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Roles of the Mutual Legal Assistances and Extradition Agreements in the Assets Recovery in Indonesia

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Roles of the Mutual Legal Assistances and Extradition Agreements in the Assets Recovery in Indonesia

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International agreement is a considerably important prerequisite to effectuate the recovery of assets generated by corruptive practices abroad. Mutual Legal Assistance (MLA) and Extradition is a frequently applied instrument in International law between states as the keystone of understanding for the assets recovery. There are several MLA and Extradition agreements that have been carried out by The Government of Indonesia with the other countries in the framework of asset recovery generated by the Criminal Acts particularly the corruption the corruptions however the MLA's implementations has not been genuinely optimal, not only in extraditing the perpetrators to be and trialed in Indonesia but also the assets recovery generated from criminal acts. These have obviously indicated that the role of MLA agreement must be carefully observed in the formulation notably concerning the substances and other provisions regulating the implementation of the agreements in order to be concluded by the signing states occur of the MLA and Extradition agreements.

Keywords: *Corruption, International Agreements, MLA and Extradition*

I. Introduction

Corruption as a criminal act has no longer been the national concern, but has been a so called transnational phenomenon. Accordingly, international cooperation becomes very essential in preventing and in eradicating corruption, particularly to combat the corruptor's efforts to hide the stolen assets by means of money laundering involving cross-border money transfers. There is a huge amount of public assets, which have been carried away and illegally saved in financial centers especially in developed countries, safely protected by the prevailing legal systems with the aids of professionals hired by corruptors.

In this context, the tracing of illegal assets is a highly complex matter because "it is not an easy matter to trace or even to re-obtain those illegal assets" [1], thereby the developing countries in which the "grand

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[1] KHN (Indonesia National Law Commission), 30th November 2007 "Pendapat

corruptions"[2] take place are fully aware of that obstacles in re-obtaining the stolen assets and hided assets within the financial centers worldwide.

The Indonesia Government as State apparatus has the executive power stipulated in the Indonesia 1945 Constitution Chapter III Article 4 until Article 15. The Government has a broad discretion in determining policy related to reparation and recovery of the State's circumstances to the previous circumstances. The Government of Indonesia's efforts in combating the corruptions have been manifested in the stipulation of key legislations namely Law Number 31 year of 1999 on the Corruption Eradication, Law Number 20 year of 2001 on the amendment of the Law Number 31/1999, Law Number 25 year of 2003 on the Money Laundering as well as other relevant legislations. Related to the authorities, not only the Indonesian Government strives to overcome those obstacles but also international societies consider the necessity to have international regulations explicitly and specifically regulating the criminal act, namely the white collar crime.

Related to the authorities, not only the national government strives forward to overcome those illegal practices, but also the international communities consider it is necessary to have the international legal instruments which strictly prohibit and penalize the white collar crimes. The international communities' determination to curb these illegal practices has been manifested in United Nations Convention Againts Corruption, 2003 (UNCAC 2003) adopted by the UN General Assembly on 31st of October through the UNGA Resolution Number A/58/4. The UNGA also stipulated that the Convention is open to all countries for signature in Merida, Mexico on 9-13 December 2003. Up to now there are 140 signature countries as well as 107 countries as the ratifying countries. The UNCAC has been taken in force as of 14 December 2005 and The First Legally Binding Global Anticorruption Agreement[3] (The first legally binding agreement on Anti Corruption).

The Republic of Indonesia is the 57th Country having signed UNCAC 2003 on 18 December 2003 and has ratified it through the Law

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Komisi Hukum Nasional (KHN) tentang Stolen Asset Recovery Initiative (StAR)", http://www.khn.go.id/new/index.php, latest accessed on 1 December 2010.

[2] *Ibid.*

[3] *Ibid.*

Number 7 year of 2006 concerning the Ratification United Nations Convention Against Corruption, 2003 on 18 April 2006. According to Law Number 24 year of 2000 on the International Treaty, the ratification act was conducted through the legislation by the House of Representatives promulgating UNCAC as the Indonesia's national legislation and creating legal obligations for every institution and individual in Indonesia.

