INTRODUCTION

As a rule of law, all activities of the Indonesian government must comply with existing laws and regulations with the highest legal basis, namely Pancasila and the 1945 Constitution.[1] According to the fourth paragraph of the Preamble to the 1945 Constitution, good governance practices can be one of the factors in accomplishing the goals of the Indonesian state. Indonesia's principles are to safeguard the entire country from conflict, advance social welfare, educate the populace, and take part in a global order based on liberty, unending peace, and social justice.[1] Unfortunately these ideals have many obstacles such as rampant corruption.[2] A terrible deed like abusing one's position of power or authority is corruption. It damages public trust and is done in

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an unfavorable way based on individual or collective advantage.[3][4] Corruption is detrimental to the state and has a negative impact on people's lives.[5][6]

Understanding this condition has long been known through its history that Indonesia itself has long made various efforts to prevent and deal with corruption. Not only does it have regulations related to corruption, Indonesia also has a special institution to deal with it. However, in fact until now corruption in Indonesia still occurs. Corruption occurs at the central, private and even regional levels.[7][8]

This phenomenon cannot be separated from the observations made by legal experts and law students. Various studies related to corruption have been carried out, in [9] it was found that currently there are many technological advances that make it easier for corruptors to carry out their actions and hide the results of these actions. There needs to be new provisions that are more appropriate to apply at this time, one of which is the need for regulations regarding asset confiscation. Deep conclusion [10] said there was a need to optimize the role of legal aid as a reciprocal in terms of returning assets resulting from corruption. In [11] found that the sentence given to the perpetrators of corruption is currently not severe enough, because in fact after the perpetrators are punished the assets that become the object of corruption still need to be tried to return to the original (asset recovery) required in future regulations so that punishment is more effective.

Indonesia itself basically does not have regulations related to that, in existing regulations related to corruption there is only the term replacement money. On [12] the material civil law norms for the heirs of the perpetrators have also not been regulated. In [13] say that the problem of asset recovery is usually faced with the reality of the inability of corruption convicts to pay criminal compensation money, even though there are hidden assets of convicts that have not been confiscated by law enforcement. Asset recovery cannot function as it should due to the lack of laws and Article 18 Paragraph 3 of Law No. 31 of 1999, which favors subsidiary offenses and results in continued losses for the state. Despite the fact that asset recovery is possible.[14]

It is clear that state losses are state assets that must be returned. However, deep [15] It is known that until now regulations regarding asset recovery have not been ratified by the government.[16] Regarding the punishments carried out in [17] say that the restorative justice approach related to the criminalization of corruption perpetrators can actually be carried out with the norm of returning the state where previously as an additional crime became the main crime coupled with the existence of a mechanism for recovering from the actions taken. Proved [18] there is an urgent need for Indonesia to have a law related to asset recovery. Asset recovery and financial recovery procedures

are urgently needed.[19] a report on the head of the center for reporting and analysis of financial transaction[20] once mentioned that Indonesia has regulations regarding asset recovery, even though it is not clearly stated, but in carrying out asset recovery originating from the proceeds of criminal acts, the existing regulations are not optimal. As written in [21] It is known that the asset recovery mechanism in the Indonesian legal system itself is divided into two, namely the criminal mechanism as well as the civil mechanism.

After observing the existing phenomena and various related studies, it can be concluded that Indonesia does have an asset recovery mechanism in its legal system, but this does not necessarily make it easier for asset recovery performance to be implemented. Because there are no rules that specifically regulate this, even though considering the existing phenomenon, Indonesia really needs these rules. It would be better if the existing draft law related to asset recovery is passed soon. Given this has also been agreed upon by the current president of Indonesia.

By paying attention to this gap, the Draft Law in question has not yet been ratified. In this study the authors try to present something that is different from the previous studies mentioned above. In order to offer responses and additions that may be corrections or additions to the current draft law before it is passed later, this study looks at the UNCAC as an effective legal instrument against corruption internationally and compares it with the contents of the draft asset recovery law. Some of the questions that will be solved in this study to achieve the research objectives that the author has determined include; First, how is corruption in Indonesia today? Second, how is the proper legal reconstruction to deal with it?

