

## **Fulfillment of Legal Objectives in Handling Corruption Cases Through Asset Recovery**

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**Abstract.** *The benchmark for success in eradicating corruption is currently not only measured by how many perpetrators are punished, but currently the success of law enforcement in corruption cases is also assessed by how much state financial loss has been recovered. So that the eradication of criminal acts does not only recognize follow the suspect but also prioritizes the principle of follow the money and follow the asset. The purpose of this study is to describe and analyze the legal rules in the confiscation of assets of corruption convicts and to determine the ideal rules to regulate asset confiscation in the future. This legal research uses a normative juridical legal research approach method, namely legal research conducted by examining library materials or secondary data as basic materials for research by conducting searches of regulations and literature related to the problems being researched. Corruption comes from the Latin word "corruption" which means damage or decay. Corruption is a crime that is included in Extra Ordinary Crime and one of the serious impacts of corruption is that it harms state finances. The Corruption Eradication Law explicitly mandates efforts to carry out Asset Recovery actions against assets resulting from corruption, namely as regulated in the provisions of Article 18 of the Corruption Eradication Law which explains that perpetrators of corruption can be subject to additional penalties in the form of confiscation of tangible or intangible movable goods or immovable goods used for or obtained from corruption, including companies owned by convicts where corruption is committed, as well as goods that replace these goods.*

**Keywords:** Asset; Corruption; Legal; Purpose; Recovery.

## **1. Introduction**

The affirmation of Indonesia as a country of law as stated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) means that all aspects of national and state life must always be carried out above the law and it is not permissible to act outside the boundaries of the established legal corridor. The concept of Indonesia as a country of law is stated explicitly in Article 1 paragraph (3) of the 1945 Constitution. Without law, people's lives will be in chaos (anarchy), because there are no guidelines or references that regulate behavior and resolve conflicts.

Corruption is one of the serious problems faced by almost all countries in the world, especially developing countries like Indonesia. Corruption not only harms state finances, but also damages the foundations of national and state life. Systematic and widespread corruption practices have hampered national development, weakened the legal system, and reduced public trust in government institutions.

Corruption in Indonesia has become so widespread in society. Its development continues to increase from year to year, both in terms of the number of cases that occur, the amount of state financial losses, and in terms of the quality of criminal acts that are increasingly systematic and the scope that enters all aspects of society. The increase in uncontrolled corruption will bring disaster not only to the national economy but also to the life of the nation and state in general. Widespread and systematic corruption is also a violation of the social rights and economic rights of the community. Therefore, corruption can no longer be classified as an ordinary crime but is included in extraordinary crimes.

Corruption is an extraordinary crime that has a systemic impact on the life of the nation and state. Corruption not only harms state finances, but also hinders development, damages the morals of state administrators, and weakens public trust in the legal system and government.

Corruption is not only a serious problem for Indonesia several international countries also have serious problems in eradicating corruption. Based on the 2023 Transparency International annual report, it provides an assessment of the Anti-Corruption Perception Index of countries in the world. As a result, Indonesia received a Corruption Perceptions Index Score of 34/100 and was ranked 115th out of a total of 180 countries with the lowest levels of corruption in the world. The results of the assessment of the Indonesian Anti-Corruption Perception Index in 2023 are the same as the results of the 2022 assessment, however, the assessment of the Indonesian Anti-Corruption Perception Index is lower when compared to the Indonesian Anti-Corruption Perception Index in 2021 which received a score of 38/100 and was ranked 96th.

Cooperation and commitment to eradicating corruption in countries around the world can be seen with the presence of the United Nations Convention Against Corruption (UNCAC) which was ratified in 2003. The presence of UNCAC in an effort to eradicate criminal acts of corruption is a new breakthrough, which regulates several preventive and repressive efforts. This convention has contributed to bringing the issue of corruption as a global concern.