The birth of UNCAC is considered as the wind of change for developing countries experiencing acute corruptions because this Convention confers enforcement for contracting states to perform the obligations stipulated therein including sanctions for Countries not complying the required obligations. One of the UNCAC's important points is about the Asset Recovery through the international cooperation. As a matter of fact, this is a new paradigm in eradicating the corruptions globally. In particular, the Asset Recovery stipulated in Chapter V Asset Recovery UNCAC,[4] whereby Article 51 UNCAC mandates:

> *The return of assets pursuant to this chapter is a fundamental principle of this Convention, and Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

This provision explicitly states that the Asset recovery is a fundamental principle in which the UNCAC's Member Countries are expected to cooperate in recovering the illegal assets as stipulated in the Convention. The efforts of the Member Countries including Indonesia in asset recovery outside their jurisdictions will then be eased through the provision which explicitly stipulates that assets recovery is a fundamental principle that must be respected and properly implemented by the Member Countries of UNCAC.

The significance of assets recovery is also seen from the World Bank's efforts and the United Nations in the launching of a new initiative for creating UNCAC's effectiveness, which was held in New York which is important in developed countries and developing ones commonly known as Stolen Asset Recovery Initiative (StAR).[5]

This initiative for the asset recovery was established to assist the

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[4] *United Nation Convention Against Corruption* 2003 (Konvensi Perserikatan Bangsa-Bangsa (PBB) Anti Korupsi) 2003.

[5] United Nations and The World Bank Group Hand Book, 2007, *"Stolen Asset Recovery (StAR) Initiative :Challenges, Opportunities, and Action Plan,* NY:The International Bank for Reconstruction and Development/The World Bank, p. 2

developing countries in recovering the assets hided in the developed countries. Based on that reasons thus "both of the world bodies will develop a system assisting the developing countries to recover the stolen assets or transferred abroad by the corrupt leaders, with estimated values in amount of US$ 40 million or 376 trillion rupiahs annually".[6]

Some of transnational corruption cases and directly related to asset recovery among other are the Montesinos case, a closest aide of President Alberto Fujimori reigned in Peru since 28 July 1990 to 17 November 2000 knowingly having many bank accounts in foreign banks worldwide; Ferdinand Marcos as the Philippine president from November 1965 to February 1986 having committed gross corruptions and hided the assets in foreign banks worldwide. From interview of World Bank to UN on 24 September 2007 revealed that former president Soeharto has been stipulated by UN and World Bank as the most corrupt person, followed by 9 corrupt persons, like Ferdinand Marcos from Philippine on the 2nd rank and Joseph Estrade on the 10th rank both coming from Philippine.

II. Problems to be Analyzed

How is the implementation of the UNCAC 2003 provisions in the national legislations in order to optimalize the asset recovery through the MLA Agreement as well as the Extradition Agreement in Indonesia?

A. Ratification of UNCAC 2003 in the National Legislation

United Nation Convention against Corruption or UNCAC regulates Assets Recovery in Chapter V. The Asset Recovery is fundamental principle in UNCAC 2003 whereby ever Country must render assistances and Contracting Parties must confer cooperations and assistances to a widest extent over this matter. UNCAC strives to curb corruptions becoming transnational crime. Up to June 2009 UNCAC 2003 has been signed by 140 Countries and has been ratified by 130 Countries according to Countries' legislations[7]. The Indonesia Government has ratified

[6] Tempo Magazine Editorial, Tuesday 18 September 2007, http://www.tempointeraktif.com/new/index.php, "Bank Dunia dan PBB Lacak Aset Koruptor", last accessed on 30 November 2010.

[7] International Transparency, *Recovering stolen assets: A problem of scope and dimention* (working paper #01/2009), www.transparency.org, last accessed on 2 March

UNCAC 2003 with the Law Number 7 year of 2006 on Ratifiation of UNCAC 2003 (state gazette number 32 yar of 2006). Based on the Law Number 24 year of 200 on International Agreement, the ratification act has been passed by the House of Representaives (DPR), consequrntly the UNCAC 2003's provisions have been part of national laws and thus prevail around Indonesia territory.