2. METHODOLOGY/ MATERIALS

Analytical descriptive research method and normative juridical approach are used in this research.[22] This method is used to provide a description or description of the object of research by taking into account each data collected as it is. While the normative juridical approach entails performing library legal research, which is done by looking into secondary data or already-existing library materials.[23] This research will also include data findings from the results of the nVivo application and data from several sources related to corruption to get a clearer picture of corruption problems in Indonesia. Then the results of these data will also be linked to other data including findings from previous research and points -important points in UNCAC to be able to answer and provide better conclusions. The following is the systematics of this research, namely

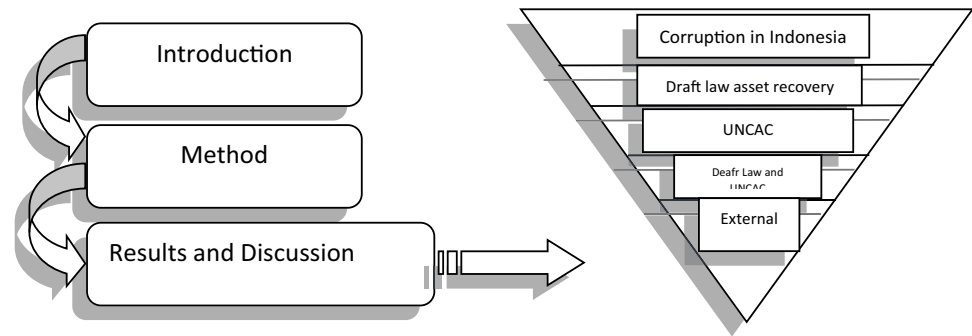


Figure 1:

3. RESULTS AND DISCUSSIONS

3.1. Corruption in Indonesia

Indonesia has long paid attention to problems related to corruption, corruption is quite a complex problem.[24] Various efforts such as the formation of regulations, anti-corruption agencies and international cooperation have been carried out.[25] However, these efforts seem to be insufficient to overcome corruption as a serious crime which is still common today.[24][26] Whereas corruption undermines economic stability and national resilience.[27] In 2021, Indonesia Corruption Watch (ICW) recorded 533 prosecutions of corruption cases and state losses of Rp. 29.4 trillion rupiah compared to several previous years, this number was much higher. Increasingly, corruption cases tend to fluctuate so that there is an increasing trend in the value of the potential loss which is quite high, which illustrates that the government's budget management is getting worse, especially oversight. In its research, ICW also noted that, in contrast to the Corruption Eradication Commission of the Republic of Indonesia, which is very informative, information disclosure regarding the treatment of corruption cases by the police and prosecutors tends to be closed. The following is a graph of trends in case enforcement and potential state losses due to corruption [28]

Data were also discovered for the years 2004 to 2022, and this revealed that the KPK had dealt with 1351 cases of corruption. There were at least 200 cases in 2018; the lowest number, two, occurred in 2004, while there were at least 200 cases in 2018. The graph below shows how all of the instances involved were connected to 904 cases of gratuity, 277 cases of services, 57 cases of budget abuse, 25 cases of permits, and various other cases.[29]

According to the Corruption Eradication Commission of the Republic of Indonesia, most cases of corruption are committed by government institutions and the corresponding provincial governments, although there are a few significant cases as well, including

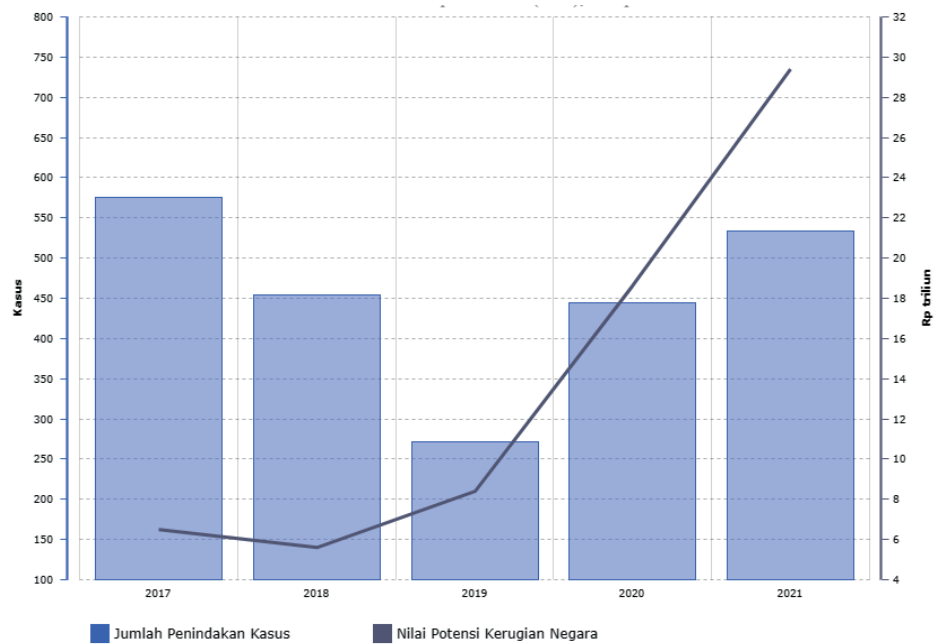


Figure 2: Trends in Case Enforcement and Potential State Losses Due to Corruption (2017-2021). Sumber : Indonesia Corruption Watch 2022 & <https://databoks.katadata.co.id>.

