

## THE RECOVERY OF THE ASSETS OF THE CRIMINAL ACTS OF CORRUPTION AS THE COUNTRY'S FINANCIAL RESCUE EFFORTS

Arif Wibawa, Djafar Saidi, Slamet Sampurno, Marthen Arie  
Hasanuddin University Graduate  
Email: arifwibawa72@yohoo.co.id

### ABSTRACT

Prosecutors in the country so that financial losses return refund losses the State has not been fullest. And existing legal institution in its implementation shows the result of maximum effort yet to refund the financial loss to the State. Therefore needs to be examined further the efforts of the Prosecutor's Office has done in the optimisation of returns on the country's financial losses.

The Attorney law enforcement institutions in the framework of the financial rescue is expected to give a significant impact, so step harmonization of legislation is required to seek the repayment of assets results of criminal acts of corruption.

*Keywords: crime, corruption, financial state, the recovery of Assets*

### INTRODUCTION

Goals and ideals reached the Indonesia people's welfare is the provision of the Constitution. The task of the State as a public service is organized and social welfare undertakings (which by Lemaire called with: *bestuurzog*) for the community.<sup>1</sup> Typology of countries was good and responsive is the goal or goals that support the creation of a public order that achieves well-being. To realize these goals, the organizer of a Government in a State of settings using a number of laws (the laws of) good rule of public law or private law rules. The second rule of the law is expected to reflect a law order responsive towards good governance or good governance.

The emergence of a national crisis that struck Indonesia with consequences much more severe if compared with that experienced by other countries caused by the practice of the Government, where the Government built through authoritarianism of power so that no significant political participation from the community, there is no transparency and Government accountability against the public and there is no rule of law. Through the spirit of reform, Indonesia is trying to rise from adversity by doing a reordering in all aspects of life in order to realize the goals of the State, including in terms of financial management of the State.

The new paradigm of the State financial management refers to Act No. 17 of 2003 about the finances of the State and law No. 1 of 2004 on the State Treasury at least contains three rules of financial management of the country, namely: orientation on results, professionalism

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<sup>1</sup>Saut P. Panjaitan, 2001. *Makna dan Peranan Freies Ermessen Dalam Hukum Administrasi Negara* dalam SF Marbun dkk (penyunting), *Dimensi-Dinmensi Pemikiran Hukum Administrasi Negara*, Cetakan Kesatu, Yogyakarta:Ull Press, hlm.104

and accountability and transparency. This paradigm is intended to slash the deficiency. Financial management is one of the main administrative activities within the Government that demands good governance and require each organization to manage finances well and properly, so that any expenditure can be accounted for properly and correctly in accordance with the applicable statutory rules.

In the absence of good financial management, plus provisions that overlap and multi tafsir is the legal loophole (loopholes) from the early onset of the loss of the country. This is certainly also a factor inseparable from the implementers in the field, with the authority attached to him tend to occur the aberration (criminal acts of corruption).

Various ways and attempts have been made to hinder the pace of development of corruption, including through the eradication of criminal acts of corruption are not only directed at the handling of the matter, but also an attempt to obstruct the corruptor to enjoy the results of his crime. In Indonesia, the criminal law to obstruct or cover the possibility of the perpetrators of the crime (including the corruptor) enjoy the results of his crime, has done a variety of ways.

In the pragmatic level is done through the process of events, for example can be done from the outset in the form of confiscation (article 39 Code of Criminal Procedure) or blocking (article 32 of Act No. 15 of 2002 jo Act No. 25 of 2003 jo Act No. 10 of 2008), or the freezing of accounts (article 42 Act No. 7 of 1992 jo Act No. 10 of 1998). In addition, it can also be done by making the deed as a criminal offence in its own right. So for example has criminalism the Act (chapter 480, 481 daan 482 Criminal Code) or money laundering (money laundering) as formulated in the Act No. 15 of 2002 jo Act No. 25 of 2003 jo Act No. 10 of 2008. Do the double criminality such as this, is an attempt at clearing a criminal act by making it as "unfortunate", as other works such as hides, trade in, or disguising criminal proceeds pidananya is a separate criminal offence. Never even broke out the idea to expand the outline of a criminal offence in the legislation of corruption, so that it includes three groups, namely, the crime of corruption, other criminal acts relating to the criminal offence of corruption and criminal acts after corruption. It is this last one is the withdrawal of money laundering became a criminal offence of corruption and criminalization forms helping after the criminal offence of corruption occurred.<sup>2</sup>

