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EMPOWERING INTERNATIONAL COOPERATION'S ROLE IN THE FOLLOW OF ASSETS OF CORRUPTION'S RESULT

Ridwan Arifin *

Abstract

Corruption case no longer involves one party or one nation alone, but also involves many parties, too few countries. Corruption is no longer the case as an individual activity but a pattern of activity patterns and very organized group. Corruption is not just a question of a nation, but also the whole issue of the nations of the world. In the case of corruption, repression is not only a top priority in the effort bondage and punishment, but also a return on assets of the most important things to do. The effort of corruptor impoverishment through seizure of assets is often hampered in practice, whether it intersect due to international cooperation, and asset tracking models. Asset tracking assessed include broader search than money, because the pattern of money laundering is now not only in money but also other assets that are the result of corruption and or benefits resulting from the corruption.

Keywords: *corruption, follow the assets, international cooperation, money laundering, international organized crime.*

I. INTRODUCTION

International community considers three major imminent problems that threaten the life of their nations, namely: corruption, drugs and terrorism.¹ Of the three issues, corruption became the main focus of late, especially in Indonesia. Corruption, however its forms, has become a

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¹ Erman, Novriady, "The Role of International Instrument in Assets Recovery: What Can We Learn So Far?" *Opino Juris Journal* Vol. 11 No. 01, 2012. p.17. See Fifty-seventh General Assembly, Third Committee, Critical Links Between Crime, Illicit Drugs, Corruption, and Terrorism: Revealed by 11 September Events, Third Committee Told, Press Release of General Assembly GA/SHC/690, 1 October 2002; Christopher Spencer, Global Issues of the Twenty-First Century and United Nations Challenges, A Guide to Facts and Views on Major or Future Trends, Canadian Department of Foreign Affairs and International Trade, 8 October 2011; Organized crime and drug trafficking major threats to international peace and security, UNODC head tells Security Council. Accessible at <http://www.unodc.org/unodc/en/frontpage/2011/November/organized-crime-and-drug-trafficking-major-threats-to-international-peace-and-security.html>.

common enemy is not only for Indonesia, but for all the nations of the world. Corruption activities carried out by corruptors no longer only covers one country alone but covers many countries and across borders and so organized, so that corruption is categorized into extra-ordinary crime.

On the other hand, the expansion of new global markets, trade and finance, as well as telecommunications and travel, have fostered economic growth and allowed many to prosper, but have also presented criminals and corrupt opportunists the ability to exploit globalization's gains with impunity in many cases.² Furthermore, corruption stunts economic development as foreign direct investment is discouraged and local businesses often find it impossible to overcome extortive fees for licenses or 'protection' that are imposed by corrupt officials.³

Even, a conclusion drawn from a report produced by the United Nations Office on Drugs and Crime (UNODC) and the World Bank demonstrates that corruption serves in the first place amongst the aforementioned three causes for its total loss entailed to society.⁴ Whereas, the existing anti-corruption efforts should be focused on three main issues, namely prevention, eradication (repressive), corruption and asset recovery. Third it affirmed an interpretation that fighting corruption lies not only in the prevention and punishment of the criminals, but also includes measures that require the state to restore the financial losses resulting from the corruption. Then the failure of recovering assets from corruption can reduce the meaning and achievement of punishment of criminals.⁵ But, many corruptors hide corruption results in overseas bank accounts through money laundering mechanism that attempts to track down and return these assets to be difficult. Not infrequently the money laundering techniques perfected by accountants, lawyers, and

² Paku Utama, "Asset Recovery: The Endless Fight" *Opino Juris Journal Vo. 11 No. 01*, 2012. p.2. See, UNODC. 2010. *The Globalization of Crime: a Transnational Organized Crime Threat Assessment*. p.ii (hereafter *Globalization of Crime*),

³ *Ibid* p. 2-3. See, UNDP. 2008. *Pacific Human Development Report: Tackling Corruption, Transforming Lives*. p. v-vi.,

⁴ World Bank "Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities and Plans" Washington, 2007.

