



## **Legal Reconstruction of Corruption Act in Indonesia to. Realize a Just Law Enforcement**

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### **Abstract**

In detail, the assets recovery bill provides for the confiscation of assets in terms of (1). The suspect or defendant has died, fled, is permanently ill, or his whereabouts are unknown; or (2). The defendant was released from all lawsuits. For the confiscation of assets from both of them, it can also be carried out against assets whose criminal cases cannot be tried or have been found guilty by a court that has obtained permanent legal force, and later it is found out that there are assets from the criminal activities that have not been declared confiscated. As for the confiscation of assets, it does not apply to improper assets that will be confiscated. Confiscation of Assets does not eliminate the power to prosecute the perpetrator of a criminal act. Assets confiscated based on a court decision that has obtained legal force can still be used to prosecute the perpetrator of a criminal act.

**Key words; Corruption, Seizure Of Assets, Criminal Prosecution.**

### **Introduction**

Corruption<sup>1</sup> today has become a global problem between countries, which is classified as a transnational crime. In various parts of the world, corruption always gets more

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<sup>1</sup> Corruption is a word that is familiar to our ears. All layers society has even become fluent in saying that an act is a crime corruption. Someone who hides money that does not belong to him can be said to be corrupt. Even though they do not know clearly the intent and meaning of the word corruption according to their views law. Apart from this, we can know that corruption is deeply embedded within community life. In Indonesia, the word corruption has been known since the Dutch East Indies era. where the origin of the word is from the Dutch language, namely corruptie (korruptie). So it's no wonder the word corruption known and has become a daily word. Andi Hamzah, Corruption Eradication Through Raja Grafindo Persada National and International Criminal Law, Jakarta, 2005, page 4. Transparency International Indonesia (TII) uses the definition of corruption as: Abusing public power and trust for personal gain. From definition there are three elements: Abuse of power, entrusted power (both in public or private sector); have access to business and material benefits, and profits private (which does not always mean only the person who abuses power, but also family members or friends). J. Pope, Strategy to Eradicate Corruption, Indonesian Obor Foundation, Jakarta, 2003, page 6. With the recognition of corruption by the public, this indicates that the practice of corruption has been going on for a long time even before the word corruption widely known. The background or cause of corruption is caused by several things which is actually very varied and multifaceted. One of the causes of corruption is acts of corruption committed with the aim of gaining personal/family/ own group/class. By basing it on motives of personal gain or In this group, it is understandable that corruption is everywhere and happens at any time because The problem of corruption is always related to the motives that exist in every human being get personal or group benefits, I. G. M. Nurdjana, Criminal Law System and The Latent Danger of Corruption: The



attention than other crimes. This phenomenon is understandable considering the negative impact caused by this crime. The resulting impact can touch various areas of life. Corruption is a serious problem, this crime can endanger the stability and security of society, endanger socio-economic development<sup>2</sup>, and also. State losses due to criminal acts of corruption are still not covered and public disquiet is still high about law enforcement of criminal acts in Indonesia. Punishment is one of the legal elements in enforcement criminal law. Criminal law without linking it to punishment is like toothless tiger.

The imposition of a criminal sentence by the court is a legitimate effort, grounded by law to inflict sorrow or suffering upon someone who is proven guilty of committing a crime. Criminal himself is a social institution that is associated with, and always reflects, values and structure of society, so that it is a symbolic reaffirmation of violation of the common conscience or collective conscience<sup>3</sup>, borrow terminology of Emile Durkheim. Given the enormous losses suffered due to corruption, law Criminal law as a law that aims to give suffering and sorrow to anyone who violates is the right way to eradicate and prevent corrupt practices. This is in line with what was conveyed by Wirjono Prodjodikoro who formulated it very briefly, namely: Criminal law is a criminal law. Then he said the word criminal means the thing that is penalized, that is by the agency in power delegated to a person as something that is unpleasant for him and also something that is not delegated on a daily basis. Indonesia as a developing country is very vulnerable to economic practice because according to Fred W. Riggs, one of the characteristics of the state developing is the thickness of corruption, collusion and nepotism Imprisonment is the most popular type of principal punishment among other principal crimes (based on Article 10 of the Criminal Code) is indeed effective retaliate against convicted criminals for proven corruption he did. However, imprisonment does not always solve the problem.

instead it can lead to problems such as over capacity, corruptors' indifference, and State losses have not been resolved. The amount of state financial losses due to corruption is very disproportionate large return on state finances due to corruption. Loss returns the country's finances must be done in any way possible justified by law so that it can be pursued as optimally as possible. in principle, the right of the state must return to the state for the welfare of the people. The issue of asset recovery to minimize state losses is a factor that is no less important than efforts to eradicate corruption in Indonesia

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Perspective of Upholding Justice Against the Legal Mafia, Student Library, Yogyakarta, 2010, page 31

<sup>2</sup> In the Corruption in Government Resolution (Results of the 8th UN Congress in 1990) it was stated that corruption is not only related to various economic crime activities, but also to Organized Crime, illicit drug trafficking, money laundering, political crime, top hat crime, and even transnational crime.