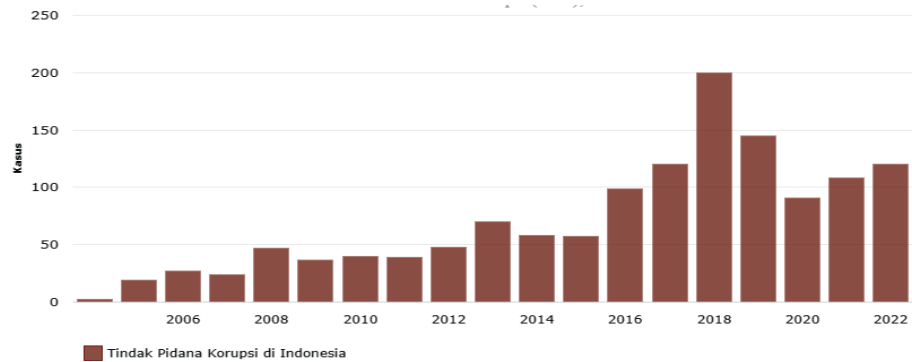


Figure 3: Number of Corruption Crimes in Indonesia (2014 s/d 2022). Source : Corruption Eradication Commission, 27 January 2023 & <https://databoks.katadata.co.id>.

those involving improperly obtained property belonging to public officials, corruption cases involving state-owned businesses, and allegations of criminal activity. Money laundering in government organizations shows that there is still a corruption emergency in Indonesia.

Basically, Indonesia already has various regulations related to corruption and special institutions. Indonesia defines corruption as a special crime. In accordance with the distribution of existing types of punishment:

According to Indonesia’s lengthy history of corruption, the country has put in place a number of laws that are related to crimes including corruption.[30][31] Law Number 31

of 1999 concerning the elimination of Corruption Crimes and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 are two laws that are still in effect in Indonesia today, [32][33] and the Corruption Eradication Commission Law Number 30 of 2002.[34]

According to current laws, there are at least three different levels of corruption: mild, moderate, and severe. For the most serious level of corruption, the Supreme Court of the Republic of Indonesia has issued Supreme Court Regulation Number 1 of 2020, which can result in a life sentence or even the death penalty for corruptors. However, until now there has never been a corruptor in Indonesia who has been sentenced to death.[35] Several studies that have existed say that legal efforts are currently considered not tough enough for corruptors.[11] Because, after the perpetrators of corruption were brought to justice, in fact there was no special effort to cover state losses. Indonesia needs to set rules to cover the country's losses.[12][13] The state continues to suffer damages as a result of a number of laws, including Law No. 31 of 1999's Article 18 Paragraph 3, which causes ancillary offences to be favored. Given that it is obvious that state losses are assets that must be restored, it is vital to pay closer attention so that asset recovery can be implemented correctly in the future.[14][15][16]

3.2. Discussion of the draft asset recovery law and its relationship with UNCAC

Basically Indonesia has ratified the UNCAC and adopted several important points in it for regulations related to corruption in Indonesia.[36] A legally binding international multilateral anti-corruption accord, the United Nations Convention Against Corruption (UNCAC) is a convention of the nation's solidarity in the fight against corruption.[37] UNCAC was formed to facilitate the handling of criminal acts of corruption between countries.[38] Unfortunately not all points in UNCAC were adopted by Indonesia, regarding asset recovery for example. Indonesia does not yet have a strong legal basis for this. Until finally, by looking at the various realities of cases in which there are draft laws of the Republic of Indonesia concerning confiscation of assets related to criminal acts, this draft has been drafted for about a decade. In May 2023, the president even gave a presidential order to immediately ratify the draft law,[39] There is a letter addressed to the House of Representatives of the Republic of Indonesia with the prefix R-22/Pres/05/2023.[40]

Legal experts agreed to pass this law. Asset recovery is believed to offset government losses and help prevent and eradicate corruption in the future. Asset recovery itself

consists of a series of steps, starting from collecting intelligence materials and various evidence, tracking, freezing, confiscating assets, litigation, investigations, and handing over assets to the state. Agustinus, a legal expert at Gajah Mada University, once said that returning the funds was the responsibility of the police, prosecutors and KPK. Due to the continued connection between assets and confiscation, which is governed by the Criminal Procedure Code and the Criminal Code, this effort to establish a link between property and crime is challenging. In terms of asset recovery, Article 31 of the UNCAC (2003) is regarded as being far more progressive. This is considered more promising because it simplifies the control process and can increase the effectiveness of corruption prevention and control in Indonesia. Criminal procedural law and laws regarding confiscation of assets or certain criminal laws must contain provisions regarding confiscation, confiscation and evidence of confiscation of asset. (Proposed Law for the Confiscation of Property Related to Criminal Acts in the Republic of Indonesia, n.d.) The Republic of Indonesia's Draft Law on the Confiscation of Assets Linked to Criminal Acts covers a number of topics, including Criminal, n.d. Each concept or word that will arise in general terms is described.

