INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH & DEVELOPMENT

ISSN 2278 – 0211 (Online)

Recovery of State Losses in Corruption Cases in Indonesia, through the Asset Recovery Model and Mutual Legal Assistance

Dr. Bambang Santoso
Lecturer, Department of Procedural Law, Universitas Sebelas maret, Indonesia

Abstract:
Two issues will be examined in this study: whether the optimization of recovering state losses in corruption cases can be carried out with the mutual legal assistance model and whether the obstacles to optimizing the recovery of state losses in corruption cases with the mutual legal assistance model. The study aims to obtain complete information about optimizing the recovery of state losses in cases of corruption which can be carried out using the mutual legal assistance model, and obstacles to optimizing the recovery of state losses in corruption cases using the mutual legal assistance model.
The study shows that efforts to recover state losses in corruption cases can be carried out in various ways, one of which is the mutual legal assistance (MLA) model. MLA plays an essential role in recovering assets obtained from corruption crimes, especially assets taken abroad by corruption perpetrators. MLA can run optimally if there is a strong synergy between stakeholders. Efforts to return 'stolen' state assets (stolen asset recovery) through criminal acts of corruption tend not to be easy to do. Corruption perpetrators have extraordinary access and are difficult to reach in hiding or money laundering the proceeds of their corruption crimes. An international institution, the Basel Institute on Governance, the International Center for Asset Recovery stated that: 'asset recovery is a difficult task and is fraught with the complications of the banks involved, the navigation of a costly international legal labyrinth and the fact that those implicated in public looting are usually those with the most power and influence'.

Keywords: *Asset recovery, mutual legal assistance, corruption*

1. Background

According to Junaidi Soewartojo (1998, 25), the widespread practice of corruption in developing countries creates the impression that the word 'corruption' is perhaps the word most people condemn. Even to the point that it emerged that, in most developing countries, corruption is a characteristic that is difficult to eradicate. Historical facts have indeed proven that not a few countries have collapsed because one of the main causes was corruption, but many countries have managed to get out of the crisis of corruption. Both countries that are now developed, like Britain, France, and the Netherlands, as well as those that are still semi-developed or increasingly advanced (South Korea and Singapore).

The impact of corruption on the economy and national development is generally viewed as negative. With corruption, there will be a waste of state and private finances or assets, the use of which cannot be controlled because it is in the hands of the perpetrators, who are likely to channel it for consumptive purposes. Corruption can also hinder the growth and development of healthy entrepreneurs. Besides that, there is a lack of professional staff, or they are not utilized for potential matters for economic growth. The phenomenon of bureaucratic and political corruption is a problem for governments in the third world (Michael Todaro, 1979, 21). The United Nations Convention Against Corruption (UNCAC) states that corruption is not only a crime that undermines the legal system and democracy but is also a violation of human rights. It undermines the economic system, reduces the quality of life, fosters organized crime, and threatens humanity and sustainable development.

Corruption is not only a national concern but also an international concern. In the Resolution on 'Corruption in government' adopted by the 8th UN Congress on 'the prevention of crime and the treatment of offenders' in Havana, Cuba in 1990 (Eight United Nations Congress On The Prevention of Crime and the Treatment of Offenders Report, 1991), stated among other things:

1.1.Corrupt Activities of Public Officials

- Can destroy the potential effectiveness of all kinds of government programs,
- Can interfere with/hinder development,
- Causing individual victims and community groups

1.2.There Is a Close Link Between Corruption and Various Forms of Economic Crime, Organized Crime and Money Laundering

Indonesia is indeed classified as vulnerable to corruption problems and is categorized as a Rent Authoritarian (OB) State, meaning that the state, via state elites (officials), allows the emergence of groups of champions who receive protection facilities, licenses, and other conveniences. For these facilities, the bourgeoisie (employers) provide compensation to the state elite (officials). In other words, in the OB rent system, corruption, collusion, and various other crimes are possible (Arief Budiman, 1991, 11).

Various international publications have ordained Indonesia to be the third most corrupt country in the world. What is sad for the Indonesian people is not an extraordinary thing, which should be a surprise. It is as if all these phenomena have been taken for granted; there is no need to debate anymore, even though the state constitution mandates that the state be based on law and not on power. The public's dismay at the high level of corruption in Indonesia is accompanied by apathy about the ability of the legal system or existing cultural instruments to eradicate corruption. This apathy is not excessive when judging the track record of law enforcers in handling criminal acts of corruption. There will be a very prominent difference in the reaction and handling of law enforcers in cases of street crimes compared to cases of corruption (Harkristuti Harkrisnowo, 2002, 65).

Today, the eradication of corruption is focused on three main issues, namely:

- Prevention,
- Eradication, and
- Return of assets resulting from corruption (asset recovery)

This development is meaningful. Eradicating corruption does not only lie in efforts to prevent or punish corruptors but also includes actions that can restore state financial 'losses' due to these extraordinary crimes. Failure to return assets resulting from corruption can reduce the 'meaning' of punishment for the corruptor (Saldi Isra, 2014, 1). According to Purwaning M Yanuar (2007: 10), the importance of the problem of returning assets for developing countries that have suffered losses due to criminal acts of corruption sees this problem as something that requires serious attention. In fact, several countries want the return of assets to be treated as a right that cannot be deleted or revoked.