<sup>3</sup> Collective Conscience: Durkheim argued that in traditional/primitive societies (those based around clan, family or tribal relationships) totemic religion played an important role in uniting members through the creation of a common consciousness (conscience collective in the original French). In societies of this type, the contents of an individual's consciousness are largely shared in common with all other members of their society, creating a mechanical solidarity through mutual likeness Durkheim .



as well as punishing the perpetrators with the harshest penalties. Step to minimize losses to the country in addition to that should be done since early handling of cases by freezing and confiscation, is also absolute carried out through cooperation with other countries where the proceeds of crime (proceeds of crime) is located.

### **Legal Reconstruction of Corruption Act in Indonesia to. Realize a Just Law Enforcement**

Corruption is a special criminal act, qualified as an ordinary crime but must be eradicated in extraordinary ways. In Indonesia, it is not only an extraordinary method but also an institution with extraordinary authority formed because corruption has become a systemic and systematic disease of society. Criminalizing the act of "obstructing the judicial process" is one way to eradicate corruption extraordinarily. The positive law has already regulated it, but it needs to be strengthened by ratifying UNCAC 2003 so that the norms governing the offense can be universally recognized. This study aims to synchronize and harmonize the norms that have been regulated in positive law with the new norms regulated in UNCAC 2003 to avoid misperceptions in its implementation. The normative method is used by examining philosophically and juridically through principles and theories that develop and are associated with emerging empirical problems. Several legal cases are used to analyze the philosophical and juridical problems and to find weaknesses in the "obstruction of justice" offense norm. It needs to be reconstructed to ensure legal certainty and justice better. In the end, the goal of eradicating corruption can be achieved, without violating the proper criminal procedural law and placing interested parties, both from the perspective of the perpetrators and victims.

Confiscating and seizing the proceeds and instruments of criminal acts from the perpetrators of a criminal act not only transfers some assets from the criminal to the community but also increases the possibility of the community to realize the common goal of creating justice and welfare for all members of society. This, in turn, prompted the Government of Indonesia to issue policies related to efforts to accelerate the eradication of corruption. One of the policies that have become the Indonesian Government's priority is the creation of legal instruments capable of seizing all assets



resulting from a crime and all means that allow the implementation of criminal acts, especially those with economic motives. Confiscation of proceeds of crime, in addition to reducing or eliminating the motive of economic crime that allows the active funds in large amounts that can be used to prevent and combat crime. In total, it will destroy the crime rate in Indonesia. Approaches to crime at the level of crime through confiscation and confiscation of proceeds and criminal acts that are in line with the principles of fast, simple, and low-cost justice. This revolutionary concept of eradicating corruption through withdrawing the wealth of corruptors that Indonesia needs to consider as a reference, namely placing recovery of state losses through the seizure of the suspect's property. The confiscation is carried out using the Asset Recovery Bill mechanism, namely by first investigating the suspect's assets by KPK investigators. Then the District Court will issue a decision regarding the suspect's total assets. Furthermore, the corruptors' assets are handed over to the Asset Management Agency, which can recover and return the proceeds of crime under the Asset Recovery Bill. Based on the withdrawal of the assets of the corruptor by the State, the investigation process by the institution concerned will be terminated. This concept follows the mandate in Article 51 of the United Nations Convention against Corruption, which states that the return of assets is a fundamental principle in this convention to eradicate corruption. It needs to be done, considering that the losses to the State due to corruption constitute oppression of the people's social rights. Soekarno expressed the oppression of the people's social rights in his state speech as exploitation de l'homme par l'homme, which must be eliminated.

## **Conclusion**

In detail, the assets recovery bill provides for the confiscation of assets in terms of (1). The suspect or defendant has died, fled, is permanently ill, or his whereabouts are unknown; or (2). The defendant was released from all lawsuits. For the confiscation of assets from both of them, it can also be carried out against assets whose criminal cases cannot be tried or have been found guilty by a court that has obtained permanent legal force, and later it is found out that there are assets from the criminal activities that have not been declared confiscated. As for the confiscation of assets, it does not



apply to improper assets that will be confiscated. Confiscation of Assets does not eliminate the power to prosecute the perpetrator of a criminal act. Assets confiscated based on a court decision that has obtained legal force can still be used to prosecute the perpetrator of a criminal act. The implementation of eradicating corruption in Indonesia through Law No. 31/1999 as amended by Law No. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption does not seem to have received optimal results; the current law still focuses on the jailing of the body against the perpetrator rather than the return of state assets that were lost from corruption, even though in fact the main objective of eradicating corruption is the return of lost assets to be returned to the state to be used as much as possible for the prosperity of the people. According to the data from the research and development center of Indonesia's Corruption Eradication Commission, state losses from 2003-2015 amounted to Rp. 153.01 trillion and only Rp. 15,957,821,529,773 or 10.4% of the funds that were successfully returned to the state. Therefore, the Indonesian government must immediately enact an asset confiscation law as mandated by the 2003 United Nations Convention Against Corruption (UNCAC) as ratified by Law No. 7 of 2006 to avoid more state losses and as a solution so that assets resulting from criminal acts of corruption can be returned to the victim (the state).

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