In addition to this effort to make offenders (offender) does not enjoy the results of his deeds also robs certain goods obtained or produced in a criminal act as additional criminal criminal subject matter such as imprisonment and fines (article 10 and Article 39 of the Criminal Code jo). For the criminal offence of corruption, this can also be done against the deprivation of property which cannot be proved by the defendant as a result not of corruption a criminal offence (article 34 b Act No. 31 of 1999 jo Act No. 20 of 2001) and still coupled with payments of money substitutes whose value is equivalent to the country's financial losses due to the acts (article 18 paragraph (1) of Act No. 31 of 1999 jo Act No. 20 of 2001).

However, all of the provisions of so above has not really made the corruption doesn't pay, given the generally only apply within the jurisdiction of the law of Indonesia. With the help of information technology results in corruption crimes apparently got a touch of "modernization",

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<sup>2</sup> Barda Nawawi Arief. 2001. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Bandung : Citra Aditya Bakti.

which is placed within the jurisdiction of the law of another country. To be able to retake (recover) hidden asset the corruptor Indonesia abroad, then at least it takes two main terms: (a) Indonesia must also have a judicial system in a clear and unequivocal stand against corruption (in this case the ACT of corruption, the KPK and the Court Tipikor); (b) Indonesia should also have clear legislation in the "retake" the assets that were stolen by the corruptor to hide assets (either within the country or abroad).

One of the impact of crime is the emergence of assets results of criminal acts is so great in fact found in many forms of intangible assets as well as both intangible assets. During this time, the assets of criminal acts tend to be ignored and only given attributes as "evidence of the results of the crime" as set forth in the book of the law of criminal procedure so that handling is becoming blurred and created the stir enforcement by legal authorities.

Work unit President, Construction monitoring and control (UKP4) assesses the performance of law enforcement in Indonesia (including Prosecutors) have not been optimal in the return of assets the proceeds of crime to the State Treasury, so that the necessary efforts to strengthen capacity and strengthen institutions in asset recovery.

Some efforts are being made Attorney General of the Republic of Indonesia in the mengembalian loss to the country is not yet optimal, especially criminal acts of corruption, it is there are at least three problems<sup>3</sup> in the handling of the perpetrator of a criminal offence-oriented property. First: use a pattern Prosecutors handling more give priority to on the punishment of the perpetrators, while the perpetrators of the assets associated with criminal acts, either directly or indirectly have not handled optimally. Second: the handling of assets not done in integrated. In every stage of the criminal procedure (investigation, prosecution and the execution) are handled by the technical units that are different so the assets lost, damaged cartilage, decreases, switches illegally, loss of economic value especially in the transition from one stage to another. Third: mechanisms of handling assets that are less transparent and accountable raises a loophole for prosecutors, employees of the Prosecutor's Office or the parties who had access to those assets can perform criminal acts against assets, such as embezzlement or theft of assets. Based on the above mentioned phenomenon then this research issue is still a low level of institutional efforts Prosecutors in the country so that financial losses return refund losses the State has not been fullest. And existing legal institution in its implementation shows the result of maximum effort yet to refund the financial loss to the State. Therefore needs to be examined further the efforts of the Prosecutor's Office has done in the optimisation of returns on the country's financial losses. Based on the background of the problems described above, the main problem of the research is "How can the policy of recovery of assets of the criminal acts of corruption committed by the Prosecutor's Office".

## **THE DISCUSSION AND ANALYSIS**

### **Laws in Indonesia Are Philosophical Set of Asset Recovery**

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<sup>3</sup> Final draft dari kajian akademik sebagai dokumen pendukung pendirian Pusat Pemulihan Aset Kejaksaan Agung Republik Indonesia, Tim Pusat Kajian Departemen Kriminologi Universitas Indonesia, Jakarta., hlm.5

That the objectives and goals reached people's welfare as the mandate of the Constitution can only be manifested among others with advancing the national economy, where this can be brought forward if the new financial sector and banking can grow with healthy and provided legal certainty. Legal certainty would be achieved if based on laws and regulations relating to the finances of the State and Treasury and taxation.