Efforts to return 'stolen' state assets (stolen asset recovery) through criminal acts of corruption tend not to be easy to do. Corruption perpetrators have extraordinary access and are difficult to reach in hiding or money laundering the proceeds of their corruption crimes. An international institution, the Basel Institute on Governance, the International Center for Asset Recovery stated that: ‘asset recovery is a difficult task and is fraught with the complications of the banks involved, the navigation of a costly international legal labyrinth and the fact that those implicated in public looting are usually those with the most power and influence’.

Based on the Indonesia Corruption Watch (ICW) report, state losses due to corruption cases will reach IDR 62.93 trillion in 2021. The value of these state losses has also increased by 10.91% compared to the previous year, which amounted to IDR 56.74 trillion. The value of state losses due to corruption cases in 2021 will also be the largest in the last five years. Previously, the state's losses due to rasuah were the greatest in 2020, namely IDR 56.74 trillion. ICW stated that the number of state losses in 2021 was attributed to several corruption cases. One of them is related to the corruption case in the management of condensate by PT Trans Pasifik Petrochemical Indotama (TPPI) with a state loss of IDR 36 trillion. The second case is the Jiwasraya corruption case, with state losses of IDR 16 trillion. There is also a corruption case involving PT Fleming Indo Batam's textile imports worth IDR 1.6 trillion.
(https://dataindonesia.id//ragam/detail/kerugian-negara-akibat-korupsi).

Developing countries, where grand corruption generally occurs, really feel this fact is difficult in trying to recover stolen and hidden assets in the world's financial centers. Domestic problems in developing countries add to these difficulties. The government's political will is unclear, weak legal system and law enforcement, limited funds, and the ability of its apparatus are examples that make it more difficult for developing countries to recover stolen assets.

Finally, the world realizes that a global effort is needed to deal with corrupt behavior and the results of corruption committed by individuals and corporations. Global efforts since 1997 culminated with the birth of the United Nations Convention Against Corruption, 2003 (UNCAC 2003), even though several G-8 countries and countries where financial centers have not ratified it. UNCAC is the first legally binding global anti-corruption agreement. UNCAC contains extensive material, including international cooperation in asset recovery, which was then followed by the birth of the StAR initiative in June 2007, which contains challenges, opportunities, and action plans in efforts to recover stolen assets.

Based on the United Nations Convention against Corruption (UNCAC), state asset recovery has become a fundamental principle in eradicating corruption, in addition to the imposition of crimes such as deprivation of liberty. Thus, for participating countries, the restoration of state assets that have been corrupted (stolen asset recovery) has been placed as an important goal in eradicating corruption. This means that the success of eradicating corruption is not only measured by the success in convicting the perpetrators of corruption but also determined by the level of success in returning state assets that have been corrupted. (Purwadi Day. Adriana Grahani Firdausy and Sasmini, 2008: 24).

The crime does not pay doctrine contains the view that a person may not benefit from acts of violating the law in general, acts of crime in particular. This view follows the demand that if the law is to affect people's behavior, then the law must convey a coherent message. It is incoherent if, on the one hand, the law seeks to prevent certain actions from occurring, but on the other hand, it allows someone to carry out certain actions and benefit from these actions. For example, the law on corruption was made to prevent people from committing acts of corruption. The message conveyed by this law must be coherent. However, when on the one hand, this law prevents people from committing acts of corruption, but on the other hand, corruptors are allowed to enjoy the results of corruption, then the law is no longer coherent (Purwaning M Yanuar. 2009: 4).

2. Research Question

- How effective is the effort to restore state losses in corruption cases through the asset recovery model and mutual legal assistance?
- What is the ideal asset recovery model and mutual legal assistance for optimizing efforts to restore state losses in corruption cases?

3. Result and Discussion

3.1. Effectiveness of Efforts to Restore State Losses in Corruption Cases through the Asset Recovery Model and Mutual Legal Assistance

Theft of public assets from developing countries is a huge development problem. The amount of money stolen from developing and transitional jurisdictions and hidden in foreign jurisdictions annually is estimated at $20–$40 billion — a figure equivalent to 20–40 percent of legal development assistance flows. The social costs of corruption far exceed the value of the assets stolen by public leaders. Corruption undermines the trust of public institutions, the climate for private investment, and the delivery mechanisms of poverty alleviation programs such as public health and education (Ahmad Sobari. 2014, 298).

Recovering state financial losses is one of the essential objectives of efforts to combat corruption, but the reality on the ground is that this is not easy. In the corruption database compiled by the UGM Economics Laboratory Research team, the value of state losses due to corruption in Indonesia during 2001-2015 amounted to Rp. 203.9 trillion, but the total financial penalty is only Rp. 21.26 trillion (10.42%), meaning there is a difference of Rp. 182.64 trillion unrecovered state losses (Febby Mutiara Nelson, 2018, 4).

Based on the provisions of Article 1 of the UN Convention Against Corruption, there are 4 (four) pillars of prevention and eradication of criminal acts of corruption that are recognized internationally, namely: prevention; eradication (repression); asset recovery, and international cooperation. The four pillars can be clustered into 3 (three) clusters, namely, the cluster on material law, formal law, and the cluster on law enforcement cooperation. The four pillars, in concreto, are closely related to one another; failure in one cluster, mutatis mutandis failure in another cluster (Romli Atmasasmita, 2014, 3).