However, in practice, the implementation of Asset Recovery in Indonesia still faces various challenges. Not all court decisions declaring corruption defendants guilty are accompanied by orders to return assets. In addition, the mechanism for tracking, confiscating, and seizing assets resulting from corruption, especially those hidden abroad or in the name of third parties, is often hampered by limited regulations, weak international cooperation, and lack of capacity of law enforcement officers.

## **2. Research Methods**

Method is the process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge, so the research method can be interpreted as the process of principles and procedures for solving problems faced in carrying out research.<sup>1</sup> The research approach serves to obtain information from various aspects regarding the issue being studied. The approach used in this study is normative juridical, namely research that focuses on the main material of the research in the form of norms. It is said that the research is normative because it comes from the word norm and gets the suffix "ev" so that the main issue in the research can be said to be the occurrence of legal vacuum, legal ambiguity, legal conflict resulting in legal conflict. Legal research with the Normative Juridical Method is legal research that is conducted by examining library materials or secondary data as basic materials for research by conducting searches for regulations and literature related to the problems being studied.<sup>2</sup> The approach required for normative legal research is a qualitative approach because the focus of the problem is the norm itself, whether it is the absence of norms, the ambiguity of norms, or the conflict of norms. This means that the expected output in normative legal research is a recommendation related to the norm itself, whether in the form of changing norms, forming norms, improving norms, or revoking norms.<sup>3</sup> Normative juridical legal research uses a qualitative approach and uses secondary data.

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<sup>1</sup>Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI-Press, 1985), p. 6

<sup>2</sup>Soerjono Soekanto & Sri Mamudji, *Normative Legal Research (A Brief Review)*, Rajawali Press, Jakarta, 2005, pp. 13-14.

<sup>3</sup>Rio Christiawan, Tuti Widyaningrum, *Normative Legal Research*, Depok: Rajawali Press, 2024 p. 17

### 3. Results and Discussion

#### 3.1. Legal Instruments for Asset Recovery Efforts in Eradicating Criminal Acts of Corruption in Indonesia

Corruption is a crime that is included in Extra Ordinary Crime and one of the serious impacts of corruption is that it harms state finances. Not only that, but several cases of corruption also have an impact on the country's economy. The overall impact of corruption will affect the ideals of a welfare state which is the mandate of the 1945 Constitution of the Republic of Indonesia.<sup>4</sup>One indicator of the effectiveness of eradicating corruption from a legal perspective is that perpetrators of corruption can be punished, and state financial losses caused by corruption can be recovered. Punishment of perpetrators of corruption has begun to show good results, this can be seen from, the performance of corruption eradication carried out by the Attorney General's Office has begun to improve in the last two years. Based on data from the Indonesia Corruption Watch (ICW), the Attorney General's Office has handled 371 corruption cases with 814 suspects throughout 2021.<sup>5</sup>However, good performance in taking action against perpetrators of corruption is not balanced with the performance of Asset Recovery to restore state financial losses. If law enforcement against corruption is not carried out in parallel with Asset Recovery efforts, it will provide an opportunity for further crimes from corruption, namely, hiding assets resulting from corruption both at home and abroad. The assets in question are traced, frozen, seized, confiscated, handed over, and returned to the state as a victim of corruption. This aims to restore state financial losses caused by corruption, and to prevent perpetrators of corruption from using assets resulting from corruption as a tool or means to commit other crimes, and to provide a deterrent effect for perpetrators and/or potential perpetrators of corruption.

The Corruption Eradication Law explicitly mandates Asset Recovery efforts against assets resulting from corruption. This is explained in the provisions of Article 18 of the Corruption Eradication Law which states:

#### Article 18

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<sup>4</sup>The opening of the 1945 Constitution of the Republic of Indonesia, paragraph 4, "Then, to form a Government of the State of Indonesia that protects all the people of Indonesia and all of Indonesia's territory and to advance public welfare, to educate the nation, and to participate in implementing world order based on freedom, eternal peace and social justice, the Independence of the Indonesian Nation is formulated in a Constitution of the State of Indonesia, which is formed in a structure of the Republic of Indonesia with people's sovereignty based on the One Almighty God, Just and civilized humanity, the Unity of Indonesia and Democracy guided by the wisdom of deliberation/representation, and by realizing social justice for all Indonesian people.