However these three regulations with regard to the finances of the State in practice has not been able to strengthen the country's economy improved. To strengthen efforts to shut the legal loophole in the third sector, has enacted the law on the eradication of criminal acts of corruption (1999/2001) reinforced with laws on money-laundering (2010).

In practice, criminal legislation mentioned above either through conventional or substantiation through asset seizure models in kepidanaan experience barriers in asset returns the results of a criminal offence. Contributions are not significant in practice also due to barriers in asset returns a criminal offence that is placed outside the country. The resistance is due to the difference in the legal system on the issue of international cooperation. Bright spot for overcoming obstacles that emerged when the United Nations Convention on Anti-corruption in 2003 adopted by the diplomatic Conference, the participating countries in Merida, Mexico. This Convention has opened up the opportunity the existence of asset seizure law policy as a means to be able to restore the assets of criminal acts that are placed in other countries.

### **Barriers In Asset Returns Teoritik and practice**

In teoritik, there has been confusion of understanding of common law and criminal law experts and legal experts to resolve the issue in the financial assets of a criminal offence. The first fallacy, namely a priori attitude that criminal law-oriented philosophy of Justice retributif is viewed as the only legal means deemed appropriate for the purpose of recovery of financial losses to the State. Whereas these objectives can only be achieved with a change of paradigm a new rehabilitative and restorative corrective justice. The fallacy of this approach, during the second law in legal proceedings reversion asset crime always used normative legal approach based on legal positivism. Purpose of change the paradigm of restorative and rehabilitative corrective justice requires economic sciences analysis approach toward criminal law.

Why is economics important approach in the enforcement of criminal law, as Cooter and • suggested that, first, economics provides a theory to predict the influence of criminal sanctions against a behavior. For Economics, the sanction is considered similar to the prices (of goods); and the public will respond to sanctions as large as a response against the price of the goods. The response of the community towards the high prices by buying cheap goods, as well as the response of the community towards high sanctions by doing deeds that bersanksi low. The bottom line approach to the analysis of the economics of a behavior, a theory of behavior to predict how communities respond to changes in the legislation.

Second, the approach of economics analysis provides the normative standards for conducting an evaluation of the law and policy (the policy). Approach to the analysis of Economics teaches about efficiency, and efficiency is highly relevant to the determination of the policy due to better achieve the social goal of law with social costs that are lower than the

high social costs. This approach helps the pattern makers of policies in the field of law and law enforcement in the estimate and save social costs.

The third consideration, in addition to the efficiency factor, approach to economics analysis can predict the influence of the policy against another important value that is equitable income and well-being.

The analogy to it, then approach the analysis of Economics very attention to how far influence on policy in the field of law and law enforcement could affect equitable income and well-being to society regardless of ethnic origin and the Group.

In international law about transnational organized crime is known for several terms, i.e. the country of origin (country of origin); country of destination (state designation), and country of transit (transit-state).

Approach to the analysis of economic science have not used adequately though have been accommodated in article 2 and article 3 of Act No. 31 of 1999 that amended by Act No. 20 of 2001, with the aim to restore the country's financial losses. But the unique thing is in addition to the provisions of article, the Act also regulates the conditions that return financial losses does not eliminate State prosecution (article 4). A third provision in the legislation is clearly heavily influenced by the normative legal approach with the perspective of Justice retributif and ignores completely the approach of economics analysis with corrective justice perspective rehabilitative and restorative justice. The classical approach banged on the barriers in the process of return loss State because the suspect fled by bringing its assets to other countries, and when the suspect/defendant dies or has moved its assets to other parties. In addition to this, the conventional legal approach prove inefficient in terms of time, had to wait for up to 400 days (remedy based on Code of Criminal Procedure) and from the economic side, because it turns out that the "high-cost".

These considerations show that the normative legal approach in the legislation mentioned above does not contribute significantly to the Government's efforts to restore the financial loss to the State. The conventional approach to the law of proof are also prone to violations of human rights of suspects and defendants.

Approach to the analysis of economic science against the legal and law enforcement establishment is the early introduction of the science of criminal law analysis on the theory of choice.

The core of this theory is that the perpetrator of the criminal offence, each has been taking into account the advantages of the acts of excess of loss as a result of his actions. The judgment only results in harm to the perpetrator of a criminal offence, but does not give the "advantage" to the victims of the crime (the criminal acts of corruption, States).