1. Assets of criminal acts can be confiscated, in this law there are provisions regarding assets that can be confiscated and assets that are not confiscated.
2. The law on confiscation procedures stipulates that investigators such as the police, officials of the National Narcotics Agency, and officials of the Civil Service Investigator carry out searches of items that can be confiscated by confiscating documents, coordinating with organizations that carry out financial transaction analysis. . that the party providing the requested data to the investigator cannot be prosecuted or found to have violated confidentiality. Investigators can also block or stop transactions if needed. Search and Seizure It is recommended that if the results of the search suspect that the item is part of the Corruption Assets, the investigator can carry out a search and/or confiscation with a warrant of detention from the local court. area. It was also specified there in relation to the duration of the blockade, it was also specified in more detail in relation to confiscation. The points in this section have been detailed regarding the procedures for implementing the Asset Return Draft Law. This section also explains how to file and file a claim for confiscation, how to manage assets while abroad, and how to file a complaint if someone is upset about the confiscation. Procedures for summons and examination at trial are also clearly regulated.

3. Asset management is described as performance carried out by the Chancellor and clearly defines the duties, authorities and handling procedures. He said the Attorney General's Office must build an integrated electronic criminal asset information system to ensure accountability and transparency.
4. International cooperation is also emphasized here to promote good asset recovery. For funding all these efforts, it is included in the State and Dutch revenue budgets and/or other sources required by law.

In summary, in my opinion, the author of this regulation has tried to overcome various existing problems. Here are some UNCAC articles that the author summarizes:

1. Concerning the declaration of intention, use of terms, scope, defense of sovereignty.
2. Preventive measures pertaining to anti-corruption and anti-corruption practices, anti-corruption agencies or institutions, the public sector, an ethics code for public employees, public procurement and management of public finances, public reporting, actions and prosecutions related to justice, the private sector, community involvement, and anti-money laundering measures.
3. Criminalization and repression involving corruption of state officials, bribery of foreign public officials and representatives of international public organizations, embezzlement or transfer of property belonging to other public officials, sale of trade influence, abuse of office, illegal enrichment, corruption of private sector employees, embezzlement of private sector property, money laundering of criminal proceeds, concealment, obstruction of justice, and liability of legal entities.
4. International collaboration, including law enforcement coordination, collaborative investigations, special investigation techniques, extradition, transfer of prisoners, mutual legal support, and transfer of criminal cases.
5. Return of Assets, General Provisions, Preventing and Detecting Criminal Transfer of Assets, Direct Actions for Asset Recovery, International Cooperation in the Context of Confiscation, Special Cooperation, Recovery and Transfer of Assets, Financial Intelligence Unit, Agreements, and Bilateral and Multilateral Arrangements.
6. Exchange of information and technical support; technical training; information gathering, sharing, and analysis on corruption.
7. The implementation mechanism, related to the conference of Contracting States, secretariat.

8. The final provisions govern the implementation of conventions, dispute resolution, signature, ratification, acceptance, approval and accession, application, modification, cancellation, filing and language.

The discussion above shows that Indonesia did not adopt all the points in UNCAC, some points were not adopted such as points related to trade in influence, asset recovery. For corruption in terms of handling in the private sector, not all are applied. Asset recovery is the sole provision of the law's draft that specifically mentions corruption crimes in Indonesia. Unfortunately, in light of the initial conversation, it was stated that corruption continues to evolve in terms of forms and methods as a result of more advanced technology today, and that the government should make use of current technology to manage and monitor corrupt activities. It would be preferable if the rules already in place included a reference to these efforts. The author has not yet discovered this. Even while this kind of law reform is much required in the digital age, especially when discussing finances or state assets connected to corruption cases, it will greatly assist the corruption eradication team in performing their job. It will be simpler, more cost-effective for the state, and much easier with digital monitoring.

4. CONCLUSION AND RECOMMENDATION

Currently, Indonesia's condition can still be said to be a corruption emergency. Technology that is currently developing makes it easier for corruptors to carry out various attempts to commit corruption and hide the results of this corruption. According to the current legislative measures adopted by Indonesia, they are unable to manage or pay for governmental losses brought on by corruption. The fact that there have been many corruption cases handled does not change the fact that the state has incurred significant damages. To build a much better state, it is necessary to reclaim state resources that corruption has stolen. The authors of this study suggest writing another article about how asset recovery implementation should be overseen. The author also advises that supervision be carried out through digitalization to assist efforts to monitor asset monitoring without any justification, such as cases of managing criminal actions of corruption, which have been used as an excuse, such as a lack of human resources and so forth.

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