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STRATEGY FOR RETURNING STATE ASSETS RESULTS OF CORRUPTION IN INDONESIA

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ABSTRACT:
Crimes related to corruption are currently felt to be increasingly worrying and require special handling in eradicating them. Where we all know that one of the most important elements in law enforcement in a country in realizing a government that is clean and free from KKN is a strong commitment to fighting corruption. This study aims to explain the arrangement of the mechanism for returning assets and the importance of legalizing the Draft Law on Asset Confiscation in Indonesia. The results of this study explain thatthere needs to be a re-structuring in the legal framework in Indonesia, both material and formal law, namely civil procedural law as a whole in order to optimize the return of assets resulting from corruption in Indonesia.

Keywords: Strategy for Returning, State Assets, Results of Corruption.

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INTRODUCTION

The war on corruption is not an easy matter because corruption cases are sometimes very difficult to uncover (Asnawi, 2013). The perpetrators use various modus operandi and usually involve more than one person in covert and organized circumstances, so that crimes related to corruption are often called White Collar Crimes or white collar crimes (Laoh, 2020). Criminal acts or white-collar crimes (white collar crimes) are committed without direct physical violence, but are accompanied by fraud, deception,

concealment of reality, subterfuge or circumvention of regulations so that the victim does not feel any direct threat (Muslim, 2021). Many victims do not even realize that they have become victims of crime. as happened in the case of misuse of customer funds committed by Century Bank owner Robert Tantular and his family in 2008. The main characteristics of white collar criminals (white collar crime) are smart, have a position and are difficult to detect (Bachriani, 2014).

Even though it has been 24 years of the Reformation Era, the existence of corrupt practices in Indonesia has not shown any significant changes. In fact, every year corruption cases continue to increase in terms of the number of cases that occur, the amount of state losses, as well as the quality of crimes committed that are increasingly systematic and their scope covers all aspects of people's lives (Suyatmiko & Nicola, 2019). The results of the 2020 Transparency International Indonesia (TII) survey show that Indonesia is the 114th most corrupt country out of 177 countries surveyed. From a range of 0-100, where the highest value indicates a country's minimal level of corruption, Indonesia gets a Corruption Perception Index (GPA) score of 32. Globally, Indonesia is included in 70 percent of countries with a GPA below 50 (Sosiawan & Indonesia, 2019). Meanwhile, at the Asia Pacific regional level, Indonesia is included in 63 percent of countries with a GPA below 50. In the ASEAN region, Indonesia's position is better than Cambodia (20), Myanmar (21), Laos (26), Timor Leste (30) and Vietnam (31). Meanwhile, the position of other ASEAN countries is far above Indonesia, such as Singapore (86), Brunei (60), Malaysia (50), the Philippines (36) and Thailand (35). Indonesia needs 8 more points to get to the ASEAN Corruption Perception Index (IPK) average score (Jakaria et al., 2018).

Eradicating corruption in the country is not an easy matter. Leaders, especially public officials who are expected to be pioneers in eradicating corruption in their respective regions, are in fact involved in corruption cases. The use of the State Revenue and Expenditure Budget (APBN) is the most vulnerable point for corruption involving public officials (Pirdaus, 2018). there are at least three points prone to corrupt practices that commonly occur in the use of the state budget: planning and budgeting, public services and the process of procuring goods and services. By looking at the complexity of the problem of corruption as a white collar crime, there are two perspectives in looking at the crime of corruption (Lindawaty et al., 2018), including;

First sight, argues that corruption is an ordinary crime that is massive and endemic in nature, so special handling is needed to overcome it (ordinary crimes that need extra efforts to combat it). The second view argues that corruption is an extraordinary crime (extra ordinary crimes), this is based on the KPK Law, especially the General Explanation of Law Number 30 of 2002 concerning the Corruption Eradication

Commission which states that corruption is an extraordinary crime (Burhanuddin, 2017).