Rational choice theory in the eradication of corruption in Indonesia once flourished when the reign of Megawati in which the Attorney General M.A. Rachman BLBI cases face. When the Government confronted to the "State of dilematis" with various intervention particularly from the International Monetary Fund (IMF) and the World Bank to quickly resolve the issue of the financial and economic crisis through "release and discharge procedure". While at the same time, the police and the Attorney General's Office investigation of the conduct of central bankers who have been designated as a suspect. The questions asked the Attorney General in the Cabinet when it is question of the BLBI will be completed with the intention of imprisoning the offender banking or money refunded. The Government's answer at that time was the refunds

take precedence over imprisoning the perpetrators. On the basis of the considerations issued Presidential Instruction No. 8 1982 on "Release and Discharge" for the settlement of BLBI cases. However, in the implementation of the policy has occurred due to lack of oversight of the manipulation of the evidence koruptif documents and conduct of perpetrators, members of the Indonesian bank restructuring Agency (Ibra) and law enforcement.

Cooter also confirmed that the pattern approach to the analysis of economics against the policy of the law will work properly if there is no intervention against the process of its implementation.

### **Seizure of assets In Criminal Legislation in Indonesia**

Before the ratification of the United Nations Convention on Anti Corruption 2003, Indonesia has occurred in some criminal legislation relating to the "deprivation of assets" the results of the criminal offence. National legal instrument are as follows:

1. RI Law Number 73 1958 Wetboek van Strafrecht Enactment about for Indie Nederlandsh for the whole of Indonesia (the book of law criminal law) and changes to the laws of the Republic of Indonesia Number 27 in 1999 about the changes to the book of the law of criminal procedure relating to crimes against State security.
2. Act No. 8 of 1981 on Criminal Procedure Code;
3. Act No. 10 of 1995 on customs, which had been amended by Act No. 17 of 2006;
4. Act No. 31 of 1999 amended by Act No. 20 of 2001 about the eradication of criminal acts of Corruption;
5. Act No. 35 of 2009 about Narcotics;
6. Act No. 5 of 1997 on psychotropic substances;
7. Act No. 15 of 2002 amended by Act No. 25 of 2003 about the criminal offence of money laundering, which has been repealed by ACT No. 8 of 2010;
8. Law number 15 Year 2003 concerning the eradication of criminal acts of Terrorism;
9. Act No. 31 of 2004 regarding Fisheries.

Throughout the above legislation has not yet been set up specifically as to the scope of the notion of the term "Asset Recovery" as contained in Chapter V of the UN Anti-corruption Convention in 2003.

Setting provisions on confiscation and seizure of assets in criminal acts and regulations mentioned above is limited to two models, namely the usurpation of "foreclosure against the property used to commit criminal acts (*instrumentum sceleris*) and objects related to a criminal offence (*objectum sceleris*). Whereas in the above legislation, foreclosures against the results of the Criminal Act (*fructum sceleris*) has not been regulated in detail and sufficient, including the process of proof reversed in the expropriation of assets of a criminal offence.

The third type of foreclosure that well according to laws and regulations in Indonesia, as well as in the United States and the United Kingdom, devoted to the interests of the country solely, and not intended for the benefit of victims of crime. Confiscation and seizure of assets for the purpose of the crime victim's interests have been enacted in the criminal law in Belgium and the Netherlands. This last seizure and confiscation, intended to provide compensation to victims of crime.



After the ratification of the United Nations Convention on Anti Corruption 2003, pursuant to Act No. 7 of 2006, the Government of Indonesia has conducted important changes that is the first step, compile the draft law the crime of corruption that includes criminalization upon the deed specific to the (new) within the scope of the crime of corruption, namely among others, deeds enrich themselves illegally (illicit's); bribery of foreign public officials or against officials of international organisations (Bribery of Foreign Public Officials and Officials of Public International Organization), and among private sector bribery (Bribery in the Private Sector); Abuse of authority (Abuse of Function). Criminalization measures in a bill the eradication of criminal acts of Corruption – Bill Tipikor (2009) prepared to replace and revoke the enactment of Act No. 31 of 1999 amended by Act No. 20 of 2001.