The goals of UNCAC 2003 consist of 8 (eight) Chapters [8] stipulated in Chapter I Article 1, as follows:

1. To improve and to strengthen the measures for preventing and for eradicating corruptions more efficiently and effectively;
2. To increase, to simplify, to support the international cooperations and technical assistances in efforts for preventing and for eradicating corruptions, including the asset recovery; and
3. To improve integrity, accountability, and the management of public assets with proper and sound ways."[9]

These goals serve the foundation for reformation in overcoming the transnational corruption cases. Adhering to mutual respect principle between contracting Parties. Subsequently an agreement has reached to impose UNCAC as the legal basis to prosecute the corruptors.

The components within the UNCAC articles has brought a good progress on technical assistances and supports demands to attain the anti-corruption agenda recognized by all Countries. The demands have been accommodated and fulfilled in accordance with UNCAC's contents. UNCAC 2003 emphasize upon the central role of "technical assistance to the developing country and economic transition countries to support the steps in implementing he UNCAC 2003".[10]

The States still have the central role in this efforts because they have the Sovereignty thus having power over every event occurred therein. Every form of action taken by the State shall become its liability form the planning phases until the final result.

2010.

[8] Chapter I on General Provisions; Chapter II Preventive Measures; Chapter III Criminalization and Law Enforcement; Chapter IV International Cooperations; Chapter V Assets Recovery; Chapter VI Technical Assistances, Trainings, and Compiling, Regulations and Analysis of Infromation; Chapter VII Implementing Mechanism; Chapter VIII Closing Provisions.

[9] UNCAC 2003, Chapter One Article 1 Statement of Objectives.

[10] Mark Pieth,2008, *Recovering Stolen Assets,* Bern:Peter Lang AG, p. 283

Contracting States and ratifying States have fully understood and agreed upon the use of law infrastructures to recover assets is the integral part of collective responsibility of all States, not only injured States. The inter States cooperations have becoming increasingly important considering corruption is not merely national crime, but the international crime. Corruptions have become extraordinary crime namely transnational crime because operate in cross-border places. There are 3 main efforts in the asset recovery through the UNCAC 2003. Firstly, by suing the corruptor through the civil litigation. This effort intended to freeze the state owned assets in the country in which the assets being hided. In addition, to obstruct the outflow of assets to another place, the Government will conduct full disclosure to minimize the corruptor intervention. Secondly, the Government through UNCAC can do physical seizure of corruptors' assets abroad. Thirdly, by using the UNCAC's power in the suspected Countries as the place of hiding for corruptors. Whereby the UNCAC's instruments regulated in Indonesia's Laws are as follows:

1. Mutual Legal Assistance

MLA (Mutual Legal Assistance) is a means or a forum to ask for assistances to other Countries to perform investigation, prosecution over a criminal case involving 2 (two) or more Countries. MLA is being suggested profoundly in many international forums and conventions of UN, like United Nations Convention against Cooruption (UNCAC). The signatory Countries are recommended to have international cooperations with other Countries, in MLA form, to eradicte corruptions.

MLA involves the legal proceedings and shall have direct imoacts to the State's interest. This measures also related to the seizure acts, take over of witnesses, and detainment of corruptors. The advantage of MLA is the requested Goverment allows the requesting Country to impose the Enforcement law and to obtain required evidences to begin the prosecution.[11]

Indonesia has already enacted the Law as the legislative umbrela for MLA, namely Law Number 1 year of 2006 on Mutual Legal Assistanc-

[11] Ian Mc Walters, 2006, *Memerangi Korupsi: Sebuah Peta Jalan untuk Indonesia,* Surabaya:Jawa Pos Books, p. 255

es effective as of 3th March 2006. This Law regulates the MLA scopes, procdedures for *Mutual Assistance Request* (MAR) and the distirbution of assets generating fro the criminal acts to the assisting Countries.