> *"The increase in uncontrolled corruption will bring disaster, not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic corruption is also a violation of social and economic rights of the community, and because of all this, corruption can no longer be classified as an ordinary crime but has become an extraordinary crime.*
>
> *Besides this, given that corruption in Indonesia occurs systematically and is widespread so that it not only harms the state's finances, but also violates the social and economic rights of the community at large, it is necessary to eradicate corruption in an extraordinary way. Thus, the eradication of criminal acts of corruption must be carried out in a special way, including the application of a reverse proof system, namely the burden of proof on the accused.*

This view can be compared with the general explanation in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes:

Based on statistical data on prosecution of corruption cases from 2004 to 2021, as follows:

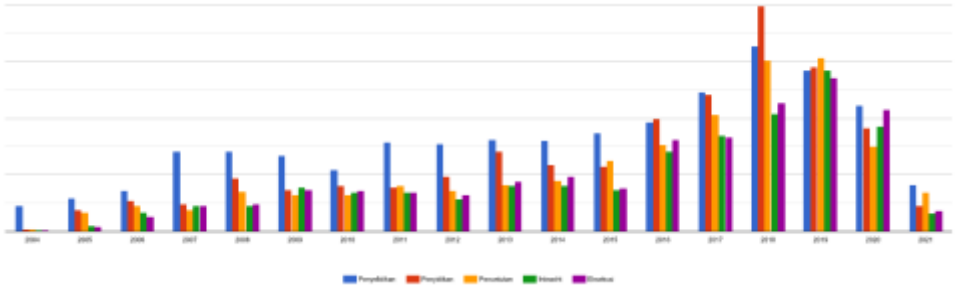

Figure 1. Statistics on the prosecution of KPK corruption cases

In the Recapitulation of Corruption Crimes, the KPK divides it into 5 categories. Namely the TPK category based on the institution, TPK based on the type of case, TPK based on profession/position, TPK based on incrach cases and TPK based on area. This recapitulation aims to be a brief report on the KPK's performance in the field of prosecution.

Based on data quoted from the Corruption Eradication Commission's 2020 report, in general the recovery, order and optimization of state-owned assets in 2020 amounted to IDR 632.5 trillion. For the recovery, control and optimization of local

government assets in the amount of Rp. 58.4 trillion, of which Rp. 24.9 trillion is an additional 25,048 certificates of local government assets. IDR 3.11 Trillion Recovery of 3,085 units of Asset Management, IDR 30.3 Trillion of Infrastructure and Utilities for 82 Local Governments in 495 locations.

In this case, the police is one of the front guards to oversee the president's direction so that it runs according to its goals. The PEN program is outlined in the form of Government Regulation (PP) Number 23 of 2020 concerning Implementation of the National Economic Recovery Program in the Context of Supporting State Financial Policy for Handling the Covid-19 Pandemic. Police as one of the institutions that society expects to prevent and minimize corrupt practices in Indonesia, it is very important to continue to maintain the capabilities of its human resources (Widyastuti, 2015).

Given that the Law on Returning State Assets Proceeds of Corruption has not yet been passed, the mechanism for returning assets is currently based on Conviction Based (Court Decision), this is in accordance with Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) (Latifah, 2016).

The problem is that the draft law (RUU) for the confiscation of criminal offenses has not been passed, the non-conviction based mechanism cannot yet be applied in the process of recovering assets based on the current legal framework (Nugraha, 2020). Confiscation of assets, according to Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), can only be carried out with a conviction base mechanism. Factually the application of the principle of returning assets in the management of state assets due to Corruption is only carried out on assets that have been declared confiscated by the state based on a court decision that has permanent legal force, and its implementation follows the execution of the prosecutor on the judge's decision (Wedha & Darma, 2018). So to achieve maximum results, it is necessary to strengthen regulation in the form of a separate law that specifically regulates a comprehensive asset recovery mechanism. Not only guaranteeing legal certainty but also creating a deterrent effect on perpetrators of corruption (Wedha & Darma, 2018).