The principle of asset recovery is regulated explicitly in the Anti-Corruption Convention. The provisions of Article 51 (article 51) of the Anti-Corruption Convention technically allow claims, both civilly (through lawsuits) and criminally, to return state assets that have been obtained by someone through acts of corruption. This Anti-Corruption Convention also allows for acts of appropriation of wealth without being penalized in the event that the perpetrator cannot be prosecuted on the grounds of death, running away (running away), or not being present in other similar cases (Aliyth Prakarsa dan Rena Yulia, 2017, 39).

UNCAC encourages integrated law enforcement where the pursuit of the proceeds of corruption is an integral part of every corruption case so that national authorities can return these assets as they should in the widest possible range of legal instruments. The development of an adequate legal framework is essential; jurisdictions will not be able to pursue asset recovery cases if they do not criminalize corruption offenses or if procedures are inadequate. At the very least, countries should be able to confiscate assets under criminal law. Ideally, they should also be able to use non-conviction-based asset forfeiture procedures and civil forfeiture. UNCAC data shows that many countries admit that they have not fully implemented UNCAC's asset recovery provisions (Febby Mutiara Nelson, 2018, 112)

International agreements are essential for the effective return of assets resulting from corruption from abroad. Mutual Legal Assistant (MLA) and Extradition are forms of international agreements that are often used between countries as a basis for an agreement to return assets. In addition to these provisions, there are several international provisions contained in the United Nations Convention Against Corruption, 2003 (UNCAC 2003), which should be adopted and implemented in Indonesian legislation to make asset return effective, including arrangements regarding Illicit Enrichment, Trading Influence, Bribery of Foreign Public Officials and Officials of Public International Organizations in the Private Sector, and other provisions that should have been regulated in the provisions of the legislation in Indonesia (Jamin Ginting, 2011, 4).

Regarding the return of state assets, there are several Indonesian criminal laws and regulations that allow for the recall of proceeds of crime and confiscation of the means used to carry out crimes. However, based on these laws and regulations, attempts to recover assets resulting from a crime can generally only be carried out if the perpetrator of the crime has been declared legally and convincingly guilty of committing a crime by the court, even though there are various possibilities that can hinder the completion of such an enforcement mechanism. One of them is the perpetrators of crimes run away or fugitives (Febby Mutiara Nelson, 2020, 9).

Law enforcement and recovery of criminal assets are two sides of a coin that cannot be separated in eradicating criminal acts, especially corruption. As a crime based on calculation or calculation (crime of calculation), the management and safeguarding of the proceeds of crime is a fundamental need for white-collar crime perpetrators. Someone will dare to commit corruption if the results obtained from corruption are higher than the risk of punishment (penalty) faced; not even a few corruptors are ready to go to jail if they estimate that while serving their sentence, their families will still be able to live in prosperity from the proceeds corruption committed (Basrief Arief. 2014). Eradicating corruption is not enough by punishing the perpetrators; it must be balanced with efforts to cut off the flow of proceeds from crime. By seizing property resulting from the crime of corruption, it is hoped that the perpetrator will lose his motivation to commit or continue his actions because the purpose of enjoying the proceeds of his crime will be hindered or be in vain.

If there is an asset confiscation instrument, it is possible.

- Firstly, it is unlikely that the perpetrator will think of committing a crime because it will not be profitable or the benefits will be confiscated by the State.
- Second, the crime of losing independence (prison) will not be able to prevent the commission of a crime because the perpetrator can still enjoy the results/benefits of his crime.
- Third, asset confiscation can increase public support and send an important message that the government is serious about fighting crime.
- Fourth, asset confiscation is a reflection of supporting a war against certain crimes.
- Fifth, the fines that have been imposed on perpetrators so far are considered insufficient to deter perpetrators of criminal acts. Sixth, asset confiscation has a role to warn those who are about to commit a crime (Aliyth Prakarsa dan Rena Yulia, 2017, 32).

In practice, public prosecutors often face obstacles on how to effectively and efficiently carry out reverse proof of criminal assets through criminal prosecution. This is because criminal evidence must first be proven with sufficient initial evidence regarding the suspect's guilt (proof beyond a reasonable doubt); only then is the confiscation of other criminal assets that have been converted or donated to third parties on the basis of reversed evidence. This asset confiscation model is not only time-consuming, but in practice, it is often faced with the fact that the suspect has run away or his whereabouts are unknown, or has died. Apart from that, another difficulty is in tracking/tracing the transfer of assets to other people, especially if it is done in cash or transferred in seconds with today's technology.

To overcome these obstacles, law enforcement in the United States and the United Kingdom have used the reverse verification model with the aim of confiscating assets by civil forfeiture without carrying out criminal prosecutions against the alleged owner of the said assets (Romli Atmasasmita, 2014). Confiscation of assets through civil forfeiture is to prove the legitimacy of someone's ownership of assets originating from a criminal act, not intended to establish someone's fault. Apart from that, the consideration is that the prosecution of suspects in civil confiscation of assets is not carried out, namely that the existence of assets is not always the perpetrators of criminal acts, but often already in the control of other people or someone who does not know the origin of these assets.

