

ENHANCING CIVIL LAW MECHANISMS FOR ASSET RECOVERY FROM CORRUPTION CRIMES

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Abstract - Asset recovery is a critical component of the global fight against corruption, involving the process of reclaiming illegally acquired assets. This paper examines the challenges and best practices in asset recovery mechanisms, focusing on the Indonesian context. It highlights the importance of preventive measures, such as robust anti-corruption laws and addressing the root causes of corruption. The paper emphasizes the need for international cooperation, as recovering assets often involves hidden offshore accounts and complex legal structures. The United Nations Convention against Corruption (UNCAC) serves as a framework for global collaboration in asset recovery efforts. The paper discusses the challenges in effectively recovering stolen assets, including the misconception surrounding the substitute for the proceeds of corruption. It explores the experiences of other countries, such as the Philippines, Hong Kong, and European nations, in asset recovery and seizure practices. The legal framework governing asset recovery in Indonesia, as well as the process of civil lawsuits for asset recovery, are examined. The paper concludes by emphasizing the importance of strengthening the Indonesian legal framework and learning from international best practices to enhance asset recovery outcomes.

Keywords: Asset Recovery, Civil Law, Corruption Crimes, Indonesia

INTRODUCTION

Asset recovery is a crucial aspect of the global fight against corruption as it involves the process of reclaiming illegally acquired assets (Smith et al, 2007). Corruption poses significant financial losses for states and erodes public trust in institutions (Nunko et al, 2018). Therefore, effective asset recovery mechanisms play a pivotal role in deterring corruption, holding perpetrators accountable, and restoring stolen assets to their rightful owners.

The recovery of assets obtained through corrupt practices is a multifaceted and complex task that requires a comprehensive approach. It begins with preventive measures aimed at reducing opportunities for corruption and fostering transparency and accountability in both the public and private sectors. These measures include the implementation of robust anti-corruption laws, the establishment of ethical standards, the strengthening of financial systems, and the promotion of a culture of integrity and good governance (Indrayana, 2007)

Preventive measures also involve addressing the root causes of corruption, such as poverty, inequality, and lack of access to basic services. By improving socio-economic conditions and promoting inclusive growth, societies can create an environment that discourages corrupt practices (Akçay, 2006; Widiowati, 2023). In addition to prevention, enforcement efforts are crucial in investigating corruption cases, prosecuting offenders, and recovering stolen assets. However, recovering these assets often presents significant challenges due to factors such as hidden offshore accounts, complex legal structures, and barriers to cooperation between jurisdictions. To address these challenges, international cooperation is essential. Countries must collaborate and exchange information to trace and repatriate stolen assets held in foreign jurisdictions.

The United Nations Convention against Corruption (UNCAC) serves as a vital framework for international cooperation in combating corruption and facilitating asset recovery. The UNCAC encourages states to cooperate in investigating and prosecuting corruption offenses and provides guidelines for the recovery of stolen assets. Ratified by numerous countries, the UNCAC has played a significant role in fostering global collaboration in asset recovery efforts (World Bank, 2015).

While progress has been made in recent years, several challenges persist in effectively recovering stolen assets. One such challenge is the misconception surrounding the substitute for the proceeds of corruption. In some cases, a fine equal to the value of the proceeds is imposed as a substitute. However, this approach has been criticized for not adequately addressing the recovery of assets or compensating for the financial losses incurred by the state (Ivory, 2014). More comprehensive measures should be implemented to ensure that stolen assets are returned to their rightful owners. In the Indonesian context, similar challenges exist in the realm of asset recovery. On the other hand, the misconception regarding the substitute for the proceeds of corruption is also contained in Article 18 of Law No. 8 of 2010 concerning Money Laundering. The article states that the substitute for the proceeds of corruption can be fulfilled by imposing a fine equal to the value of the proceeds. However, this provision has been criticized because it does not effectively address the recovery of assets obtained through corruption. Imposing a fine alone may not fully compensate for the financial losses incurred by the state and does not ensure that the assets are returned to their rightful owners (Wardani & Barkhuizen, 2022; Marwan&Prayogo,2019).

To enhance asset recovery efforts, many countries, including Indonesia, have established specialized agencies and units dedicated to this purpose. These entities focus on investigating corruption cases, tracing illicitly acquired assets, and initiating legal proceedings for their recovery. The adoption of advanced technology and data-sharing mechanisms has also significantly improved the chances of successful asset recovery (Setiadi, 2018)

In recent years, non-conviction-based asset recovery mechanisms have gained attention. These mechanisms allow authorities to seize and recover assets even without a criminal conviction. By shifting the burden of proof to the individual holding the assets, these mechanisms enable authorities to target and recover assets associated with corruption, even if the perpetrators evade prosecution or legal proceedings face significant obstacles.