RESEARCH METHODS

To examine the subject matter in this research, normative legal research methods and empirical legal research methods are used. The juridical-normative approach will be carried out by using primary legal materials, secondary legal materials, and tertiary legal materials. Meanwhile, empirical legal research in this study is carried out by collecting data through interviews and conducting various discussions with parties that researchers consider to have the competence and in-depth knowledge in the field of law, especially those related to handling corruption and the application of the United

Nations Convention Against Corruption-2003 UNCAC. Then the data is processed and then analyzed. Then it is concluded in a qualitative-descriptive way.

RESULTS AND DISCUSSION

According to the Open Society Justice Initiative report, there are 3 (three) characteristics of the looting of state assets, namely the amount of wealth reaching millions of dollars, transferring and hiding this wealth by perpetrators of criminal acts, the destruction of social and economic life which ultimately sacrifices society. This description makes the criminal act of corruption qualify as a crime against the welfare of the nation and state which is marked by the loss of public assets that are used for the benefit of the people's welfare. Therefore, the return of state assets resulting from criminal acts of corruption is a must in the context of recovering the country's economy after the occurrence of corruption in a country.

a. Arrangements for asset return mechanisms in Indonesia

The Criminal Code, the Criminal Procedure Code, and the Corruption Eradication Law have not regulated the process of returning state assets resulting from criminal acts of corruption. The current process of returning assets, especially in the Corruption Eradication Law, still refers to the process of confiscating certain items contained in the Criminal Code, so that the regulation regarding the return of state assets resulting from corruption does not yet have clear rules. But as shared knowledge.

The Criminal Code does not specifically regulate the process of returning assets resulting from corruption. Return of assets or confiscation of assets is included in additional punishments regulated in Article 10 b of the Criminal Code. This additional sentence can only be decided by a judge with the principal sentence.

According to him, the Criminal Code also stipulates a substitution penalty if the seized object is not handed over or the price is not paid to the state. In Article 41 of the Criminal Code it is determined that if the confiscated goods are not handed over to the state or the price according to the estimate in the judge's decision is not paid, then imprisonment shall be used as a substitute. The length of imprisonment ranges from 1 day - 6 months. This depends on the calculation of the judge. If the confiscated items are handed over, the alternative imprisonment sentence will also be removed. Furthermore, Article 42 of the Criminal Code stipulates that all costs for imprisonment and confinement shall be borne by the state, and all income from fines and confiscation shall belong to the state.

In addition to the Criminal Code, the Criminal Procedure Code (KUHAP) regulates the issue of confiscation and confiscation of assets but not confiscation of assets resulting from corruption. When viewed in depth, the provisions in the Criminal Procedure Code are more detailed than

those regulated in the Criminal Procedure Code. This is because the Criminal Procedure Code is the executor of the Criminal Code. Regarding confiscation of assets in the Criminal Procedure Code, it is regulated starting from Article 38, Article 39, Article 40, Article 41, Article 44, Article 45, and Article 46 of the Criminal Procedure Code.

Technically the confiscated objects are kept in the state storage house for confiscated objects (Rupbasan). The storage of confiscated objects is carried out as well as possible and the responsibility for them lies with the authorized official according to the level of examination in the judicial process and these objects are prohibited from being used by anyone. If the confiscated goods consist of objects that can be easily damaged or are dangerous, so that it is impossible to keep them until the court's decision on the case in question has obtained permanent legal force or if the cost of keeping the said goods will be too high, as far as possible with the consent of the suspect or his attorney can be taken action as follows:

1. if the case is still in the hands of the investigator or public prosecutor, said object can be sold at auction or can be secured by the investigator or public prosecutor, witnessed by the suspect or his attorney;
2. If the case is already in the hands of the court, then the object can be secured or sold at auction by the public prosecutor with the permission of the judge who is studying the case and witnessed by the defendant or his attorney.