Besides that in Article 88 untul Article 91 law Number 8 year of 2010 on Prevantion and Eradication of Money Laundeering regulates also MLA and other cooperations in tracing the assest and assets recovery from money laundeering. MLA also regulated in UNCAC 2003 Article 46. MLA can be devised both by bilateral and multilateral ways. MLA Bilateral is based on the MLA Agreement or reciprocal relations of two Countries. The MLA Agreement between Indonesia and Australia regulated in Law Number 8 year of 1994.

The objects of MLA among other the taking and rendering of the evidences. This includes statements, documents, notes, identifications of people residences, enquiries for searching of evidences and forfeiture, tracing, freezing, and forfeiture of assets generating from corruptions, striving for assents from people willing to give testimonies or to assist investigations in the requesting State of MLA.

According to Law Number 1 year of 2006 on the Reciprocal Assistances in Criminal matters are: request to the the foreign Countries related to investigation, proscution, and trials before the court. Whereby the forms of assistance are as follows:

a) To identify and to search for person;
b) To obtain statements or any other forms;
c) To show documents or any forms;
d) To strive for presence of people to render informations or to assist investigations;
e) To deliver letters;
f) To perform requests of frisking and forfeiture;
g) The seizure of assets generated from crimes;
h) To re-obtain the money as the penalties related to the criminal acts;
i) To forbid wealth transactions, frezeement of assets which are releaseble or forfeitable, or which are required to fulfill penalties being imposed, related to the criminal acts;
j) To trace the assets which are releaseable or perhaps required to fulfill the imposed penalties, related to the criminal acts and/or; u;
k) Other assistances pursuant to this Law.

The matters mentioned above are closely related to the substantiation

system. In Indonesia, the prevailing system of substantiation according to KUHAP (Criminal Law Procedure) is the negatief wettelijk in order to be eligible as proofs or evidences in the investigation phase, proscution phase and trials before the court, and if in these phases at least 2 (two) qualified evidences have not been founded thus the alleged person can not be prosecuted, eventhough the judges convinced over the guilty of the person or vice versa.

To take the evidences in a form of assets located abroad thus an international cooperation, namely the Mutual Legal Assistances, are required. Even within the domestic territory, the related institutions must coordinate and cooperate respectively. According to Law on the Mutual Legal Assistances in Criminal Matters, the cooperation and coordination are carried out by a Central Authority as a forum for asking assistaces to foreign countries or vice versa.

MLA Agreements of Indonesia with several Countries

No.	Contracting States	Name of Ratification Agreements	Signatory Years	
1.	Indonesia - Australia	Treaty Between the Republic of Indonesia and Australia on Mutual Assistance in Criminal Matters	1995	Law No. 1 Year 1999
2.	Indonesia - RRC	Treaty Between the Republic of Indonesia and The People's Republic of China on Mutual Legal Assistance in Criminal Matters	2000	Law No. 8 Year 2006
3.	Indonesia – Korea Selatan	Treaty Between the Republic of Indonesia and Republic of Korea on Mutual Assistance in Criminal Matters	2002	Not yet ratified
4.	Indonesia - Brunei Darussalam - Kamboja - Laos - Malaysia - Filipina - Singapura - dan Vietnam	Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN MLA TREATY)	2004	Law No. 15 Year 2008
5.	Indonesia - Hongkong	Agreement concerning Mutual Legal Assistance in Criminal Matters between Hong Kong and Indonesia	2006	Not yet ratified

The Central Authority in Indonesia is the Ministry of Justice and Human Rights (MoJHR) which differs with other Countries whereby the Central Authority is Department of Justice which directly subordinates all investigation and prosecution phases. In contrast, the Ministry of Justice and Human Rights is only an adminsitrative Authorization which indirectly performs inquiries and investigation. This becomes one of the obstacle for negotiation processes of MLA with other Countries, thereby it is important to consider for confering the State Attorney as Central Authority competences related to cooperation in management of assets abroad including the transfer of person as criminal actors from abroad. Indeer the MLA Agrrements concluded and signed by the Indonesia Government have not been peroperly sufficient and they require other effeorts of the Government to increase the numbers and to extend the scopes of the Agreements in MLA for recovering of assets generated from the criminal acts, corruptions. Followings are several Countries having conclude MLA Agreements with Indonesia:

2. Extradition

The term extradition derived from Latin words "extradere" (verb) consiting of word ex meaning to exit and tradere meaning to render or to give.[12] The term extradition mostly known or usually used ppartic-ularly in transfer of criminal actors from a country to the requesting contry.[13] Extradition is a formal transfer which is based upon the prior agreement as well as upon the reciprocal principle against a person al-leged commiting criminal act (convicted person) or someone which has been penalized due to his/her commited crimes by the Country, place of hiding to the the requesting Country having the jurisdiction to prosecute and to penalize the person in order to put the person in the criminal pro-ceedings of the requesting Country.[14]

To bring back corruptors to their country of origins can be carried out through extradition. Extradition can be conducted between states having the extradition agreement, for example Law Number 8 year of

[12] E.Y.Kante & S.R. Sianturi, 2002, *Asas-Asas Hukum Pidana di Indonesia dan Pene-rapannya*, Jakarta:Storia Grafika, p. 167

[13] *Ibid.*

[14] I Wayan Parthiana, 1990, *Ekstradisi dalam Hukum Internasional dan Hukum Na-sional Indonesia*, Bandung: Mandar Maju, p. 186

1984 on the Indonesia-Australia extradition Agreement. The extradition agreement can also be done based upon the cooperations between law enforcement institutions. Basically, extradition refers to a series of process whereby a Country returns an alleged person or convicted person to the requesting country based upon the treaty or reciprocity principle.

The legislation in Indonesia regulatig the extradition is Law Number 1 year of 1979. Up to year of 2007, Indonesia has concluded extradition agreements with 7 (seven) Countries and the whole agreements have been bilaterally concluded. The extradition agreements concluded by Indonesia with other Countries are among others: Indonesia-Malaysia extradition Agreement ratified by Law Number 9 year of 1974, Indonesia-Phillipne extradition Agreement ratified by Law Number 10 year of 1976, Indonesia-Thailand extradition Agreement ratified by Law Number 2 year of 1978. Subsequently, Indonesia has concluded an extradition agreement with Australia ratified with Law Number 8 year of 1994 and with Hongkong ratified with Law Number 1 year of 2001, with South Korea ratified in 2001, and lately with Singapore signed on 27 April 2007.

In as much as the extradition agreement can be conducted with the perpetrators of corruptions located in the States in which the assets being hided, the appropriate method is through conviction base procedure. This means the alleged person firstly stated as the guilty person and the assets inseparable from the crimes are confisticated. Yet, the most important matter is the returning of the criminals along with the stolen assets which have not been manifested in the current extradition system. Even up to now, Singapore in the extradition agreement with Indonesia has only agreed upon the returning of criminals in economic and general crimes as well as of fugitives at large having been penalized due to terrorism crimes. Followings are several of officials and business actors fleeing abroad and cannot be extradited to Indonesia:

The Extradition Agreements of Indonesia with other Countries

No.	Contracting States	Name of the Agreements	Signatory year	Ratified by
1.	Indonesia-Malaysia	Treaty Between The Government of The Republic of Indonesia and The Government of Malaysia Relating to Extradition	1974	Law No. 9 Year 1974
2.	Indonesia-Filipina	Extradition Treaty Between The Republic of Indonesia and The Republic of the Philippines	1976	Law No. 10 Year 1976
3.	Indonesia-Thailand	Treaty Between the Government of the Republic of Indonesia and the government of the Kingdom of Thailand relating to Extradition	1976	Law No. 2 Year 1978
4.	Indonesia-Australia	Extradition Treaty Between Australia and The Republic of Indonesia	1992	Law No. 8 Year 1994
5.	Indonesia- Hong Kong	Agreement between the government of the Republic of Indonesia and the Government of Hong Kong for Surrender of Fugitive Offenders	1997	Law No. 1 Year 2001
6.	Indonesia- Korea Selatan	Treaty on Extradition Between the Republic of Indonesia and the Republic of Korea	2000	Law No. 42 Year 2007
7.	Indonesia-Singapura	Treaty on Extradition Between the Republic of Indonesia and Singapore	2007	Not yet ratified