Furthermore, asset recovery efforts should not be limited to the national level. International collaboration is crucial for effectively tackling cross-border corruption and recovering assets held in foreign jurisdictions. The exchange of information, mutual legal assistance, and extradition treaties all play a vital role in facilitating asset recovery. International organizations, such as the World Bank and the International Monetary Fund (IMF), also provide technical assistance and support to countries in strengthening their asset recovery frameworks (Aslund, 2014).

In the Indonesian context, international cooperation is particularly important given the global nature of corruption and the potential for stolen assets to be hidden in foreign jurisdictions. Indonesia has recognized the significance of international collaboration and has actively participated in initiatives aimed at enhancing asset recovery. The country has entered into mutual legal assistance agreements with several nations, allowing for the exchange of information and the tracing and recovery of assets held abroad.

Despite these efforts, there is still room for improvement in the Indonesian legal framework concerning asset recovery. The existing provisions, such as those outlined in Law No. 8 of 2010 concerning Money Laundering, need to be strengthened to ensure more effective asset recovery outcomes (Wardani & Barkhuizen, 2022). The misconception surrounding the substitute for the proceeds of corruption, as mentioned earlier, is one area that requires attention.

To address this issue, it is essential to consider the experiences and best practices of other countries that have implemented successful asset recovery mechanisms. Conducting a comparative analysis of civil law mechanisms in different jurisdictions can provide valuable insights and inform policy recommendations for Indonesia.

METHODOLOGY

This qualitative exploration employs a comprehensive research methodology to examine law enforcement efforts in addressing street crime in Indonesia. The study integrates multiple data sources and analytical techniques to gain an in-depth understanding of the subject. The research design involves collecting and analyzing qualitative data from diverse sources, including crime statistics, policy documents, and scholarly research on street crime in Indonesia. These primary

sources provide a robust foundation for exploring the complex nature of street crime and investigating the role of law enforcement agencies in ensuring national stability and facilitating economic growth.

In addition to primary sources, secondary sources such as academic literature, government reports, and relevant publications are reviewed to contextualize street crime and law enforcement strategies. This broader analysis establishes a comprehensive framework for the qualitative exploration. Data analysis follows a thematic approach, allowing for the identification and exploration of recurring patterns, key issues, and emerging themes concerning law enforcement efforts and their impact on national stability and economic growth. Thematic analysis involves coding and categorizing data to uncover significant findings and develop a comprehensive understanding of the topic. The research process maintains rigor and credibility through a systematic and transparent approach.

The researcher incorporates reflexivity, acknowledging personal biases and potential influences on the research findings. This practice promotes objectivity and enhances the validity of the study. The findings from this qualitative exploration contribute to a nuanced understanding of the intricate dynamics among street crime, law enforcement efforts, and their implications for societal well-being in the Indonesian context. The insights gained can inform policymakers, law enforcement agencies, and community organizations in formulating effective strategies to combat street crime, promote national stability, and foster economic growth.

RESULTS AND DISCUSSION

1. *Exploring the Consequences and Categorizations of Corruption*

Andi Hamzah (2004) presents two contrasting viewpoints on the consequences of corruption. The first perspective argues that corruption can sometimes have positive effects, acting as a lubricant that facilitates transactions and greases the wheels of bureaucracy. However, the second viewpoint, as articulated by Gunnar Myrdal and cited by Andi Hamzah, asserts that corruption never leads to positive outcomes. Instead, it exacerbates various problems within society.

According to Myrdal's perspective, corruption has several negative implications. Firstly, it solidifies and amplifies issues related to the lack of entrepreneurial drive and the limited growth of national sentiment. Secondly, corruption exacerbates societal divisions, weakening national unity and compromising the stability of the state. Moreover, as the government's integrity declines, it poses a significant risk to political stability. Finally, corruption results in a decline in social discipline, as bribes not only streamline administrative processes but also foster deliberate delays to extract larger bribes. This, in turn, hampers the implementation of development plans and further obstructs progress (Kumorotomo, 1992)

Alatas outlines several characteristics of corruption. Corruption typically involves multiple individuals and often operates in secrecy, except in cases where it becomes widespread and difficult to conceal. It entails a reciprocal relationship between obligation and benefit, which extends beyond monetary forms. Corrupt individuals seek legal justifications to mask their actions, while simultaneously desiring decisive outcomes and the ability to influence decisions. Overall, corruption can be seen as an act of betrayal that violates societal norms, as it prioritizes self-interest over the public good.