The Anti-Corruption Convention has made major breakthroughs regarding the return of state assets that have been corrupted, including a system for preventing and detecting the proceeds of corruption (Article 52), direct asset return system (Article 53), asset return system indirectly and international cooperation for the purpose of confiscation (Article 55). The essential provisions which are very important in this context are specifically aimed at returning assets resulting from corruption from the custodial state to the country of origin of the corruption assets.

The strategy for returning assets resulting from corruption is explicitly regulated in the Preamble to The Anti-Corruption Convention, Article 8, which formulates: 'Determined to prevent, track, and deter in a more effective way international transfers of assets obtained illegally, and to strengthen cooperation international in asset returns. However, in practice, provisions regarding the return of assets resulting from criminal acts of corruption face obstacles in their implementation. Among other things, due to differences in legal systems in countries, political will, legal systems in countries, political will in countries receiving assets resulting from criminal acts of corruption.'

Efforts to eradicate corruption are currently considered to be experiencing many obstacles, especially in terms of returning assets which is the main goal of eradicating corruption in Indonesia because the return of corrupted state assets can only be done through criminal efforts. In fact, the criminal process often proceeds haltingly, thus opening up opportunities for these assets to be transferred by corruptors. The asset recovery program is currently neglected. This is more due to a formal legal problem, where the Corruption Law limits the return of state losses only to the amount of money corrupted. The confiscation of his assets can only be done through criminal procedures. In fact, the mode of hiding the results of corruption is usually through family or cronies. Unfortunately, the Asset Confiscation Law, which has been discussed since 2008, is unclear when it will be enforced. In fact, the bill provides space for law enforcement officials or the state to take civil steps to be able to confiscate, seize, and take over ownership of assets suspected of originating from a crime. In this regard, law enforcers must promote asset recovery as the main agenda for eradicating corruption through the passage of the Asset Confiscation Bill, improving the management of assets resulting from crime, and increasing the ability of law enforcement to conduct asset tracing, as well as maximizing anti-money laundering regulations.

According to Romli Atmasasmita (2014), confiscation of assets in criminal laws and regulations in Indonesia prior to the ratification of the 2003 UN Anti-Corruption Convention, several criminal laws and regulations in Indonesia had been enacted relating to the 'confiscation of assets' of proceeds of crime. The national legal instruments are as follows:

- Republic of Indonesia Law Number 73 of 1958 concerning the Enforcement of Wetboek van Strafrecht for Nederlandsh Indie for all of Indonesia (the Criminal Code) and its amendments to RI Law Number 27 of 1999 concerning Amendments to the Criminal Procedure Code relating to Crimes Against State Security.
- Law Number 8 of 1981 concerning Criminal Procedure Code.
- Law Number 10 of 1995 on Customs, which has been amended by Law Number 17 of 2006.
- Law Number 31 of 1999 was amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes.
- Law Number 35 of 2009 concerning Narcotics.
- Law Number 5 of 1997 concerning Psychotropics.
- Law Number 15 of 2002 was amended by Law Number 25 of 2003 concerning the Crime of Money Laundering, which was revoked by Law No. 8 of 2010.
- Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism.
- Law Number 31 of 2004 concerning Fisheries.

Romli emphasized that all of the aforementioned laws and regulations have not specifically regulated the scope of the term 'Asset Recovery' as contained in Chapter V of the 2003 UN Anti-Corruption Convention. The provisions regarding confiscation and confiscation of criminal assets in these laws and regulations The above is limited to two models of confiscation, namely:

- 'Confiscation of assets used to commit criminal acts (instrumentum sceleris), and
- Objects related to criminal acts (objectum sceleris)

Meanwhile, in the laws and regulations mentioned above, the confiscation of the proceeds of crime (fructum sceleris) has not been regulated in detail and adequately, including the reverse verification process in confiscating criminal assets. According to the laws and regulations in Indonesia, as well as in the United States and England, these three types of confiscation are intended solely for the benefit of the state and have not been intended for the benefit of victims of criminal acts. Confiscation and confiscation of criminal assets for the purposes of the victim's interests have been enacted in the Criminal Code in Belgium and the Netherlands.

This latest confiscation and confiscation is intended to be able to provide compensation to victims of criminal acts. After the ratification of the 2003 UN Anti-Corruption Convention, based on Law Number 7 of 2006, the Government of Indonesia has made important changes, namely:

- The first step, drafting the Corruption Bill, which includes the criminalization of certain (new) acts within the scope of criminal acts of corruption, namely, among others, acts of enriching oneself illegally (illicit enrichment),
- Bribery of foreign public officials or officials of international organizations (Bribery of Foreign Public Officials and Officials of Public International Organizations), and bribery among the private sector (Bribery in the Private Sector),
- Abuse of authority (Abuse of Function)

The criminalization step in the draft Corruption Crime Eradication Bill – the Corruption Crimes Bill (2009) was prepared to replace and repeal the application of Law Number 31 of 1999, which was amended by Law Number 20 of 2001 (Romli Atmasasmita. 2014: 5).

Ideally, in recovering assets, several stages must be carried out by law enforcement officials:

3.1.1. Preparing Plans and Policies

At this stage, it is carried out by means of research methods as material for planning and policy determination. Then an asset recovery unit was formed in each law enforcement institution, strengthening institutional capacity, preparing resources, setting targets and active intelligence, training, and capacity building, as well as technical assistance.