List of Fleeing Corruptors or the List of Wanted Persons (DPO: Daftar Pencarian Orang) and very difficult to be extradited[15]

1. Sudjino Timan (Director PT BPUI)
   Case; Corruption in PT. Bahana Pembina Usaha Indonesia (PT BPUI) causing total State losses in 1995-1997 amount of Rp. 369 miliar and 178 US million.
   Court Decision; Supreme Court .No. 434/K/PID/2003 on 2 December 2004; prison 15 years ; fine Rp. 50 million; substitute compensations Rp. 369 billion and 98 million dolar AS
   Infos ; Latest Info resided in Ardmore Park Singapura

2. Samadikun Hartono (managing Commissioner Modern Bank)
   - Case; Corruption using liquidity aid from Indonesia Central Bank causing state losses Rp. 169 miliar year 1997-1998
   - Court Decision; Supreme Court No. 1696/K/PID/2002 date 28 May 2003; prison 4 yaars; fine Rp 20 million; Substitute compensations Rp. 169 billon and US$98 million
   - Infos ; Latest info resided in Apartemen Beverly Hills Singapura. Had fuji film factories China dan Vietnam
3. Bambang Sutrisno (Vice of managing Commissioner PT Bank Surya)
   - Case; Corruption in Bank Surya together with Adrian Kiki Ariawan causing total State losses Rp. 1,51 triliun tahun 1989-1997
   - Court Decision; PT DKI Jakarta no. 71/PID/2003/PT DKI, date 2 June 2003; a life time sentece; fine Rp. 30 juta; Substitute compensations Rp. 1,51 triliun; in absensia trial.
   - Infos ; Latest info resided in 721 Bukit Timah Road Singapura 269768, but stay in China, have paspor no. K 565432 name Bambang Sutrisno predection in di KBRI Beijing
4. Adrian Kiki Ariawan
   - Case; Corruption in Bank Umum Surya together with Bambang Sutrisno No. 4, causing total State losses 1,51 triliun since year 1989-1997
   - Court Decision; MA.No. 434/K/PID/2003 date 2 December 2004 ; prison 15 year; fine Rp. 50 million ; Substitute compensations Rp. 369 billion and 98 billion dollar AS
   - Infos ; Latest info resided Australia ; formal request already sent to interpol.
5. Edi Tansil alias Tanju Fuan alias Tan Tju Hong (Director PT Pusaka Warna Polu Propylene, managing commissioner PT Graha Swakarsa Prima dan managing commissioner PT Materindo Supra Metal Work)
   - Case; Corruption Bank Bapindo causing total State losses Rp. 962 billion year 1989-1994
   - Court Decision; Supreme Court No. 255/K/PID/1995 date 29 September 2005; prison 20 year; fine Rp. 30 million ; Substitute compensations Rp. 500 billion
   - Infos ; Info running beer factory in china and hold the licensi of Kawasaki motorcycle factory in China
6. Eko Edy Putranto (commissioner PT Bank Harapan Sentosa together with Hendra Raharja (Dirut Bank Harapan Sentosa)
   - Case; Korupsi bersama Hendra Raharja (pass away in Australia) amount Rp. 1,95 triliun
   - Court Decision; In Absensia trial in high court of Jakarta No. 125 / PID/2002/PT DKI, tanggal 8 November 2002; prison 20 year; fine Rp. 30 juta; togerther pro rata parte Substitute compensations with Hendra sebesar 1,95 triliun
   - Infos ; Latest info resided west Australia