<sup>5</sup> Accessed from <https://dataindonesia.id/ragam/detail/kejaksaan-agung-tangani-371-kasus-korupsi-sepanjang-2021> on November 02, 2022

(1) In addition to the additional penalties as referred to in the Criminal Code, as additional penalties:

- a. confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing such goods;
- b. payment of compensation in an amount that is at most equal to the assets obtained from the criminal act of corruption;
- c. closure of all or part of the company for a maximum period of 1 (one) year;
- d. revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be granted by the Government to the convict.

(2) If the convict does not pay the replacement money as referred to in paragraph (1) letter b within a maximum of 1 (one) month after the court decision has obtained permanent legal force, then his property may be confiscated by the prosecutor and auctioned to cover the replacement money.

(3) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then he shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law and the length of the sentence shall be determined in the court decision.

Based on the provisions in Article 18 of the Corruption Eradication Law, it is explained that perpetrators of corruption can be subject to additional penalties in the form of confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including companies owned by convicts where corruption is committed, as well as goods that replace these goods. This can be the basis for law enforcement officers to carry out Asset Recovery efforts. The concept of Asset Recovery is closely related to Asset Tracing both must be carried out simultaneously and cannot run alone.

The term "Asset Tracing" is not explicitly regulated in the law and is only regulated in the Regulation of the Attorney General of the Republic of Indonesia Number Per-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia as amended by the Regulation of the Attorney General of the Republic of Indonesia Number 1 of 2021 concerning the Second Amendment to the Regulation of the Attorney General of the Republic of Indonesia Number Per-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia, namely with the addition of a new nomenclature, namely the Sub Directorate of Asset Tracing and Evidence

Asset Tracing actions carried out by the Asset Tracking Team which also includes investigators who carry out their duties and functions both openly and secretly based on the Asset Tracking Order to search for, find and inventory assets in the form of asset ownership, asset existence, number and type of assets and time of acquisition of assets in the form of movable, immovable, tangible and intangible assets. Furthermore, assets that have been found and inventoried are confiscated based on the provisions of Article 39 paragraph (1) of the Criminal Procedure Code, namely:

#### Article 39

(1) Which may be subject to confiscation:

- a. objects or bills of a suspect or convict which are wholly or partly suspected of being obtained from criminal acts or as the result of criminal acts;
- b. objects that have been used directly to commit a crime or to prepare for it;
- c. objects used to obstruct the investigation of a crime;
- d. objects specifically made or intended to commit a crime;
- e. other objects that have a direct connection with the criminal act committed.

(2) The thing that being seized due to a civil case or due to bankruptcy can also be seized for the purposes of investigation, prosecution and trying criminal cases, as long as it meets the provisions of paragraph (1).

Meanwhile, the results of asset tracking that are not followed up with confiscation or only blocked, then the information and data on the assets can be used as a basis for the executing prosecutor to carry out asset confiscation through execution seizure after the court decision as an additional penalty to fulfill the payment of compensation as regulated in the provisions of Article 18 Paragraph (1) letter b in conjunction with Article 18 Paragraph (2) of the Corruption Eradication Law or based on the information and data on the assets, the investigator submits it to the State Attorney to be filed a civil lawsuit if the suspect dies during the investigation stage or trial stage as regulated in the provisions of Article 33 in conjunction with Article 34 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption.<sup>6</sup>

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<sup>6</sup>Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Article 33 "In the event that the suspect dies during the investigation, while it is clear that there has been a state financial loss, the investigator shall immediately submit the case file resulting from the investigation to the State Attorney or submitted to the injured agency to file a civil lawsuit against his heirs", Article 34 "In the event that the convict dies during the