3.1.2. Is an Investigation

In this stage, the process that needs to be passed is in the form of an investigation plan, asset tracing, extracting sources of information, determining witnesses and suspects, digital forensics, subject profiles, document analysis, financial profiles, accounts payable, corporate structure, and beneficial ownership tracing, digital currency and open sources of information.

3.1.3. The Maintenance and Security of Assets

The work in it is in the form of issuing asset confiscation orders, asset freezing, asset confiscation, temporary measures, third-party interest/inclusion, classification of tangible and intangible goods, and legal proceeding.

3.1.4. Management

At this stage, the officer analyzes the ability to manage assets, identifies evidence/seizure track records, reports on asset management, calculates impairment of assets, and plans proper asset management.

3.1.5. The Stage of Deprivation

At this stage, the court issues a forfeiture order and a confiscation order. It may also include fines, confiscation without trial, orders explaining the origin of assets (reversing the burden of proof), and orders for the application of just civil law.

3.1.6. The Stage Utilization

This starts with the auction process, then social utilization, repatriation, return to victims, and use of funds by the state. Following is the implementation of asset recovery pathways in a number of law enforcement institutions. (https://www.hukumonline.com/).

The presence or absence of a political will can significantly influence a country's steps in implementing its asset recovery agenda. Because the decision to pursue major corruption is usually a political one, political support is critical to mobilizing resources and securing institutional partner collaboration. But often, when countries compare the costs of pursuing an asset recovery agenda against the uncertain benefits, the risks of stepping outside the status quo are more than they are willing to take.

While political pressure exerted on governments may facilitate willingness to honor international commitments, this pressure is generally accompanied by moral and reputational considerations and driven by financial and enforcement incentives. Regardless of politics, the responsibility for implementing UNCAC obligations into the domestic system ultimately rests with individual state parties. Diverse legal systems and varying legal standards often make it difficult to

introduce new concepts and procedures into existing legal systems. In Indonesia, efforts to recover corruption assets can run optimally if supported by synergistic cooperation between the following state institutions:

No.	Agent Institution	Responsibility
1.	Republic of Indonesia Police	Has the authority to seize/seize and investigate all criminal acts.
2.	The Attorney General's Office	Has the authority to make all applications/administrations related to confiscation/confiscation, and also has the authority to conduct investigations.
3.	Corruption Eradication Commission (KPK)	Has special authority to investigate corruption (only by state administrators/law enforcer) and can seize/seize assets without execution from the Attorney General's Office (debatable)
4.	National Narcotics Agency (BNN)	Has special authority to investigate narcotics, including money laundering.
5.	Directorate General of Taxes	Tax collectors can conduct investigations into violations without a court decision.
6.	The Directorate General of Customs and Excise	Has the authority to investigate customs and excise violations as a gateway for goods suspected of being proceeds of crime to enter and exit.
7.	Center for Reporting and Analysis of Financial Transactions (PPATK)	Financial Intelligence.
8.	Audit Board of the Republic of Indonesia (BPK) / Regional Financial Audit Board (BPKP).	Provide expert information to investigators regarding state losses
9.	Confiscated Goods Storage House (Rupbasan)	Storing and caring for confiscated evidence.

Table 1

3.2.The Ideal Model of Asset Recovery and Mutual Legal Assistance for Optimizing Efforts to Restore State Losses in Corruption Cases

Indonesia has Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters and ratified the Agreement on MLA in Criminal Matters (ASEAN Treaty) with Law Number 15 of 2008 and a mandate to the Ministry of Justice and Human Rights as the central authority. The modus operandi of crimes is increasingly sophisticated as technology develops, in such a way that it makes it difficult to find, confiscate and send the proceeds of crime from the requested country to the requesting country so that bilateral or multilateral cooperation is needed. In Indonesia, there should be better cooperation between related agencies in accordance with established procedures (Ahmad Sobary, 2014).

Mutual Legal Assistance in matters of crime and asset recovery has been regulated in the United Nations Convention against Corruption, 2003, as follows:

In Article 46, as follows:

States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to the offences covered by this Convention (Article 46 [1]). Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons,

(b) Effecting service of judicial documents,

(c) Executing searches and seizures, freezing,

(d) [...], etc. up to point (j),

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention. (Article 46 [3])

Indonesia is a signatory to all relevant international MLA Agreements and has set out in domestic legislation necessary to ensure participation in MLA. In 2006, the Government and the Parlement passed Law no. 1/2006 concerning Mutual Legal Assistance in Criminal Matters. It provides law enforcement agencies with the authority to pursue MLA requests (e.g., Indonesian National Police, Attorney General's Office, Corruption Eradication Commission (KPK). It also articulates the scope of MLA requests, including:

- Identify and find people,
- Get statement,
- Provide documents,
- Facilitating the appearance of persons to provide information or to assist with an investigation,
- Mail

According to Yenti Garnasih, efforts to eradicate corruption do not only talk about punishment. There are also important things that should not be forgotten by law enforcers, namely: asset recovery or the return of state assets (assets) that have been corrupted. Law enforcers, such as the police, prosecutors, and judges, of course, must also use this asset recovery approach in handling corruption cases. Law enforcers are often negligent in using this approach. Moreover, in efforts to return assets placed abroad, law enforcement officers often find it difficult to bring them to Indonesia. There

are several obstacles, but the most crucial one is the law enforcers themselves. Yenti gave an example of the role of judges who were not optimal in efforts to return assets planted abroad.

