



OPTIMIZING CONFISCATION OF CORRUPTION ASSETS THROUGH CIVIL LAW

Zefanya Gloria Tachika Lianta¹, Amelia Chandra Kartika², Naya Hapsari³, Tiara⁴, Arnetta Adelia Santoso⁵, Marcelina Lovely Awaeh⁶

¹Faculty of Law, President University, Indonesia. E-mail: zefanya.lianta@student.president.ac.id

²Faculty of Law, President University, Indonesia. E-mail: amelia.kartika@student.president.ac.id

³Faculty of Law, President University, Indonesia. E-mail: naya.hapsari@student.president.ac.id

⁴Faculty of Law, President University, Indonesia. E-mail: tiara@student.president.ac.id

⁵Faculty of Law, President University, Indonesia. E-mail: arnetta.santoso@student.president.ac.id

⁶Faculty of Law, President University, Indonesia. E-mail: marcelina.awaeh@student.president.ac.id

Article	Abstract
<p>Keywords: <i>Corruption; Corruption Eradication Committee; Confiscation of Assets</i></p> <p>Article History Received: July13, 2022; Reviewed: July16,2022; Accepted: July 18,2022; Published: Aug10, 2022</p>	<p>For a long time, Indonesia has been facing the complexity of corruption cases. Corruption turns out to be more than just a legal issue. In fact, it is also a violation of people's economic and social rights. Poverty, significant social disparities, and overall state losses are also the result of corruption, so Indonesia must always find solutions to rampant corruption. The Follow the Money approach is one of the approaches used in Indonesia to combat corruption today. This approach also uses the main concept of the Corruption Eradication Law (<i>UU PTPK</i>), namely the concept of "state loss recovery" as a legal basis. The return of assets resulting from corruption in the realm of public and civil law is an important part of combating corruption in restorative efforts. Thus, it is expected that every legal source used in Indonesia can optimize the process of asset forfeiture to restore state losses caused by corruption, both in public and civil law.</p>

1. INTRODUCTION

Corruption is a problem whose urgency to find a solution is always a topic of discussion. The problem of corruption is something that is disturbing in several countries in the world, especially in Indonesia. The complexity of corruption in Indonesia is not only a legal problem but also involves violations of economic rights, causes poverty in society, and is also detrimental to the country as a whole. In Indonesia, corruption cases are something that is disgusting. The habit of corruption is deeply rooted in all sectors, from the large scale of the Presidential Palace to even the small scale of small neighborhoods¹. Corruption habits in Indonesia can even be found in all aspects such as politics, economics, government, education, religion, and even humanitarian

¹ Nurul Irfan, *Korupsi Dalam Hukum Pidana Islam*. (Jakarta: Amzah, 2011) p.5.

activities. Therefore, in Indonesia the issue of corruption is one of the focuses that is always sought for ways to overcome it.

The government and its structures exist to regulate the movement of the nation's people in order to prevent corruption and ensure that state finances remain in place. Of course, there are many ways that the state has demonstrated as a form of realization of its dream of eradicating corruption. Indonesia has formed a special unit called the Corruption Eradication Commission. Through Law Number 30 of 2002 concerning the Corruption Eradication Commission which was then changed to Law Number 19 of 2019 concerning the Corruption Eradication Commission. Although the efforts made by the state are quite convincing, the government is indeed committed to creating a corruption-free country by creating an independent Corruption Eradication Commission (KPK). However, efforts to create a corruption-free country are not supported by adequate and burdensome legal regulations. Based on the Corruption Law, there are only two ways to recover financial losses that can be used to recover state financial losses, namely criminal compensation or fines. In practice, based on ICW monitoring, the policy of compensation fines in corruption cases does not even reach half of the losses experienced by the state, and even the fines applied are relatively light.

Therefore, handling corruption cases needs to consider the aspect of recovery for the victims, namely the state and society in economic and financial terms, not just giving punishment to the perpetrators. In handling it, we can use Criminal Law as a form of punishment to criminalize someone who has committed a criminal act of corruption. Meanwhile, civil law exists to examine what losses are felt by the state and how the state regulates how a corruptor is responsible for and pays for the losses that the state has suffered due to him².