The second step, post ratification of the UN Anti-corruption Convention in 2003, is the enactment of Law No. 8 of 2010 on prevention and eradication of the crime of money laundering which deprive the enactment of law on the crime of money laundering (2002/2003). In the legislation have noted the provision of proof reversed in the two article (article 77 and article 78, and article 81).

The third step, which is very important in terms of seizure of assets, there is a draft law on the criminal acts of corruption (2009). In the draft law the crime of corruption has been rooted in the way the seizure of assets through privat (in rem forfeiture) however the provisions set forth in chapter III under the heading, "deprivation of assets" (article with article 23 to 25) still contains weaknesses meaning seen from the angle of protection of the rights of the accused and from the point of use authorized by the Prosecutor.

Findings from the study of important laws of the law over the seizure of assets, wealth is that the results of the criminal act is recognized as a subject of the criminal law "can be socially criminal", not simply as an object of seizure and forfeiture of a criminal offence.

### **Asset recovery of corruption within the UN Anti-corruption Convention (2003)**

The birth of the provisions on Asset Recovery in the UN Anti-corruption Convention (2003) was preceded by three resolutions of the UN General Assembly Session that is as follows:

- (1) The UN General Assembly Council resolution No 5/188 dated 20 December 2000, "*Preventing and Combating Corrupt Practices and Illegal Transfer of Funds and Repatriation of such funds to Countries of Origin*";
- (2) Resolution of the Council of the United Nations General Assembly, no. 56/260 of 31 January 2002, the Adhoc Committee asking for Negotiations of a Draft United Nations Convention on Anti Corruption to enter the a multi-dimensional approach discipliner including prevention to the transfer of asetberasal from corruption; and
- (3) Ecosoc Bodies resolution 2001/13 of 24 July 2001, "*Strengthening International Cooperation in Preventing and Combating the Transfer of Funds of Illicit Origin, including Laundering of Funds*".

The third resolution above followed up with a technical Workshop with the topic:

- (1) *Transfer Abroad of Funds or Asset of Illicit Origin;*

- (2) *Return of Funds or Assets of Illicit Origin*
- (3) *Prevention of the Transfer of Funds or Assets of Illicit Origin.*

History of development “*Asset Recovery*” can be traced from several international instruments on corruption and money laundering as follows:

1. *United Nations Convention Against Transnational Organized Crime Year 2000 (UN General Assembly Resolution No.55/25 Annex 1);*
2. *The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds From Crime (ETS No.141) –Strasbourg 8 November 1990.*
3. *Criminal Law Convention on Corruption of the Council of Europe(adopted in 1999 entry into force in 2003)*
4. *Civil Law Convention on Corruption of the Council of Europe(adopted in 1999, entry into force in 2002)*
5. *The Inter-American Convention Against Corruption of the Organization of American States(adoption in 1996, entry into force in 1997)*
6. *The Convention on Combating Bribery of Foreign Public Officials in International Business Transaction of the Organization Economic Cooperation and Development (adopted in 1997, entry into force, 2004)*

Since the various international instruments set out above, the regulation concerning the expropriation of assets of a criminal offence have been experiencing new developments both in the theory of proof as well as from the side of judicial practices in some countries against serious crime matters as narcotics crime, corruption, money-laundering and in the field of taxation.

The 2003 United Nations Convention demanding that the State the ratification of the in corruption proceeds asset returns efforts open cooperation widely with other countries with a that is sentence of "mandatory" as follows:

*“The return of assets pursuant to this chapter is a **fundamental principle** of this Convention, and **State Parties shall afford one another the widest measures of cooperation and assistance in general**”.* (Article 51).

One of the most important and fundamental conventions is the return on assets, implied in the sentence, “*fundamental principle*”.

Chapter V of the Convention set:

- (a) How cooperation and assistance will be implemented, how assets are the proceeds of corruption can be returned to their home country and how to protect the interests of victims and the owner of the assets of crime of corruption;
- (b) provide technical instructions read Chapter V must be connected with other provisions in chapter II to chapter IV in particular with the provisions of article 14 concerning the prevention of money laundering, article 31 concerning the establishment of a regime of freezing and confiscation of assets of the results of the criminal offence of corruption, article 39 concerning the cooperation of the authorities in each country and the private sector, and of article 43 and article 46 regarding international cooperation and mutual legal assistance in criminal matter (*mutual illegal assistance*);
- (c) Affirming the importance of the steps are important and responsible in determining the legitimate owner of the assets of the criminal acts of corruption with very large amounts



and measures to improve accuracy in checking individual accounts that have a public office and members of his family and friends nearby; and

- (d) Gives instructions how to interpret the provisions of the Convention, namely, that any doubt as to the interpretation of the provisions of the Convention concerning the return of assets should be solved with the purpose of return of assets and the core of the objectives of international cooperation.