Yenti confirmed the absolute condition is that the assets can be returned to Indonesia after a court decision in Indonesia that has permanent legal force. Therefore, the investigation process until the trial must be accelerated. In the court decision, Indonesian judges must clearly state which assets need to be returned and where the assets are currently placed. So it is not arbitrary to just mention the return on assets but not mention it in detail. That detail must be included in the decision; otherwise, it will be difficult to reverse. These guidelines had been included in an international partnership or Mutual Legal Assistance (MLA). Unfortunately, Indonesian judges often forget to include this. Police and prosecutors must also understand the asset recovery process properly. Yanti suggested that the investigation and public prosecutor prioritize confiscation efforts at the investigation and prosecution stage. If assets have been confiscated from the start, once the judge's verdict has declared the defendant guilty, there is no need to look for the defendant's assets (Yenti Garnasih, 2011).

In the era of economic and digital globalization, where international transactions only require a few 'clicks', acts of corruption are becoming increasingly complex, with elements occurring in several countries. For example, companies in country A bribe public officials in country B, and corrupt officials then launder the proceeds of this bribe through country C before depositing or investing the proceeds in country D (Marie Terracol, 2015). International immunity is a significant barrier to criminal proceedings against officials and thus contravenes MLA provisions. While immunities are essential to allow foreign officials to freely carry out their duties, they should not protect them from criminal proceedings when they are suspected of corruption. Protection must be balanced with the public interest in fighting corruption. Thus, states should not recognize immunity outside the scope defined by international law.

Other legal hurdles: fiscal concerns, bank secrecy, and economic interests. Some countries will not grant MLAs for offenses involving fiscal misconduct, such as tax evasion or tax fraud. Both the UNCAC and the FATF's 2012 recommendations prohibit the rejection of MLAs as the sole reason involved in such violations of fiscal matters. Another major obstacle to international cooperation in corruption cases is the bank secrecy law. UNCAC contributed to addressing this barrier by explicitly excluding bank secrecy as a reason for refusing to provide MLA for cases involving UNCAC violations. Similar to the issue of bank secrecy is legal client privilege. The privilege of legal protection is essential but should only apply when attorneys are providing legal advice. This should not prevent investigators from viewing financial transactions facilitated by attorneys. Finally, states are often reluctant to enforce MLA Requests that relate to a company's national interests (even when economic interests are not listed in domestic law or treaties in force as grounds for refusal).

The agreement between Indonesia and ASEAN countries, including Singapore, in the 'Treaty on MLA in Criminal Matters', which was signed on 29 November 2004, also does not provide advantages or benefits to Indonesia for returning assets resulting from past crimes (before 2004) unless offenders through an extradition treaty. This is because the Mutual Assistance Treaty in Criminal Matters (ASEAN Treaty) does not apply retroactively, especially to request the confiscation and recovery of assets resulting from corruption, including BLBI (Bank Indonesia Liquidity Assistance), which occurred before 2004, and other crimes. The agreement between Indonesia and Singapore is not on reservation (amended or rejected) by the two countries, which is explicitly contained in Article 29 of the bilateral agreement on MLA 'The agreement is not subject to reservations (Ahmad Sobary, 2014, 302).

There is egoism between the institutions of the Ministry of Law and Human Rights, the Attorney General, and the National Police Headquarters. Mabes Polri sometimes acts separately without notifying the Ministry of Law and Human Rights (as the center of authority) for the purpose of gaining reputation and other benefits. This is contrary to the provisions regulated in Article 45 paragraph (13) of the Convention, which state: 'Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of the State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the State Parties agree, through the International Criminal Police Organization, if possible'.

There are several obstacles in the implementation of asset recovery and MLA, namely:

- Cultural barriers, which are sourced from negative habits that develop in society. Included in this group, among others: the persistence of ‘reluctance’ and tolerance among government officials who could hinder the handling of corruption.
- Instrumental obstacles, which originate from the lack of supporting instruments in the form of laws and regulations, make the handling of corruption not work as it should. Included in this group are: many laws that overlap, giving rise to corrupt practices in the form of inflating government agency funds.
- Structural barriers – weaknesses in Law Enforcement Officials. Likewise, the Indonesian government is less progressive than in making agreements with other countries (Mutual Legal Assistance / MLA). It also seems that the law is unprepared in this country, and also, due to the limited understanding of law enforcement officials about the mode of economic crime, it is increasingly complicated because it involves institutions. Financial, banking, capital markets, and other instruments that are cross-border interventions coupled with enormous powers and are still common to law enforcement officers (Ahmad Sobari, 2014).