Andi Hamzah (2004) categorizes corruption into different types. These include direct criminal extortion, such as embezzlement of state funds, tax evasion, extortion, and bribery. Additionally, there are cases of difficult-to-prove criminal extortion, such as commissions in bank loans, project tender commissions, fees for granting permits, promotions, travel money extortions, and bribes at checkpoints. Furthermore, unauthorized collections made by local governments, without a legal basis but solely based on decision letters, contribute to corrupt practices. Other forms of corruption involve bribery, where individuals offer money or services in exchange for favors, and extortion, where those in power demand payments for the facilities they provide. Lastly, corruption may manifest as theft, where individuals abuse their authority to directly or indirectly steal public

assets. Nepotism is also identified as a form of corruption, characterized by those in power granting authority and privileges to their family or relatives, depriving others of fair opportunities.

2. *Asset Recovery and Seizure Practices in the Philippines, Hong Kong, and European Countries*

The Philippines faced legal obstacles in repatriating assets related to the corruption of former President Ferdinand Marcos. The process required the Philippine government to file charges and go through a restitution process within a year, along with compliance with Swiss law and human rights conventions. Eventually, a mutual legal assistance agreement was signed between the Philippines and Switzerland, enabling anticipatory restitution. The asset recovery process involves four stages: asset tracing, preventive actions like freezing, asset seizure, and repatriation. Asset tracing involves identifying and connecting the assets to criminal activities, while asset seizure requires proper documentation and protocols to ensure transparency. Repatriation involves legal proceedings and the return of assets based on court decisions. International agreements like the UNCAC play a crucial role in facilitating efficient asset recovery mechanisms and promoting transparency and accountability (William, 2001).

In Hong Kong, the legal system grants courts authority similar to that of the UK. The concept of seizure in Hong Kong is expanded, allowing the state to seize additional assets that may not directly relate to the specific crime but are deemed unlawfully obtained. The burden of proof can be partially shifted, particularly in cases of repeat offenses or when the defendant is associated with a criminal organization. Asset return in Hong Kong requires legislative actions and measures that adhere to the legal principles of each country. The division of assets between the receiving and victim countries is an important issue, and asset sharing is often governed by mutual legal assistance agreements (Ziouvas, 2018).

Meanwhile, the UK has introduced legislation that allows for asset freezing, while the actual seizure and transfer of assets will be conducted administratively. The UK government plans to establish dedicated teams to respond quickly to asset recovery requests. Seizure is considered a punishment and a permanent confiscation of assets obtained through corruption. The UNCAC and the CLSCPC define seizure differently, and the execution of seizure orders can vary depending on the national laws of the receiving country. Uncooperative jurisdictions in receiving countries may lead to unilateral actions, causing potential diplomatic issues. Challenges exist in implementing seizure requests, considering the different legal systems and the costs involved. The passage highlights the importance of preventing criminals from benefiting from their crimes and acknowledges the challenges concerning the rights of asset owners and the compatibility of seizure laws with human right (Peter, 2003; Sulastri et al., 2023).

The Proceeds of Crime Act 2002 in the UK has influenced legal principles such as the right to a fair trial, personal rights, and the presumption of innocence. The passage discusses property-based and value-based seizure systems in the UK and other countries, with civil law countries primarily using property-based systems, and common law countries mainly employing value-based systems. The choice of system affects the assets subject to seizure. It is crucial to consider the seizure system in the receiving country and whether a court decision from the victim country is required for implementing the seizure order. In FATF member countries, a court decision is typically required for asset seizure in corruption cases. (Kebbell, 2017).

3. *The Legal Framework Governing Asset Recovery in Corruption Cases within Indonesia*

Asset recovery in corruption cases in Indonesia is governed by Law Number 31 of 1999 on the Eradication of Corruption. This legislation provides a comprehensive legal framework for the recovery of assets obtained through corrupt practices. The law encompasses various measures, including confiscation, restitution, and the closure of companies involved in corrupt activities. By implementing these provisions, the Indonesian government aims to combat corruption and ensure that ill-gotten assets are returned to the state (Lubis, 2005).

The primary responsibility for asset recovery lies with the Corruption Eradication Commission (KPK) and other relevant law enforcement agencies. These institutions are entrusted with the task of investigating corruption cases, tracing illicit assets, and initiating legal proceedings to recover

them. The KPK, in particular, has been instrumental in combating corruption in Indonesia and has played a significant role in the asset recovery process (Taryanto&Prasojo, 2022).