In The Convention realize that interest to be able to pull back the assets results mainly corruption that exists outside of the country practically can only be done within the framework of international cooperation. This has been the motivation for Indonesia to sign the UNCAC 2003 and ratified it. Considering one of the significance of this Convention for Indonesia to increase international cooperation in particular in trace, freeze, seize, and returns the results of the assets a criminal offence of corruption that is placed outside the country. However, if the scrutiny is still too much of a "gap" between the UNCAC with the laws and regulations in Indonesia which later became a significant barrier for the repayment of assets the proceeds of corruption.

### **Manuscript Draft Law for Expropriation of Assets of a Criminal Offence**

Manuscript draft of the law on the Seizure of assets, establish the definition of the criminal offence of "Assets" is the crime all moving objects or objects do not move, either tangible or intangible "(article 1 point 1). Definition of the criminal offence of asset has not been clearly and more fully connected with the sound of article 4 which reads: "the assets of a criminal offence that can be taken, including:

- a. Assets acquired directly or indirectly derived from criminal acts, including wealth into it then converted, modified or combined with the wealth that is generated or retrieved directly from the criminal offence, including income, capital or other economic advantages gained from wealth;
- b. Assets should be presumed to be used or have been used as a means or infrastructure to do criminal acts;
- c. Assets associated with criminal acts of the suspect/defendant dies, escape, permanent pain, unknown whereabouts or other reasons;
- d. Assets in the form of goods findings; and or
- e. Other assets that rightful assets in lieu of a criminal act.

Referring to the sound of article 1 is linked to article 4 above, a draft script of ruini requires no legal loophole in the future resulting in the State is not capable of restoring the country's assets through expropriation of assets in crimems. Even in the script of this draft legislation, the enactment of the ebb tide to 12 (twelve) years before legislation is enacted.

Comment the above provisions regarding "assets of criminal acts" mentioned above, first, need affirmation that criminal acts placed assets both in Indonesia and in other countries.

The meaning of the assertion no other, first, to provide guidance to law enforcement asset returns, a move that criminal acts with the asset seizure law this can be done up to the outer limit of the territorial area of Indonesia (extraterritorial jurisdiction). Second, the sound article 4 letter a very broad and would constitute "moral hazard" if not given such limitations. The sound of the phrase, "combined with the resulting wealth including income, capital or other economic benefits derived from the wealth"; there are no worries guarantee legal certainty and

the protection of the law for anyone who had been set to be a suspect or defendant in criminal acts relating to the finances of the State.

In practice, blocking and seizure of funds from an account account of the suspect/accused has done well against official income received from business or occupation/profession so that the wives and children of the suspect/accused cannot meet the needs of the everyday of his life and forced to owe.

From the side of humanity and the rights of the Constitution in the 1945 Constitution then the pattern of freezing and in accounts at banks and the seizure of next, in practice, the human rights violation in question. The sound of the letter a of article 4 is quite limited with the phrase, "assets obtained directly or indirectly from a crime or alleged strong is used or has been used to commit a criminal offence or have been donated or converted into private property, wives or his children and relatives to the third degree, or to any other person".

Manuscript draft of the law on the seizure of assets crime Indonesia did not include deprivation of assets model keperdataan (civil forfeiture based) due to begin chapters I sd Chapter VIII with 44 (forty four) article none governing asset seizure model model privat. Manuscript draft of the Bill is not different from the mechanism of seizure the assets of a criminal offence based on the book of the law of criminal procedure (through crimems), with the addition of the substance of the law of asset grabs of special events that deviate from the book of the law of criminal procedure. The absence of a change of paradigm from seizure of assets through the asset seizure to kepidanaan through the keperdataan seems to be facing serious constraints in asset seizure law enforcement criminal acts including if the suspect fled to a foreign country or died and the issue of the procedure relatively long compared to the seizure of assets through privat.