The bad value of asset confiscation cannot be separated from the efforts of law enforcement officials to confiscate property. This is related to the extent to which state officials have discovered the assets of suspected corruptors related to the acts of corruption they have committed. Because this will have an impact on returning state financial losses due to corruption if the discovery of the corruptor's assets is not ideal. What are the technical and civil law methods for holding corruptors accountable through confiscation of personal property? This is the main thing that will be discussed in this journal.

² Saleh, Abd. Rahman. Fawaid, Imam. *Skema Hukum Gugatan Perdata Dalam Perkara Korupsi*, (Volume 4, No 1, Mei 2023), p.82-83.

2. RESEARCH METHODOLOGY

This research methodology uses a qualitative normative legal method with secondary data used in this research to explore and provide deeper insight into problems that exist in the real world. This method helps explain the complexity of the case and provides a comprehensive understanding of the legal aspects involved. Qualitative normative legal research methodology involves the interpretation and analysis of legal principles and norms to understand how the law is applied in the real world. This methodology involves a thorough analysis of legal texts, relevant laws and regulations, legal cases, and other legal sources to produce insights and conclusions.

The aim is to gain a theoretical understanding of the legal framework relating to a particular problem or case. A qualitative normative legal research methodology that uses secondary data allows the author to thoroughly examine every legal aspect in cases of confiscation of assets resulting from corruption. To gain a better understanding of the legal framework for criminal acts of corruption, this analysis includes a comprehensive examination of asset confiscation through a civil suit mechanism based on Articles 32 to 38 of Law Number 31 of 1999, which was updated through Law Number 20 2001 concerning the Eradication of Corruption Crimes³.

3. DISCUSSION

3.1 Corruption Factors

Economic considerations are often seen as the main contributor to corruption. This is a wage or income level that is less than required. From an organizational perspective, the following elements contribute to corruption namely poor management control and oversight systems, lack of accountability framework, lack of leadership model, and inappropriate corporate culture⁴. Corruption has 2 factors, namely internal, originating from within oneself, with support from family members. And also externally however, a person's internal life is not a source of external corruption⁵. The nature or behavior of greed is potentially shared by everyone and is related to individual perpetrators of corruption⁶.

Professor Anthon F. Susanto from the Faculty of Law, Pasundan University stated that the reason corruption in Indonesia cannot be eradicated is because law enforcers have low morals and

³ Indonesia, *Law on Eradication of Criminal Acts of Corruption*, Law No.31 Year 1999, LN No. 140 Year 1999, TLN 3874, Article 32-38.

⁴ *Faktor eksternal Orang Melakukan Korupsi | Indonesia baik*. (n.d.-a). <https://indonesiabaik.id/infografis/faktor-eksternal-orang-melakukan-korupsi>, retrieved on 26 February 2024.

⁵ *KMS:: Kenali, Pahami, Dan Basmi Penyebab Korupsi*. (n.d.-c). <https://klc2.kemenkeu.go.id/kms/knowledge/kenali-pahami-dan-basmi-penyebab-korupsi-66719309/detail/>, retrieved on 26 February 2024.

⁶ *KMS:: Kenali, Pahami, Dan Basmi Penyebab Korupsi*. (n.d.-c). <https://klc2.kemenkeu.go.id/kms/knowledge/kenali-pahami-dan-basmi-penyebab-korupsi-66719309/detail/>, retrieved on 26 February 2024.

ethics. "The existing law enforcement system in Indonesia is still based on Western logic, making it impossible to eradicate corruption completely.". Minister of Home Affairs (*Mendagri*) Muhammad Tito Karnavian revealed that the main reason why corruption cases still occur frequently, as the results of the analysis carried out by the Ministry of Home Affairs, is that there is still a system that opens gaps for acts of corruption. This includes a government administration system that is not transparent, high-cost politics, and recruitment of state civil servants (*ASN*) for compensation⁷.

3.2 The Impact of Corruption

Corruption is an act that violates the law and ethics, as well as detrimental to the public interest. In the field of law, corruption generally fulfills elements such as acts against the law, abuse of authority, opportunities or means, to enrich themselves, others, or corporations, and harm the country or the country's own economy. There are several impacts of corruption that are seen throughout numerous businesses. We are unaware that corruption charges are increasing in Indonesia. Corruption will only spread more widely if it doesn't end. from the political, medical, educational, and even environmental and economic spheres. The biggest threat to the state of Indonesia might come from this effect if it were to get worse. We are highly conscious as a society of the rising rates of poverty and dearth of facilities.