The next stage is the results of the auction of the object in question in the form of money used as evidence. In the interest of proof, as much as possible set aside a portion of the destroyed object. Confiscated objects that are prohibited or prohibited from being distributed, do not include goods that are destroyed, confiscated to be used for the benefit of the state or to be destroyed.

If the case has been decided, then the object subject to confiscation is returned to the person or to those named in the `

Rupbasan is further regulated by Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. It stipulates in detail regarding Rupbasan whose management is held by the Ministry of Justice, now the Ministry of Law and Human Rights. Meanwhile, regarding the physical responsibility for the confiscated objects lies with the Head of Rupbasan in each region. The Head of Rupbasan who is appointed and dismissed by the Minister and is structurally under the authority of the Director General of Corrections. Meanwhile, the working mechanism, duties and authorities of the Rupbasan are further regulated by the Minister.

Then Law Number 31 of 1999 concerning Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Crimes, has included

several new things related to the confiscation of criminal assets, especially in corruption cases, namely:

1. Add new additional criminal clauses that have been regulated in the Criminal Code;
2. Adding a new clause regarding replacement money;
3. Existence of a confiscation mechanism for replacement money;
4. The rights of good faith third parties over criminal assets;
5. Obligations of several parties regarding information on assets;
6. There is a rule of confiscation of assets related to suspects and defendants who died.

The Corruption Crime Act also adds additional crimes that have been regulated in the Criminal Code, namely first the confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies the property of the convict where the criminal act of corruption was committed, as well as goods that replace those goods (Illahi & Alia, 2017); secondly, the payment of compensation in the maximum amount equal to the assets obtained from the criminal act of corruption; thirdly the closure of all or part of the company for a maximum period of 1 (one) year; and fourthly the revocation of all or part of certain rights or the elimination of all or part of certain benefits,

For the purposes of investigation, the Corruption Crime Law regulates the obligations of several parties regarding information on the assets of suspects, namely:

1. The suspect is required to provide information about all of his assets and the assets of his wife or husband, children, and the assets of any person or corporation that is known or suspected of having a relationship with the criminal act of corruption committed by the suspect.
2. Investigators, public prosecutors or judges have the authority to request information from banks about the financial condition of suspects or defendants. A request for information from a bank is submitted to the Governor of Bank Indonesia in accordance with the prevailing laws and regulations. The Governor of Bank Indonesia is obliged to comply with requests from investigators, public prosecutors or judges no later than 3 (three) working days, starting from the receipt of complete request documents.
3. Investigators, public prosecutors, or judges can ask the bank to block the savings accounts belonging to suspects or defendants who are suspected of being the result of corruption. If the results of the examination of the suspect or defendant do not obtain sufficient evidence, at the request of the investigator, public prosecutor or

judge, the bank will lift the block on the same day.

When examined together, the asset recovery process contained in the Corruption Crime Law has not been able to meet the demands of the asset recovery system required at this time. This is because firstly, it still includes the confiscation of goods from corruption as an additional crime, not the main crime. Second, the difficulty of proving someone guilty is extremely difficult. Even though the anti-corruption law has adopted a reverse burden of proof system in corruption crimes. Third, one example is the difficulty in proving the element of state loss in corruption committed by prosecutors during the trial process. If the prosecutor cannot prove that there is an element of loss to state finances, then the process of returning state assets will be difficult to carry out.