In article 4 paragraph (2) shall set the minimum value of the assets of a criminal act which became the script scope of the draft law for expropriation of assets, which will be set forth in a government regulation. The sound of this provision was intended so that the real value of the assets can be defined flexibly follows the development of the rupiah's value compared to the value of the asset seizure Restrictions in this Bill is hanyaterbatas on assets that a criminal offence is liable to a minimum of four (4) years.

## **Regulation and realization of Assets Recovery Efforts In Prosecution criminal acts of corruption As the country's Financial rescue efforts.**

### **The Role of The Prosecution In The Criminal Justice System**

Refers to Act No. 16 of 2004 which replaced Act No. 5 of 1991 about the Prosecutor's Office of the Republic of Indonesia as one of the Prosecutors, law enforcement agencies are required to further play a role in enforcing the rule of law, the protection of the public interest, the enforcement of human rights, as well as the eradication of corruption, collusion, and Nepotism (KKN). In the Prosecutor's Office Act, the Attorney General of the Republic of Indonesia as the State agencies that administer the State power in the field of prosecution must carry out the functions, duties, and authority independently, regardless of the influence of government power and the influence of other powers (article 2 paragraph 2 Act No. 16 of 2004).

### **Why Should the State Attorney**

Associated handling assets in the context of law enforcement, the Prosecutor's Office has authorized Pro-justisia (for Justice) moving in the three studies, namely investigation, prosecution (including authority of evidence and control over assets during the trial) and execution (authorities executorial).

### **Authority Pro-Justisia**

To answer the doubts whether the Attorney has authority to perform the handling of assets, must first be clarified understanding of assets in this context. The asset in question is an asset that has a connection with a criminal offence. The book of the law of criminal procedure Article 1 point 16 clarifies that assets which have to do with the crime. Against such assets may be punishable by confiscation. The Act of confiscation referred to in article it is investigating a series of actions to take and or store under the control of assets of related criminal acts for the benefit of proof in the investigation, prosecution and the judiciary. So obviously here action against assets can only be done by law enforcement officials because this action is the action pro-justisia.

Law enforcement officers investigating that question is whether Indonesia Republic State police investigators, investigator civil servant, corruption eradication Commission investigators (Special corruption) and the State Attorney's investigator (for the criminal offence of corruption and violation of human rights by weight). The handling of assets not only exist at this stage of the investigation but also exist at the stage of prosecution. At this stage of the prosecution of this public prosecutor also has the authority to handle the assets because it is in the judicial system the prosecution authorities of Indonesia is dominus litis (domain) the institution of Prosecution. Despite the surrender of suspects and judicial stages on the docket but is evidence that assets remain in the mastery of public prosecutors.

### **Eksekutorial Authority**

The Court ruling, consisting of the law still executed Prosecution include assets that have been decided by the Court. As the prosecution which is typical of authority (dominus litis) Prosecutor's Office, the implementation of court rulings have the force which has been fixed (in kraacht) is also the authority of the Attorney General. This is the justification and legitimacy for the Attorney to act as Asset Recovery Office associated with the basic tasks and functions in the investigation; as the public prosecutor who accepted the surrender of assets from investigators and as the executor who carry out the ruling of the Court as well as the statutes and or do a completion of the appropriate court order or disposal.

### **Authority Management**

State-owned goods as goods are obtained over the burden of State income and Expenditure Budget or derived from the acquisition of more legitimate (Non-State Budget). According to the Government regulation is State-owned Goods that come from Non State Budget are the goods of the country that are relevant to the context of the recovery of the assets, i.e. the goods are obtained based on the provisions of the Act or the goods are obtained on the basis of a court decision which has acquired permanent legal force (inkracht).

In the context of the Attorney General, the Attorney General as the leadership of the institution are ex officio status as "users of goods" that are functional authority and

responsibility as a steward of goods executed by the Attorney General's Youth coaching. The young Attorney General Coaching delegating authority and responsibility of the functional use of the goods to the Finance Bureau Chief in its functions, among others: "managing income and Money belonging to the State and Not state income tax (PNBP) Prosecutor's Office and manage the swag."