The asset recovery process typically involves several stages. Firstly, the relevant authorities conduct a thorough investigation to gather evidence and identify assets acquired through corrupt means. Once identified, these assets can be frozen or confiscated to prevent their disposal or further use in criminal activities. Subsequently, upon the conclusion of the criminal proceedings and a conviction, the court can order the return of the confiscated assets to the state or the payment of restitution or compensation equivalent to their value.

The management and disposal of confiscated assets are carried out in accordance with applicable laws and regulations. The proceeds from the sale of these assets may be used for various purposes, such as supporting anti-corruption efforts, compensating victims, or funding development programs. The asset recovery process in Indonesia requires cooperation between domestic and international authorities, especially in cases involving cross-border corruption and illicit financial flows (Zulyadi, 2020). Therefore, the country has established bilateral and multilateral agreements to facilitate international cooperation in asset recovery and mutual legal assistance. Indonesia's commitment to combat corruption and recover illicit assets reflects its determination to hold individuals accountable for corrupt practices and benefit its citizens and the state as a whole.

4. *The Process of Civil Lawsuits for Asset Recovery in Corruption Cases in Indonesia*

Civil lawsuits for asset recovery in corruption cases play a vital role in recovering illicitly obtained assets when there is insufficient evidence to prove a corruption offense beyond a reasonable doubt. This article focuses on the process involved in civil lawsuits for asset recovery, highlighting the key steps and procedures undertaken to trace, freeze, and recover assets derived from corrupt practices (Munir, 2002):

- 1) Initiating the Lawsuit. Civil lawsuits for asset recovery are typically initiated by state prosecutors or authorized agencies. They assess cases where there is a strong suspicion of corruption but insufficient evidence for a criminal conviction. The initiation process involves gathering relevant information and evidence to establish a link between the assets in question and the corruption offense.
- 2) Burden of Proof. In these civil lawsuits, the burden of proof lies with the state prosecutor or authorized agency. They must present compelling evidence that demonstrates a direct connection between the assets and the corruption offense. This requirement ensures that the asset recovery process is based on solid evidence, safeguarding individuals' rights and preventing unfounded claims.
- 3) Filing the Lawsuit. Once the evidence is gathered, the state prosecutor or authorized agency files the civil lawsuit in the appropriate court. The lawsuit outlines the allegations of corruption, identifies the assets believed to be derived from corrupt practices, and seeks their recovery and return to the state.
- 4) Court Proceedings. The court plays a pivotal role in evaluating the evidence and arguments presented by both parties involved in the civil lawsuit. The court carefully examines the connection between the assets and the alleged corruption offense. It assesses the validity of the evidence and determines whether it meets the required standard of proof.
- 5) Asset Tracing. During the civil lawsuit, asset tracing becomes crucial in establishing the origin and ownership of the assets in question. Investigators and authorities follow the money trail, scrutinizing financial transactions and pathways to gather vital evidence. Asset tracing aims to provide a clear picture of how the assets were acquired through corrupt means.
- 6) Asset Freezing Measures. To prevent the dissipation of assets during the lawsuit, asset freezing measures are often implemented. These measures temporarily prohibit the transfer, disposal, or sale of the assets under investigation. Asset freezing ensures that the assets remain available for recovery if the court rules in favor of the state.
- 7) Court Decision and Asset Recovery. If the court finds sufficient evidence linking the assets to the corruption offense, it issues a decision for their recovery and return to the state. This decision serves justice by restoring stolen assets and acts as a deterrent against corrupt activities. The court

may specify the mechanisms for asset recovery and may involve collaboration with international counterparts to recover assets hidden or transferred abroad.

8) Enforcement and Monitoring. Government agencies responsible for asset recovery play a crucial role in enforcing and monitoring the court's decision. They oversee the effective return of the recovered assets to the state. This process involves ensuring compliance with the court's orders, coordinating with relevant authorities, and preventing any attempts to circumvent the asset recovery process.

5. *The Challenges Brought by Civil Lawsuits*

Asset recovery in corruption cases is a complex process with various challenges. Identifying and tracing assets acquired through illegal means can be difficult due to intricate financial transactions and money laundering schemes. Offshore accounts and jurisdictional issues further complicate the task, as cooperation between countries may be limited. Additionally, the lack of documentation and deliberate concealment of evidence hinder the establishment of a clear paper trail (Arnone & Borlini, 2014).