⁵ See, *Ridwan Arifin*. "The Effort of Corrupted Assets Recovery which being Abroad on Law Enforcement of Corruption Eradication Law in Indonesia" (Final Project, Faculty of Law. Semarang State University, 2013). p.3.

even hired by corrupt bankers. It does look very difficult as what have been revealed by Isra⁶ that efforts to return assets stolen state (stolen asset recovery) through acts of corruption tend not easy to do, because the perpetrators of corruption have exceptional access extensive and difficult reached the hides and laundering money proceeds of crime of corruption.

II. PROBLEMS OF INTERNATIONAL ORGANIZED CRIME: CORRUPTION AND MONEY LAUNDERING IN INDONESIA

Explaining of the problems and discussing about the solutions on inter-national organized crime, corruption and money laundering, is not as easy as what we assume for this, moreover to find an easy way to seize the assets of the corruption into the country. For example, in Indonesia, until now, only 36 cases of money laundering crimes (money laundering) that the legal process has been completed, of 147 suspicious transactions reported Transaction Reports and Analysis Centre INTRAC Finance or to the police. Of the 36 cases, 28 of which have been transferred to the public prosecutor.⁷ Even, Indonesia get into the black list in the money laundering act in the international arena, thus causing Indonesia's reputation is very low.⁸

Arifin⁹ ever been described some of the factors which become the

⁶ Saldi Isra "Asset Recovery Corruption Through International Cooperation" (paper presented to Workshop on International Cooperation in Combating Corruption, Semarang 2008).

⁷ <http://www.antikorupsi.org/id/content/baru-36-kasus-tindak-pidana-pencucian-uang-yang-tuntas>

⁸ Indonesia's poor reputation of handling cases of money laundering as the Financial Action Task Force accused the Indonesian government has not yet standardization prevention of money laundering act. Read release news, available at:

<http://www.tempo.co/read/news/2013/08/21/063506144/Indonesia-Masih-Masuk-Daftar-Hitam-Pencucian-Uang>

⁹ Arifin ever tried to investigate the role of some institutions in Indonesia such as the Corruption Eradication Commission, the Attorney General, Directorate of Political Security and Territorial Ministry of Foreign Affairs, Ministry of Law and Human Rights, NCB Interpol Indonesia, and Central Authority. All have an important strategic role in corruption asset recovery efforts, but rather the main obstacle is the problem of diplomacy and international cooperation. Because the assets of the corruption that infested in some countries very difficult returned for various reasons. Arifin said

problems in the process of asset returns, especially in Indonesia, are: different legal systems, weak political will, bilateral relations between Indonesia and other countries, the implementation of the principle of bank secrecy, and the verdict is weak. Furthermore, the problems of asset recovery efforts during this extremely diverse, where barriers are influenced by various factors. One of them is ever disclosed as Dutcher¹⁰ that white collar crime is almost related to the velocity of money is not just involve one party alone, but organized with a variety of acts such as fraud, bubbles, and even money laundering.

Associated with legal substances,¹¹ barriers were found to statutory regulations inadequate. Although Indonesia has ratified the UNCAC but the mechanism has not been regulated asset recovery clearer and more detailed. In addition to the different legal systems between Indonesia and the country in question is often a bottleneck in the process of recovering assets from the graft.

At the ASEAN level despite there is MLA in criminal matters treaty which is then ratified through UU No. 15 of 2008 turned out to Singapore and other countries to apply the principle of non- retroactive so that Indonesia difficult to track and restore the pre-2008 assets.

In addition to the rules of statutory barriers, legal structure in the case of law enforcement officers is also an obstacle. The lack of capacity of law enforcement agencies, particularly the judge's ruling did not mention amount of assets to be seized and be everywhere became an obstacle. Because in many countries do not allow any fishing expedition in the asset tracking.