In the world of politics, corruption can complicate the development of state government. Corruption complicates democracy and good governance because it can undermine formal processes. Corruption in the justice system inevitably hinders order and the enforcement of crime. Corruption in government inevitably causes an imbalance in public services. So in general it can be said that corruption weakens the effectiveness of government institutions because procedures are ignored and resources are wasted. At the same time, corruption complicates government legitimacy and undermines democratic values such as trust and tolerance⁸. Political power obtained through corruption creates a government that is unfair in the eyes of society. If this happens, people will not trust the government and its leaders, so they will not submit to government authority. Widespread corrupt practices in politics also encourage corrupt rulers to use violence to maintain power and can lead to the destruction of democracy.

Another bad impact of corruption is reducing productivity in society. It cannot be denied that productivity will continue to decline in line with weak economic growth and investment which of

⁷ Laraspati, Angga. (2022, January). *Mendagri Ungkap Penyebab Utama Maraknya Kasus Korupsi, apa itu?*. detikNews.<https://news.detik.com/berita/d-5912136/mendagri-ungkap-penyebab-utama-maraknya-kasus-korupsi-apa-itu/amp>. retrieved on 26 February 2024.

⁸ Lamijan, Imam. Tohari, Mohamad. (2022). *Dampak Korupsi terhadap Pembangunan Ekonomi dan Pembangunan Politik*. JURNAL PENELITIAN HUKUM INDONESIA: jpehi. p.46.

course will not be strong if corruption is still rampant in a country. This happens because development and capacity building in the industrial and manufacturing sectors are hampered. Production improvement programs involving various initiatives, including the establishment of new factories and production companies, or efforts to increase the production capacity of existing companies, are hampered by a lack of investment. This decline in productivity will also of course lead to other problems such as high numbers of layoffs and increasing unemployment rates and will end in poverty in society⁹. The low economy of a country is also the beginning of a decline in state income in terms of taxes, which of course will be detrimental to a country's development sector. This can also spread to how countries try to obtain money for the smooth running of their own countries, allowing state debt to increase.

Situations that arise due to corruption can lead to conflict between the authorities and the people, so that socio-political, economic and social integration instability is a real impact that can later be easily felt. In fact, in many cases, this leads to the embarrassing overthrow of government power and inconvenience to people's social lives, as happened in Indonesia.

3.3 Efforts to recover the state's losses

Civil Suit is a civil legal instrument. Meanwhile, corruption is a criminal act. Even though civil law is within the scope of private law, in cases or cases of recovering state losses, in this case corruption, through the judiciary, the substance of public law can be applied. Efforts to recover State losses through justice means that the State must pursue a settlement based on civil law, including civil procedural law. Thus, the State is the plaintiff against the defendant who caused losses to the State's finances in its position as the defendant. In connection with the fact that the State is a public legal entity, this means that it must be represented to carry out legal actions in the form of suing the defendant. Juridically, the representative of the State to carry out legal actions, especially suing defendants, is the prosecutor's office as in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (*UU KAJARI*)¹⁰.

In cases of criminal acts of corruption, the use of civil lawsuits is an attempt to take over the assets of the corruptor. However, this effort is rarely used by State Attorneys, who have the authority to sue defendants in civil cases. In fact, efforts to confiscate corrupt assets are more effective than simply imposing criminal penalties. In this case, efforts to confiscate assets of

⁹ Rachmawati, Amalia Fadhila. (2022). *Jurnal Hukum. Dampak Korupsi dalam Perkembangan Ekonomi dan Penegakan Hukum di Indonesia*. p.16-17.

¹⁰ Saidi, Muhammad Djafar. (2008). *Hukum Keuangan Negara*. Jakarta: PT. Rajagrafindo Persada, p.149.

corruptors can restore state losses, have a deterrent effect on those convicted, and can be used as a lesson for society to avoid corruption¹¹.