Legal and procedural challenges add to the difficulties of asset recovery. The burden of proof lies with the state or plaintiff, requiring strong evidence to demonstrate the assets' illicit origin. Lengthy legal processes, including filing lawsuits and court hearings, contribute to delays, allowing perpetrators to dissipate or hide their ill-gotten gains. Furthermore, asset dissipation through transfer to third parties obstructs asset identification and necessitates legal action against these parties (Rifai & Tisnanta, 2022).

International cooperation and political will are crucial factors. Mutual legal assistance agreements are essential for successful asset recovery, but the willingness of foreign jurisdictions to cooperate varies. Political interference can hinder investigations and prosecutions, protecting the interests of influential individuals (Qisa'i, 2019). Moreover, managing and repatriating recovered assets back to the country of origin presents challenges, requiring transparent mechanisms and effective anti-corruption measures.

6. *Drafting of Asset Recovery Law*

Asset recovery legislation in Indonesia is crucial in combating corruption and addressing poverty. However, the existing legal framework falls short in terms of confiscating assets derived from criminal acts without a court ruling. The Indonesian legal system does not currently have specific laws or provisions regarding the confiscation of assets resulting from criminal acts without a court ruling. Currently, asset recovery in the Indonesian criminal justice system is done through court rulings that have acquired legal force (*inkracht*). In addition to court judgments, civil lawsuits such as Article 32, Article 33, Article 34, and Article 38C of Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001, are utilized for asset recovery in Indonesia. However, based on the experience of asset recovery in other countries and international customary law that has been in effect, it is clear that the existing legal regulations in Indonesia for combating crimes, including corruption and money laundering, are not sufficient to effectively safeguard the assets resulting from those crimes from other countries for the greatest benefit of the people and to address poverty (Eddie, 2013; Wangga et al., 2022)

Asset recovery legislation plays a crucial role in combating corruption in Indonesia. To effectively recover assets obtained through corrupt practices, comprehensive and integrated legislation is needed, aligned with the United Nations Convention against Corruption (UNCAC). The enactment of such legislation would encompass prevention, investigation, prosecution, and international cooperation in asset recovery (Wahyudi, 2019)

The implementation of asset recovery legislation in Indonesia offers numerous benefits. Firstly, it strengthens the legal framework by establishing clear guidelines and procedures for identifying, tracing, freezing, confiscating, and repatriating assets linked to corruption (Mariana, 2022). This enhances the efficiency and effectiveness of the asset recovery process. Furthermore, asset recovery legislation acts as a deterrent against corruption. Its presence sends a strong message that corrupt activities will face severe consequences, including the potential loss of illicitly acquired

assets. This discourages individuals from engaging in corrupt practices and promotes a culture of integrity.


The recovery of stolen assets is a significant advantage of asset recovery legislation. It allows the government to reclaim illicitly obtained wealth and redirect it to public welfare, development projects, or compensating victims of corruption. By returning stolen assets to the state treasury, the legislation helps restore the rightful ownership to the people of Indonesia. Asset recovery legislation also facilitates international cooperation in combating corruption. It enables collaboration with other countries, international organizations, and financial institutions to trace, freeze, and repatriate assets held abroad (Hasanah, 2022). This collaboration is essential as corrupt individuals often transfer their ill-gotten gains to foreign jurisdictions to evade detection and prosecution. Lastly, the enactment of asset recovery legislation builds trust and accountability in the government. It showcases a commitment to fighting corruption, promoting transparency, and holding corrupt individuals accountable. By recovering stolen assets, the legislation contributes to a more responsible and accountable governance system, fostering public trust in the fight against corruption.

CONCLUSION

Corruption has both positive and negative consequences. Some argue that it can facilitate transactions and bureaucracy, while others believe it worsens societal issues. Corruption is characterized by secrecy, reciprocal relationships, and a focus on self-interest. Types of corruption include bribery, theft, and nepotism. Asset recovery practices in various countries involve legal procedures, international agreements, and challenges related to jurisdiction and human rights. In Indonesia, the Corruption Eradication Commission (KPK) plays a key role in asset recovery through investigation, asset tracing, freezing, court proceedings, and returning confiscated assets to the state. Civil lawsuits are important when criminal convictions are not possible. Challenges include complex financial transactions, lack of documentation, and political interference. Addressing these challenges requires legal reforms, investigative capacities, and international cooperation. Comprehensive asset recovery legislation aligned with international standards offers benefits such as deterring corruption and promoting trust in governance.

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