Fourth, determine whether an asset or item confiscated is related to a criminal act of corruption or not. The large number of assets that have been transferred to other parties or taken abroad has become a difficulty for law enforcers. Fifth, Article 19 of the Corruption Crime Act provides a loophole for corruptors to transfer goods or assets resulting from corruption to third parties who are not related to the corruptors to administer and manage these assets. Actually, the provisions in Article 19 of the Corruption Law have the good intention of providing protection for the assets of the parties. However, this condition is misused by corruptors so that the process of recovering assets that is happening now is very difficult to do.

b. UrgencyLegalization of the Asset Confiscation Bill

Currently the Asset Confiscation Bill is still being "boiled" by the Government and the House of Representatives. The Asset Confiscation Bill has been included in the national legislation program. according to researchers the obligation to have legal products that regulate the return of assets or confiscation of assets resulting from crime has been mentioned in UNCAC 2003. Based on the results of the author's study, Article 2 (1) of the Asset Confiscation Bill states that asset confiscation can only be carried out in the following cases:

1. the suspect or defendant dies, runs away, is permanently ill, or his whereabouts are unknown;
2. the defendant was acquitted of all charges;
3. the criminal case has not been or cannot be tried; or d) a criminal case that has been decided by a court and has permanent legal force, and later it turns out that there are assets from a crime that have not been declared confiscated.

As in the Criminal Code, Criminal Procedure Code and the Corruption Eradication Law, not all assets belonging to the perpetrators of criminal acts can be confiscated. Criminal assets that can be confiscated include:

1. all or part of the assets allegedly obtained from the criminal act including the wealth which was later changed, or combined with the wealth obtained or generated from the assets of the said crime, including income, capital or other economic benefits obtained from the said wealth;
2. assets that are suspected to be used or have been used as facilities or infrastructure to commit a crime;
3. other legal assets as a substitute for criminal assets. In addition to the assets mentioned above, assets of criminal acts that can be confiscated consist of assets that are worth at least Rp. 100,000,000.00 (one hundred million rupiahs) or assets originating from criminal acts that are punishable by imprisonment for 4 (four) years or more.

Asset return/confiscation mechanisms, including tracing, blocking, confiscation and asset confiscation:

Search As mandated by the UNCAC 2003, in the context of recovering assets, there are steps that must be taken so that assets resulting from criminal acts can be maximally recovered. The first step in returning assets resulting from a crime is by tracing assets. In carrying out searches, investigators or public prosecutors in accordance with their authority may request documents or other materials from any person, corporation or government agency. In this case, every group that is asked for document materials or other materials, be it corporations, or government agencies and the public, is obliged to provide this information to investigators or public prosecutors. However, if there are confidential materials or documents, the obligation to submit such information may be waived for reasons of confidentiality.

On the other hand, if there is no good cooperation from the party requesting materials or documents, the government can sue either criminally or civilly. This is very important considering that there are often difficulties for law enforcers in requesting information needed as material or evidence in order to take action against someone who has committed a crime.

Asset tracing can be carried out both for assets that are in the country or abroad. If the criminal act assets are suspected to be abroad, then the search is carried out in accordance with the provisions stipulated by bilateral, regional and multilateral agreements and/or on the basis of good relations based on the principle of reciprocity with due observance of statutory regulations. However, if the assets are located in the country, asset tracing can be directly carried out with permission from the authorities, namely the police, prosecutors, KPK or the head of the court.

The next stage in returning assets resulting from corruption is the blocking stage. This stage is carried out if from the results of the search a strong suspicion is obtained regarding the origin or whereabouts of the criminal act assets, the

investigator or public prosecutor can order blocking to the authorized institution. In this stage, it can also be continued with efforts to confiscate assets stored in banking institutions, especially regarding movable property. The authorized institution is obliged to carry out the Blocking immediately248 after the Blocking order is received. Implementation is carried out within a maximum period of 90 (ninety) days after the Blocking order is received. During the Blocking period, Criminal Act Assets cannot be transferred or transferred.

The next stage in the asset recovery process is the foreclosure stage. Confiscation is carried out by investigators or public prosecutors with a permit from the Head of the local District Court. In "urgent circumstances" confiscation of movable objects can be carried out without obtaining a permit in advance and must immediately report to the head of the local district court to obtain approval. The meaning or intent of the urgent situation in the confiscation Bill is not further stated, so it is not known under what circumstances the urgency applies.