The creators of the Corruption Crime Law hope for the maximum possible return to state finances. For example, if investigators find that there is insufficient evidence for one or more elements of a Corruption Crime, there is the possibility of filing a Civil Lawsuit. Even though there has actually been a loss to the State (Article 32), a lawsuit against the heirs, and a civil lawsuit is still possible against the acquittal. However, unfortunately this provision is not operational and has never been implemented. There is so much attention to corruption which has been categorized as extra ordinary crime, transnational crime, and other nicknames that show how dangerous corruption is, so that even suspects, defendants, or convicts who die are still held accountable to their heirs. The great desire to recover state losses and the nickname of corruption as an extra ordinary crime is still not supported by existing legal instruments, especially in efforts to recover state losses through civil lawsuits¹².

Efforts to recover state losses that have been corrupted through civil confiscation of assets are based on two sources: the proceeds of corruption that have become part of the wealth of the accused or convict; and compensation for losses from the assets of suspects, defendants or convicts, even if they do not own the proceeds of corruption. In this case, the corruption that occurred did not benefit the defendant, but benefited another person or a corporation. When criminal measures can no longer be used to recover state losses to the state treasury, civil lawsuits are carried out to obtain assets resulting from corruption. In some cases, criminal law can no longer be used, such as when there is insufficient evidence; the suspect, defendant, or convict dies, or the defendant is acquitted. In addition, there is a possibility that the country still has the proceeds of corruption that have not been confiscated, even though the court decision has been made. Articles 32, 33, 34, and 38C UPTPK regulate civil lawsuits for confiscation of assets. Thus, it can be concluded that assets resulting from criminal acts of corruption cannot be confiscated through civil mechanisms if there are no such provisions. Confiscation of assets through criminal mechanisms in the UPTPK and the Criminal Code is basically the same,

¹¹ Fitrizia Blessi Karina, “Gugatan Perdata Dalam Tindak Pidana Korupsi Menurut Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi” *Lex Crimen* Vol. VI/No. 9/Nov/2017.

¹² Mujahid A. Latief, “Pengembalian Aset Korupsi via Instrumen Perdata” <https://antikorupsi.org/id/article/pengembalian-aset-korupsi-instrumen-perdata> retrieved on 26 February 2024.

because both require a long time and are not optimal for efforts to recover state losses caused by corruption after a court decision which has binding legal force¹³.

Meanwhile, corrupt assets that can be confiscated by the state are important in law enforcement. Corruptors also often store assets abroad with the aim of eliminating traces and reducing the nominal value of their assets so that there are no suspicions that they have wealth for no apparent reason. However, it is quite difficult to trace or confiscate assets hidden by corruptors if the assets are already abroad, because they are often hidden in foreign banks, invested in stock investments, capital markets and cryptocurrencies, or even transfer ownership of the assets to other parties. to avoid confiscation by the state.

However, there are two main conditions that can be met to seize bank assets hidden by Indonesian corruptors abroad, namely: a. Indonesia must have a clear and firm justice system against corruption; and b. Indonesia must have clear laws to "take back" assets stolen by corruptors, whether hidden within the country or abroad. These two conditions are very important to confiscate or return the assets of Indonesian corruptors who are abroad. Assets owned by corruptors abroad must be requested or confiscated by Indonesia through the legal channels of the country where the assets are located. Indonesia is a requesting country, or "a country of victims, and other countries ask for help", or "a country of assets".

To recover the proceeds of corruption, return or confiscation of assets is carried out according to criminal and civil law. Return or forfeiture of assets under civil law (return or forfeiture of assets) is often referred to as "in rem forfeiture". On the other hand, the return or confiscation of assets according to criminal law, which we know in the Criminal Code, criminal forfeiture is referred to as "in personam forfeiture". According to Indonesian criminal law, the legal concept of return or confiscation of assets is an additional crime that can be imposed by a judge in addition to the main crime.

4. CONCLUSION

Corruption in Indonesia has taken root in various sectors, in fact corruption is something that is very detrimental to the country. Based on considerations of the article in Law Number 31 of 1999 as amended into Law Number 20 of 2001 (Corruption Eradication Law) that corruption is detrimental to the country as a whole and hinders the country's development. Based on these facts, it is appropriate that there is special urgency to continue to create strong laws for perpetrators of corruption. Because so far the use of confiscation regulations based on

¹³S Eka Iskandar, "*Prinsip Pengembalian Aset Hasil Korupsi (Bagian II)*" <https://gagasanhukum.wordpress.com/2008/09/01/prinsip-pengembalian-aset-hasil-korupsi-bagian-ii/> retrieved on 26 February 2024.