7. Robert Dale Kutchen (President Director PT Karaha Bodas (WNA AS)
   - Case; Allegation for false Accounting company report year 1985-1990 cause financial lose US$ 261 million
   - Court Decision; Red Notice ke ICPO-Interpol No.Pol. NCB/fax/A2-2104/1479/XI/2004 date 4 November 2004
   - Infos ; Latest info resided USA
8. Pauline Maria Loamura (WNA Belanda) Busines Woman
   - Case; Year 2002-2003, with Bank Negara Indonesia and 8 company eksport false document, cause get the fund from BNI amount 1,2 triliun. Suspect Money Laundering Act No. 15/2002
   - Court Decision; Investigation No. SP Kap /R/50/XII/2003/DII II Eksus date 4 December 2003, Red Notice and fax ke Singapore dan Hongkong
   - Infos; Latest info resided USA Netherland
9. Irawan Salim alias Tjioe Giok Ping (Dirut PT Bank Global International tbk)
   - Case; Suspect of corruption in Bank Global
   - Infos ; Investigation by National Police
10. Rico Hendrawan Santosa (Direktur PT Bank Global International tbk)
   - Case; Suspect of corruption Bank Global
   - Infos ; Investigation by National Police
11. Amri Irawan (Bank Mandiri Cabang Tangerang)
   - Case; Suspect Corruption in Bank Mandiri Rp. 1,5 billion
   - Court Decision: Suspect of Police investigation No. 1356/IX/2002 date 6 September 2002
   - Infos; Investigation by National Police
12. Budianto (Wiraswasta)
   - Case; Suspect Corruption in Bank BNI Pondok Indah
   - Court Decision; Red Notice Interpol. 42 /VIII/2004 date 13 august 2003
   - Infos; Investigation by National Police
13. Hendra alias Hendra Lee (Wiraswasta)
   - Case; Year 2002-2003, with Bank Negara Indonesia and 8 company eksport false document, cause get the fund from BNI amount 1,2 trillion rupiah. Suspect Money Laundering Act No. 15/2002
   - Court Decision; Red notice Interpol No. 43 /VII/2004 dated 13 August 2003
   - Infos; Investigation by National Police
14. Hendra Liem alias Hendra Lim
   - Case; Banking Crimes sub robbing
   - Court Decision; Ret Notice Police No. 11/II/2005 date 4 February 2005
   - Infos ; Investigation by National Police
15. Lisa Eviyanti Imam Santosa (istri Richo Hendrawan)
   - Case; Banking Crime dan Money Laundering
   - Court Decision; SP.KAP/17/II/2005
   - Infos; Investigation by National Police

16. Atang latief (Dirut Utama Bank Bira)
    Case; Running away to aboard before investigation by Police and General Attorney
17. Agus Anwar (managing commisioner PT BPUI) with Sudiono Timan Suspect Corruption amount Rp. 369 billion dan US$178 million.

Sources : IGM Nurjana, Sistem Hukum Pidana dan Bahaya Laten Korupsi

B. Important Matters Required to be Adjusted in the National Legislations in Indonesia According To UNCAC 2003

There are several law instruments required to be established as part of ratification of UNCAC 2003, which have not been implemented in Indonesia:

1. The returning of assets through the non conviction base (in rem system) in civil law system in Indonesia with principle that assets allegedly generated from criminals acts can be directly seizured by the State until the legal owner can prove that the assets not generated from crimes or used for criminal purposes. If the owner can prove the legality of assets thus they will be returned, otherwise if the owner cannot prove thus they become the State's assets and the criminal law provisions like forgery or frauds can be imposed to the owner.

2. To make law instruments in the Criminal Procedures code especially in the reverse substantiation, which means every State official or party benefited from corruptions must be able to prove the sources of their wealth to the Court and this applies as well to the significant increase of wealth through unlawful ways (illicit enrichment) (Article 20 UNCAC 2003). Currently, reverse substantiation aimed specifically to gratification which amounts more than Rp. 10.000.000,- (ten million rupiahs)[15], which supposedly not only gratification but also for all kinds of corruptions can be required the application of reverse substantiation.

3. Criminalization of bribery in the private sector, which means the bribed parties are the private parties outside the scope of Law Number 20 year of 2001 which amends Law Number 31 year of 1999 concern-

[15] Article 12 B verse (1) point (a) Undang-Undang No. 20 Tahun 2001 jo UU No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

ing the Eradication of Corruptions. This matter is important considering there is none of law provisions in Indonesia regulating the corruptions in private sector (both the active actors and receiver are private parties), whereby this corruptions affect The State but also the economic development in Indonesia negatively, provided there are criminal acts therein.