Another thing that is also an obstacle to efforts to return assets (asset

that the court ruling did not specify the amount of assets and the location of the asset is stored, so in an effort to return on assets located abroad becomes very difficult. *See Op.Cit. Ridwan Arifin*. "The Effort of Corrupted Assets Recovery which being Abroad on Law Enforcement of Corruption Eradication Law in Indonesia" (Final Project, Faculty of Law. Semarang State University, 2013).

¹⁰ J. Scoot Dutcher, "The Justification for Harsher Punishment of White-Collar and Corporate Crime" *Arizona State Law Journal*, Vol. 70: 1295, 2006. p. 1297.

¹¹ Friedmaan ever been said that the law enforcement systems affected by legal substance, legal structure, and legal culture. This thesis has known as Friedman Theory. Friedman, L.M, *The Legal System: A Social Science Perspective*. Russel Sage Foundation. 1975.

recovery) was not only the number of assets that were taken out of the country, a different legal system, or the principles of banking secrecy, but one of them is the lack of law enforcement officers themselves. As confirmed by Gunarsih,¹² that there are some obstacles, but the most crucial fact in its own law enforcement. The role of the judge is less than the maximum in the effort to return assets that are stored outside of the country. Though an absolute requirements that the assets be returned to Indonesia is following a court ruling in Indonesia, which has permanent legal force. Therefore, the investigation process should be speeded up trials. Even in the court verdict, the judge expressly Indonesia should include what assets need to be returned and are in a country where the assets are now placed. So, instead of just arbitrarily called return on assets but not mentioned in detail. As detailed as it should be included in the decision, if not, it will be difficult refunded.

Furthermore, the constraints are also found in some countries, the laws will strictly Bank Secrecy so that the investigator is often difficult to keep track of assets suspected, despite the UNCAC. Even the ASEAN countries themselves have not fully ratified the UNCAC thus became its own obstacles. Concerning the relationship between countries also poses its own in asset recovery. Surely it is a serious obstacle because the asset recovery process also requires diplomatic relations between the two countries.

Of no less importance, are the obstacles are political and good will of the government of Indonesia. Indonesian bargaining position in international relationship or position, have not had a big impact even more political will of the government that are not exhibited significant. This is evident when Indonesia faced asset recovery cases that are in Singapore or in Swiss. Even to this day the Soeharto's assets have not been able to be returned by Indonesia from Swiss.

Obviously, all these constraints greatly affect the significance of asset recovery efforts as well as the progression of the assets can be returned to the country. These constraints must also be a challenge for

¹² "Law enforcement officials must Understand Asset Recovery", available at <http://www.hukumonline.com/berita/baca/lt4ea0302d324cf/penegak-hukum-harus-paham-iasset-recovery>, Accessed on 13th December 2012.

the government, together with law enforcement officials to continue to seek the return on assets as well as to make improvements so that the legal instrument asset recovery efforts can truly maximal and optimal.

Of course, despite all obstacles and barriers faced and problems that occurred, restitution efforts of these assets are included in the framework to combat corruption, which is not only limited by the eradication of corruption eradication prevention, but are returned assets outcome criminal acts, corruption also became important. The framework of *onrecht in actu* as the strict enforcement form of the perpetrators of corruptors and *onrecht in potentie* to continue to be able to prevent corruption of assets results in an increasingly broad overseas until the assets, wherever located, can be confiscated and will be returned to the state. As law enforcement theory described by Soedarto,¹³ wherein the acts of grasping the law enforcement legal fight that occurred (*onrecht in actu*) and that it is possible to happen (*onrecht in potentie*). In other words, there is enforcement for currently thus prevention in the future.