Finance Minister with regulation of the Minister of finance number: 03/08/2011 FMD. About the management of the State-owned Goods that come from country and Swag Gratuities, recognizes and affirms the functions of asset management pro-justisia Prosecutors as in article 8 and article 9 that says the Attorney General as the caretaker of the plunder of the country. Besides asset handling unit is already a part of the integrated with the structure of the Prosecutor's Office. The unit attached to the construction of the working unit of every Prosecutor across Indonesia. This shows that asset management is not a new thing for the Prosecutor's Office of the Republic of Indonesia.

Recovery of asset or Asset Recovery is a very complicated process even for experts and practitioners of asset recovery in all corners of the world. Therefore, the establishment of Asset Recovery Center intentionally complement this unit with the ability not only to "follow the money" but also have access to join various international networks, such as: CARIN (Camden Assets Recovery Inter-Agency Network), ARIN-AP (Asset Recovery Interagency Network for Asia and the Pacific) even Attorney General r. i. is President of ARIN-AP 2014, RRAG (Red de Racuperacion de Activos del GAFISUD) , ARINSA (Asset Recovery Interagency Network for South Africa).

Informal cooperation with various international networks proves to be very effective in terms of exchange of information, strategies in asset tracking/search results of crime abroad as well as shortening the process of drafting the Mutual Legal Assistance. Asset Recovery Center Attorney r. I believed to be able to answer the whole issue of handling as well as the management and disposal of assets the spoils, among others:

### **The Application of the Principle of IN REM**

The scope of the recovery of assets is not limited to recovery in criminal but also civil, considering the Prosecutor's Office of the Republic of Indonesia has the authority private and it is very possible to do asset recovery through the optimization of the civil code. Asset Recovery Center has extensive options in handling the assets through the criminal or civil liability. This Center can be the answer will be the emergence of new legislation related to the seizure and recovery of assets using the principles IN the BILL, namely: Brake Seizure of assets, because the country is the victim and the State have the right to take back the property taken unlawfully by the perpetrator of the crime. If you use the principle of In Personam as implemented by the Code of Criminal Procedure, then the assets that can be seized is related as well as generated by the perpetrator of the criminal offence only.

The formation of Asset Recovery Center under the structure of the Prosecutor's Office of the Republic of Indonesia is also the easiest and cheapest way out, because the Prosecutor's Office of the Republic of Indonesia has 400 (four hundred) State in the whole of Indonesia, as the length of the hand from the center of the recovery of assets.

### **Structured, efficient, effective and accountable**

Asset Recovery Center was built to provide a new paradigm in Indonesia which every law enforcement actions are executed: (1) structured as any asset recovery in Asset Recovery Center is always through the following stages: tracking, security, deprivation, maintenance and repatriation; (2) efficient due to optimization of asset recovery related and be the result of a crime is the basic tasks and functions of the Prosecutor's Office of the Republic of Indonesia; (3) effective Recovery Center, given its assets under the structure of the Prosecutor's Office of the Republic of Indonesia does not work alone but equipped with a Liaison Officer from the various agencies and institutions that have authority, interests and linkages with basic tasks and functions of the Prosecutor's Office Asset Recovery Center of the Republic of Indonesia; and (4) upholding accountability because the administrative control of the swag that became the basic tasks and functions of the Ministry of finance as a State-owned Goods Manager connect digitally with Asset Recovery Centre especially in reporting systems, in addition to Asset Recovery Centre is also equipped with a means of information service that facilitates the community and various parties get information related to data management and control over assets that have performed security/seizure/repatriation.

## CONCLUSION

The eradication of criminal acts of corruption should also pay attention to the interests of the people, that is to say in addition to eradicate criminal acts of corruption should also pay attention to the financial return of the State as a result of such a feat, because corruption has always concerned the finances of the State.

In fact, the country's financial losses due to the repayment of a criminal offence of corruption is very important existence. Asset recovery proceeds of corruption is expected to be an impact/benefits directly to restore the finances of the State or the country's economy finally is geared towards the well-being of the community.

Asset recovery efforts conducted law enforcement institutions in order to rescue State finances has yet to give a significant impact, so step harmonization of legislation is required to seek the repayment of assets results of criminal acts of corruption, not just criminal law regulations adjustment (of corruption), but also the civil law and the law of the State shall be assessed, including his show.

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