Indonesian Corruption Watch (ICW) researcher Kurnia Ramadhana conveyed a number of steps the government could take to catch fugitives, one of which was to increase reciprocal legal agreements. The government must increase mutual legal assistance agreements with other countries that are suspected of hiding assets in corruption cases or perpetrators of corruption crimes. According to Kurnia, currently, Indonesia does not have enough mutual legal agreements with other countries. As a result, law enforcement officers find it difficult to detect assets resulting from crime and confiscate them. Kurnia also asked the government to increase extradition agreements. With the lack of extradition

agreements and reciprocal legal agreements, law enforcers are asked to establish good relations with law enforcement in other countries. Law enforcers must also establish good relations with law enforcers from other countries, strengthening the P to P (police to police) concept as practiced by Indonesian Police and the Royal Malaysian Police. The good relationship between the National Police and the Royal Malaysian Police has proven to have succeeded in repatriating the convict in the Bank Bali case, Djoko Tjandra, who has been a fugitive for 11 years. (https://nasional.kompas.com/read/2020/11/06/17463161/icw-).

Asset recovery is the process of handling assets resulting from crime in an integrated manner at every stage of law enforcement so that the value of these assets can be maintained and returned in full to victims of crime, including to the state. Asset recovery also includes all preventive actions to keep the value of these assets from decreasing. The need for policy formulation and concrete action steps because procedural asset recovery includes tracking, freezing, confiscation, confiscation, maintenance/management, and return of stolen assets/proceeds of crime to victims of crime/the state. In the case of corruption crimes, the return of assets resulting from crime is the right of the state, which is seen as a victim of crime (Widyo Pramono, 2014).

The Attorney General's Office has a strategic position in efforts to recover assets resulting from crime. Like public prosecutors in various countries, the Republic of Indonesia's attorney general's office has the task of executing court decisions. With this responsibility, the prosecutor's office is very interested in establishing effective international cooperation both in seizing and freezing assets, especially those suspected of originating from criminal acts of corruption and money laundering, and recovering assets lost due to crime. The Indonesian Attorney General's Office anticipates this phenomenon by forming a Center Asset Recovery, which is called PPA, as a work unit under the structure of the Attorney General's Office of the Republic of Indonesia which specifically handles Asset Recovery for criminal acts based on PERJA Number PER 006/A/JA/3/2014 and was promulgated in the 2014 State Gazette no. 453 (Chuck Suryosumpeno. 2014).

4. **Conclusion**

- Efforts to eradicate corruption do not just talk about punishment. There are also important things that should not be forgotten by law enforcers, namely: asset recovery or the return of state assets (assets) that have been corrupted. Law enforcers, such as the police, prosecutors, and judges, of course, must also use this asset recovery approach in handling corruption cases. So far, law enforcers often need to be more careful in using this approach. Moreover, in efforts to return assets placed abroad, law enforcement officers often find it difficult to bring them to Indonesia.
- The ideal model for implementing asset recovery through MLA is that the formation of an international task force, even outside the investigation stage, can prevent the creation of obstacles for MLA due to a lack of coordination. It is indeed the case that countries involved in international corruption cases are entered into settlements for lesser offenses which preclude other countries involved in cases from obtaining the evidence needed for their own investigations. The joint task force also has the advantage of facilitating skills and knowledge transfer between its members from different countries. The need for policy formulation and concrete action steps because procedural asset recovery includes tracking, freezing, confiscation, confiscation, maintenance/management, and return of stolen assets/proceeds of crime to victims of crime/the state. In the case of corruption crimes, the return of assets resulting from crime is the right of the state, which is seen as a victim of crime.

5. References

i. Ahmad Sobari. 2014. *MLA in Criminal Matters as Asset Recovery Tool* . Mimbar Hukum. Volume 26, Nomor 2. Juni 2014. Hal. 298.
ii. Anna Christina Sinaga, Jacob Phelps, Dadang Trisasongko and Muji Kartika Rahayu. 2014. *Mutual Legal Assistance to Strengthen Indonesia-ASEAN Forest Governance*. Brief Info. No 77, August 2014 cifor.org. Center for International Forestry Research.
iii. Aliyth Prakarsa dan Rena Yulia. Model Pengembalian Aset (*Asset Recovery*) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi. Jurnal Hukum PRIORIS Vol. 6 No. 1 Tahun 2017.
iv. Arief Budiman, 1991, Negara dan Pembangunan, Salatiga, Yayasan Padi dan Kapas.
v. Febby Mutiara Nelson. 2020. *Plea Bargaining & Deferred Prosecution Agreement* dalam Tindak Pidana Korupsi. Jakarta. Sinar Grafika.
vi. Chuck Suryosumpeno. 2014. Pemulihan Aset Sistem yang Terintegrasi. Workshop Pemulihan Aset Tindak Pidana, Mahupiki, Jakarta. 28-29 Agustus 2014.
vii. Hari Purwadi, Adriana Grahani Firdausy dan Sasmini. Pengembalian keuangan Daerah Akibat Tindak Pidana Korupsi. Yustisia Jurnal Hukum Edisi 79 Januari – April 2010 tahun XXI.
viii. Harkristuti Harkrisnowo, 2002, Korupsi, Konspirasi dan Keadilan Di indonesia, Kajian atas perkara pencemaran nama baik oleh Endin Wahyudin, Jakarta, Dictum edisi I Jurnal Kajian Putusan Pengadilan.
ix. Jamin Ginting. 2011. Perjanjian Internasional dalam Pengembalian Asset Hasil Korupsi di Indonesia. Purwokerto : Jurnal Dinamika Hukum Fakultas Hukum Unsoed Volume 11 No. 3 tahun 2011.
x. Jean-Pierre Brun. *Asset Recovery Handbook A Guide for Practitioners. The World Bank- UNODC.*
xi. Juniadi Soewartojo, 1998, Korupsi Pola Kegiatan dan Penindakannya serta Peran Pengawasan dalam Penanggulangan, Jakarta: Balai Pustaka.
xii. Marie Terracol. 2015. *Mutul Legal Assistane and Corruption*. Transparency International.