The next stage is asset confiscation. Confiscation of assets does not eliminate the authority to prosecute perpetrators of criminal acts. This is in anticipation of the things mentioned in Article 2 of the Asset Confiscation Bill. In the Asset Confiscation Bill, the Criminal Procedure law system applies. The asset confiscation system that applies is almost the same as the civil forfeiture system, namely that the objects of confiscation are not people but assets from criminal acts. The difference is, the procedural law system that applies in asset confiscation trials is the criminal procedural law system that applies in Indonesia. Meanwhile, in civil forfeiture, the procedural law system used is the civil procedural law system. In this asset confiscation trial there were also parties namely the public prosecutor as the prosecutor who made the asset confiscation request, asset owners, third parties who have an interest in these assets, witnesses, and experts. In addition, there is evidence needed in the trial process.

Each District Court has the authority to adjudicate asset confiscation trials according to the area where the assets are located. Specifically for assets originating from abroad, only the Central Jakarta district court can conduct trials. One of the interesting things in the asset confiscation trial process is the presence of a third party who has an interest in the confiscated assets. This bill provides facilities for third parties to submit objections to asset confiscation accompanied by evidence regarding the said objection.

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It is still very difficult to return assets resulting from corruption to the state treasury. This is because there are many obstacles that influence law enforcement to confiscate assets that were taken illegally by perpetrators of criminal acts. One of them is the absence of a national legal basis that regulates the mechanism for returning assets or confiscating the proceeds of corruption. This makes it even more difficult for law enforcers to confiscate assets related to suspected corruption. In addition, it is not clear what the institution managing the proceeds of corruption is so that the assets resulting from corruption are kept by law enforcement. This makes the goal of returning assets resulting from corruption crimes not achieved, because these assets become unclearutilization.

According to the author, the most important thing that must be done by the Government of Indonesia is the political will to make maximum efforts to recover assets resulting from criminal acts of corruption. If there is no political will from the government to restore assets and eradicate corruption, then corruption cannot be eradicated. Asset recovery and corruption eradication in Indonesia will only be a mere discourse. Not only from state leaders, all groups must have the desire to eradicate corruption, be it in central or regional government agencies, law enforcement, business people, to the community itself must be able to eliminate corruption starting from the smallest things, don't let corruption appear turn it into a culture. If this can be implemented, in the next few years Indonesia will be more advanced. Specifically for asset recovery, in addition to

political will, Indonesia must have bilateral cooperation with other countries so that money that has been rushed to these countries can be easily returned. In addition, it must be synergized regarding the legal system in Indonesia specifically regarding corruption.

In addition, the need for international cooperation, both bilateral and multilateral, in the framework of returning assets resulting from criminal acts of corruption. This is necessary in order to carry out the extradition of perpetrators, return of stolen assets, and transfer of assets belonging to other perpetrators. This international cooperation is also needed in establishing good relations with other countries, which will be useful if there are corruptors who flee to that country. Indonesia also needs to conduct an internal audit of every institution in the context of good governance and identify any leakages due to corruption.

CONCLUSION

From the discussion above, it can be concluded that: First, the regulation of the mechanism for returning assets in Indonesia is currently still using the Criminal Code, the Criminal Procedure Code, and the Corruption Eradication Law; the process for returning state assets resulting from corruption has not been regulated. The current process of returning assets, especially in the Corruption Eradication Law, still refers to the process of confiscating certain items contained in the Criminal Code, so that the regulation regarding the return of state assets resulting from corruption does not yet have clear rules.

Second, there needs to be a re-structuring in the legal framework in Indonesia, both material and formal law, namely civil procedural law as a whole. Currently, the Indonesian government still uses formal civil law which only applies to cases that are individual or private to private. Therefore the implementation of this system must be followed by reforms in the field of civil procedural law so that the problems so far faced by the money laundering regime, such as reverse proof and predicate crime problems, can be minimized. Thus, the civil forfeiture provisions outlined in the TPPU Law can be applied effectively.

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