Article 39 paragraph (1) of the Criminal Procedure Code has become an obstacle in recovering state financial losses. The limitations of the objects of confiscation open up opportunities for perpetrators to divert their assets during the investigation process so that they are not traced, for example to foreign banks, invest in shares, capital markets and cryptocurrencies, or even transfer ownership of these assets to other parties. This of course has a big impact on creating maximum recovery of state financial losses. The author suggests using possible legal flaws that can be used to further strengthen the legal basis for confiscation of assets resulting from corruption through civil law if criminal law cannot be used.

REFERENCES

Book

Reksodiputro, Mardjono. (2009). *Tambahan Catatan Dalam Rangka Sosialisasi RUU tentang Perampasan Aset Tindak Pidana*. delivered as resource person in socialization RUU by Ditjen. PP. Kemenkumham. Jakarta.

Saidi, Muhammad Djafar. (2008). *Hukum Keuangan Negara*. PT. Rajagrafindo Persada. Jakarta. <http://library.stik-ptik.ac.id/detail?id=19885&lokasi=lokal>

Journal/Article

Danil, Elwi. Kurniawan, Iwan. (2017) . Optimizing confiscation of assets in accelerating the eradication of corruption. *Optimizing confiscation of assets in accelerating the eradication of corruption*. Vol.3 No.1. 1-10. <http://pasca.unhas.ac.id/ojs/index.php/halrev/article/view/717/225>

Iskandar, S Eka. (2008, September 1). *Prinsip Pengembalian Aset Hasil Korupsi (Bagian II)*. Media Online Gagasan Hukum. <https://gagasanhukum.wordpress.com/2008/09/01/prinsip-pengembalian-aset-hasil-korupsi-bagian-ii/>

Karina, Fitrizia Blessi. (2017). Gugatan Perdata Dalam Tindak Pidana Korupsi Menurut Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi. *Gugatan Perdata Dalam Tindak Pidana Korupsi Menurut Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi*. Lex Crimen Vol. 6 No. 9. 1-8. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/18415>

Lamijan, Imam. Tohari, Mohamad. (2022). Jurnal Penelitian Hukum Indonesia. *Dampak Korupsi terhadap Pembangunan Ekonomi dan Pembangunan Politik*. Vol.3 No.02. 1-20. <https://ejournal.undaris.ac.id/index.php/jpehi/article/viewFile/381/279>

Latief, Mujahid A. (2007, August 1). *Pengembalian Aset Korupsi via Instrumen Perdata*. ICW. <https://antikorupsi.org/id/article/pengembalian-aset-korupsi-instrumen-perdata>

Rachmawati, Amalia Fadhila. (2022). Jurnal Hukum. *Dampak Korupsi dalam Perkembangan Ekonomi dan Penegakan Hukum di Indonesia*. Vol. 1 No. 1. 16-17.

Saleh, Abd. Rahman. Fawaid, Imam. (2023). Skema Hukum Gugatan Perdata Dalam Perkara Korupsi. *Skema Hukum Gugatan Perdata Dalam Perkara Korupsi*. Vol.4, No 1. 1-18. <https://www.journal.ibrahimy.ac.id/index.php/alhukmi/article/view/3447>

Sularto, R.B. Wisaksono, Budhi. Sibuea, Deypend Tommy. (2016). Kebijakan Hukum Pidana dalam Perampasan Aset Hasil Tindak Pidana Korupsi di Indonesia. *Diponegoro Law Review*, Vol. 5, No. 2. 1-7. <https://www.neliti.com/publications/18957/kebijakan-hukum-pidana-dalam-perampasan-aset-hasil-tindak-pidana-korupsi-di-indo>

Urgensi Pengaturan Sita Jaminan Dalam. (2022). ICW. (n.d.-b). <https://icw.or.id/index.php/id/urgensi-pengaturan-sita-jaminan-dalam-penanganan-perkara-tindak-pidana-korupsi>

News

Laraspati, Angga. (2022, January 24). *Mendagri Ungkap Penyebab Utama Maraknya Kasus Korupsi, apa itu?*. detikNews. <https://news.detik.com/berita/d-5912136/mendagri-ungkap-penyebab-utama-maraknya-kasus-korupsi-apa-itu/amp>

Regulation/Constitution/Law

Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as Amended by Law Number 20 of 2001. (Corruption Law).