xiii. Mark V. Vlasic and Jenae N. Noell. 2010. *Fighting Corruption to Improve Global Security: An Analysis of International Asset Recovery Systems*. Yale Journal of Inernational Affair. Volume 5, Issue 2 – Spring/Summer.

xiv. Marwan Effendi. 2009. Peran Kejaksaan dalam upaya Menyelematkan Keuangan Negara dari Tindak Pidana Korupsi dan Kaitannya dengan RUU Perampasan Aset. Lokakarya Penyelamatan Aset Negara Hasil Tindak Pidana Korupsi. Surakarta 18-19 Agustus 2009.

xv. Michael Todaro, 1979, Economic for Developing Worlds, London, Longman.

xvi. Purwaning M Yanuar. 2003. Pengembalian Aset Hasil Korupsi (Berdasarkan Konvensi PBB Anti Korupsi) Dalam Sistem Hukum Indonesia. Bandung: Alumni.

xvii. Purwaning M. Tanuar. 2009. Proses Penarikan Aset Negara Hasil Tndak Pidana Korupsi dengan Memperhatikan Kepentingan Pihak Ketiga. Lokakarya Penyelamatan Aset Negara Hasil Tindak Pidana Korupsi. Surakarta 18-19 Agustus 2009.

xviii. Romli Atmasasmita. 2014. *ASSET RECOVERY DAN MUTUAL ASSISTANCE IN CRIMINAL MATTERS*. MAKALAH UNTUK PELATIHAN HUKUM PIDANA KERJASAMA MAHUPIKI DAN FAKULTAS HUKUM UGM, TANGGAL 23 – 27 FEBRUARI 2014.

xix. Saldi Isra. 2008. *ASSET RECOVERY* TINDAK PIDANA KORUPSI MELALUI KERJASAMA INTERNASIONAL Makalah disampaikan dalam Lokakarya tentang Kerjasama Internasional dalam Pemberantasan Korupsi, diselenggarakan atas kerjasama Fakultas Hukum Universias Diponegoro dan Kanwil Depkumham Prov. Jawa Tengah, tanggal 22 Mei 2008, di Semarang.

xx. Supriyadi Widodo Eddyono. Masa Depan Hukum Pengembalian Aset Kejahatan Di Indonesia. Jurnal Legislasi. Vol. 7 No. 4 Desember 2010.

xxi. Tjandra Sridjaja Pradjonggo. Sulitnya Memberantas Korupsi Di Indonesia. Konsideratum Jurnal Hukum dan Peradilan. Volume I Nomor I Maret 2011.

xxii. Widyopramono. 2014. Peran Kejaksaan Terhadap Aset Revocery Dalam Perkara Tindak Pidana Korupsi, Pelatihan Hukum Pidana dan Kriminologi 'Asasasas Hukum Pidana dan Kriminologi serta Perkembangannya Dewasa ini', Kerjasama MAHUPIKI dan Universitas Gadjah Mada, Yogyakarta, 23-27 Februari 2014.

xxiii. Yenti Garnasih. 2011. Makalah Seminar 'Peran Kejaksaan dalam Pemulihan Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi Melalui Asset Recovery. Hotel Atlet Century Park, Senayan, Jakarta Selatan, 20 Oktober 2011.

xxiv. Edi Nasution. Pemulihan Aset (*Asset Recovery*) dengan Menyita Aset illegal. http://www.ppatk.go.id/

xxv. Kurnia Ramadana. https://nasional.kompas.com/read/2020/11/06/17463161/icw-sebut-ada-36-buron-kasus-korupsi-pemerintah-diminta-perbanyak-mutual

xxvi. *Lilik Mulyadi.* PENGEMBALIAN ASET (ASSET RECOVERY) PELAKU TINDAK PIDANA KORUPSI MENURUT UNDANG-UNDANG KORUPSI INDONESIA PASCA KONVENSI PBB ANTI KORUPSI 2003*pn-kepanjen.go.id. diakses pada tanggal 4 Desember 2020 Pukul 11.00 WIB.* http://www. *pn-kepanjen.go.id.*

xxvii. Nashriana. *Asset Recovery* dalam Tindak Pidana Korupsi: Upaya Pengembalian Kerugian Keunagan Negara. Fakultas Hukum Universitas Sriwijaya. http://eprints.unsri.ac.id.

xxviii. Suwarsono Muhammad. *Assets Recovery*: Perspektif Perdata. https://jurnal.kpk.go.id/Dokumen/SEMINAR_ROADSHOW/Asset-recovery-Suwarsono.pdf

xxix. Tanpa pengarang. https://en.wikipedia.org/wiki/Mutual_legal_assistance_treaty

xxx. Tanpa pengarang. https://www.hukumonline.com/berita/baca/lt583e74a9c93a3/6-alur-ideal-iasset-recovery-i-tindak-pidana-korupsi/