III.STARTING THE INTERNATIONAL COOPERATION: FOLLOW THE ASSETS, RETURNING THE PEOPLE'S MONEY

Hoover¹⁴ ever been stated that the most effective weapon against crime is cooperation. Supradiono¹⁵ described that international cooperation and partnerships are inevitably shaped by shifting international paradigm about corruption from the traditional to modern. *First*, corruption is a global concern that is why corruption eradication has to be globalized. Globalization provides opportunities for increased international trade and investment, but as well as corruption. *Second*, corruption is not merely a single jurisdiction issue but a multi-jurisdiction issue. The perpetrators of corruption are aware that overseas jurisdictions are safe haven for them. *Third*, global anti-corruption spirit has departed from conventional to a more sophisticated and globalized *modus operandi*. It used to be that corruption was treated as an ordinary

¹³ *Op.Cit.* Sudarto, *Capita Selecta of Criminal Law*. Alumni, 1986. p.65.

¹⁴ Giri Supradiono, "Developing International Cooperation: A Need for Expediting Mutual Legal Assistance" *Opinio Juris Journal Vo. 11 No. 01*, 2012. p.63.

¹⁵ *Ibid.*

and conventional crime, ending only with the trial and conviction of the perpetrators. These days, it is not enough to tackle down the criminals and put them in jail. It is also important to track and recover the assets that are stolen and hidden all over the world. Asset recovery is one paramount effort in the fight against corruption and money laundering. Furthermore, proceeds of corruption and money laundering will create another potential crime in fighting the law enforcement process. The ill-gotten money will be a source for another crime in order to cover crime under investigation or to support obstruction of justice. The weaker and poorer corruptors are, the easier the job of law enforcement becomes. *Fourth*, a transnational corruption requires swift and effective transnational law enforcement. The modus operandi often involves countries abroad as loci for transaction, safekeeping of stolen assets, hiding the evidences and sanctuary for fugitives. Today, corrupt officials and the bribers, ill-gotten gains and evidence of the crime may all be in multi-jurisdiction. Therefore, in this modern day and age, there needs to be a better way to address corruption. The fact that international cooperation has developed in recent years, there should not be any safe haven for corruptors to hide in this world. Wherever and whenever they hide, they have to be dealt with international law enforcement networks. Thus, fighting corruption today can no longer rely on conventional and traditional means. It must be done by modern, sophisticated means, involving international collaboration between law enforcement agencies and authorities from all over the world.

In the other hand, Zinkernagel and Anja Roth¹⁶ said that there were two main barriers on returning assets, are: practical barrier and political economy barrier. Practical barriers to assets recovery consists of technical obstacles: lack of capacities, lack of resources, formal requirements for MLA requests, unclear institutional responsibilities, and gaps in of ineffective enforcement of banking regulations in the requested states. Then, political economy barriers to assets recovery consists of: lack of political will, conflict of interest, corruption in anti-corruption institutions, misuse of asset recovery for political power games, and political considerations form the side of the requested state. That's all like what

¹⁶ Gretta Fenner Zinkernagel and Anja Roth, "Practical Hurdles to Effective International Recovery of Stolen Assets" *Opino Juris Journal* Vo. 11 No. 01, 2012.

explained before, that in recovering assets it will be affected not only by the regulation, but also the political will of state.

Then, based on all existing conditions, international cooperation to be one of powerful ways, whether it formal or informal cooperation between countries and or between institutions. Follow the Assets effort not only to follow where that money flows but also money and assets wherever located, develops, and produces a larger asset. Because of corruption and all forms can be assessed as a result of profit a result of corruption crimes. Money laundering, which international scope, whether it placement process, layering, or integration, there were the organized process which not involve only one party, but many parties are organized. So, the international cooperation to follow the assets it become very important in this case. So, among the Anti-Corruption Agency, we are not stranger, but brother and sister in Justice.

IV. CONCLUSION

Till today, we have to admit and couldn't deny that international cooperation among the world of nations it become the main way of the modern way to not only fight against corruption as the international organized crime but to return the assets back to the country as the responsibility forms to the people. Because, the money embezzled by corrupt our money but not actually belong to the people, and the people who should enjoy the money. International cooperation, especially on empowering role of international on following the assets of corruption, would be done effectively by diplomatic relationship, formal-informal cooperation, or with the shared commitments.

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