4. Criminalization in the forms of bribery to the foreign officials and officials of the International Organization. The acts comprising intentionally promising, offering, rendering foreign officials directly or indirectly benefits significant to the officials which causing the officials to act to refrain from acts which are their officials duties pursuant to the Laws. The illegal aims of these are to obtain or to maintain other illegal benefits related to the international business conducts.[16]

5. Criminalization of forgery act, misuse, and diversion of State assets conducted by civil servants or other State officials as regulated in Article 17 UNCAC 2003 and in private sector (Article 22). Article 17 UNCAC not only conduct criminalization against the fraud, but also "misuse" or "abuse" over the properties in any form entrusted to public officials.

6. Criminalization against the Trading in Influence. Qualification of this act is by intentionally promising, offering, giving to a person or a public official, directly and indirectly improper benefits with aims the public official misuse the real influence or expected to gain administrative authority or public authority from the State, or an unlawful advantage in any form.[17]

7. To establish a special institution in managing or administering corrupted assets with the purposes all of the assets generated from corruptions both in domestic and foreign territories can be collected and managed in that institution. This is very important considering many of the State institutions conceive they are authorized to collect and to manage the assets generated from crimes to hinder from future problems

[16] Saldi Isra dan Eddy O.S. Hiariej, 2009, *Perpektif Hukum Pemberantasna Korupsi di Indonesia:Korupsi Mengorupsi Indonesia*, Jakarta:Gramedia Pustaka Utama, p. 600

[17] *Ibid.* p. 601

like the losing of assets, decreasing of assets including bonus, interests of the assets to whom the assets are given.

8. Regulation on Illicit Enrichment or illegal enrichment through intentionally enrich people in an illegal way, indicated from significant increase of public official's assets which cannot be explained reasonably by his/her normal routine incomes.

9. Concealment or intentional act of hiding, after he/she commited crimes stipulated by UNCAC 2003, without involving in those crimes.

10. Obstruction of Justice or a series of acts to obstruct jduciary proceedings by intentionally use physical forces, threats, or intimidations or promises to give improper advantages to promt the false testimonies or to intervene in giving testimonies or in proposing the evidences in a trial proceeding related to crimes stipulated by UNCAC 2003. Accordingly, the use of physical forces, threats or intimidation to intervene in the perfomrance of the Judge's official duties or the Law Enforcement apparatus's tasks stipulated by UNCAC 2003.

III. Conclusion

The Indonesia Government has ratified UNCAC 2003 with Law Number 1 year of 2006, yet the government has not been able to fully implemented principles in UNCAC 2003, such as non conviction base (in rem system) in the criminal law system, the absence of a special body for collecting and administering assets generated from this criminal actions as well as the concept of Central Authority having not focused on improving partnerships within bilateral and multilateral agreements so that MLA and extradition agreements can be effectively implemented for accepted by the States as destination place of corrupted assets.

The absence of efforts for completing legislations mandated by UNCAC 2003 indicates that the Indonesia Government has not consistently performed recommendations expected by UNCAC 2003 and thus shall impact to the implementation of MLA or extradition Agreements mandated by UNCAC 2003 towards the Countries as the place of destination for corrupted assets with purposes recovering assets from these Countries optimally.

IV. Recommendations

The Indonesia Government is supposedly to increase the international agreements through MLA and Extradition Agreements with the Countries, destined places for hiding of assets to achieve effective assets recovery as well as making legislations which support the MLA's and Extradition's implementations such as, the endorsement of Drafts of Law on Assets Recovery regulating the consignment, management and recovering of assets. Additionally the legislations shall also establish a body of an independent body performing the tasks of seizure, administration and recover of confiscated assets from corruptions, whereby this body shall have authority to receive and to custody the assets not only properties but also money in bank accounts, administering those illegal assets and recovering or returning those illegal assets to the State or the Victims of crimes. This body shall be independent and responsible directly to the President and also holds duties as the Central Authority.

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