Optimizing Asset Recovery efforts is not only a national issue, but also an international issue. The ratification of UNCAC in 2003 where one of the Chapters in UNCAC specifically regulates Asset Recovery. This is one manifestation of the international world's concern to realize the enforcement of corruption laws that are not only oriented towards following the suspect but also oriented towards following the asset. Explained in Chapter V on Asset Recovery Article 51. General Provision "The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard" Which in a free translation can be interpreted as the return of assets as regulated in this Chapter is a basic principle in this convention, therefore the state parties must provide a form of cooperation with each other. Based on the provisions of Article. 51 UNCAC, it can be seen that UNCAC wants the implementation of Asset Recovery to be carried out optimally. This can be seen from the mandate of Article. 51 UNCAC which provides an obligation for state parties to cooperate in Asset Recovery efforts against corruption. So that the concept of law enforcement that prioritizes following the asset can be implemented properly.

#### a. *Asset Recovery Through Criminal Path*

Asset Recovery through criminal channels is usually carried out based on the provisions of Article 18 of the Corruption Eradication Law. The implementation of Asset Recovery through criminal channels is carried out in 4 (four) stages, consisting of; first asset tracing, second prevention and stopping the transfer of assets through blocking, freezing, confiscation mechanisms, third confiscation, and fourth handing over assets to the state.<sup>7</sup> which will be explained as follows:

##### 1) Asset Tracing

As the first stage in Asset Recovery efforts, Asset Tracing has a very important objective, namely to identify assets, asset storage locations, evidence of asset ownership, and their relationship to the crime committed. In order to sharpen the implementation of Asset Tracing, the investigator's mindset must formulate a presumption that the perpetrator of the crime will use funds or assets obtained illegally for personal and family interests.<sup>8</sup>

##### 2) Blocking, Freezing and Confiscation

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examination in court, while it is clear that there has been a state financial loss, the public prosecutor shall immediately submit a copy of the trial minutes to the State Attorney or submitted to the injured agency to file a civil lawsuit against his heirs".

<sup>7</sup>OC Kaligis & Associates, Return of Corrupt Assets Based on the 2003 UN Anti-Corruption Convention in the Indonesian Legal System (Bandung: PT Alumni, 2015) pp. 206-207

<sup>8</sup>Gillespie, James, Follow The Money: tracing terrorist assets. Draft Seminar on International Finance, (Havard Law School, 2022) Pg. 209



The three mechanisms can be interpreted as a temporary prohibition on transferring assets under the control of the perpetrator. Control of the assets or wealth in question is temporarily handed over under the supervision of an institution that is authorized by laws and regulations, which in this case can be interpreted as the Police, Prosecutor's Office, or other institutions that are authorized or authorized to carry out actions of Blocking, Freezing, and Confiscation.

### 3) Foreclosure

The order to confiscate assets or wealth from the perpetrator is issued by the Court or authorized institution. Based on the provisions of Article 38 paragraph (1) of the Criminal Procedure Code, it states that "Confiscation can only be carried out by investigators with a permit from the head of the local district court". After the confiscation is carried out, the objects or wealth that are confiscated will then be used as evidence in the trial process.

### 4) Handover of Assets to the State

The fourth stage is carried out after a court decision has obtained permanent legal force. Through the trial process of a corruption case, the convict is given the opportunity to prove that he did not commit a corruption crime as charged by the public prosecutor and that the assets he owns do not come from a crime. This system of proof is known as the reverse burden of proof system, as regulated in the provisions of Article 37 paragraph (1) of the Corruption Eradication Law "The convict has the right to prove that he did not commit a corruption crime." As well as the provisions of Article 37A paragraph (1) of the Corruption Eradication Law "The defendant is required to provide information about all his assets and the assets of his wife or husband, children, and the assets of every person or corporation suspected of having a relationship with the case being charged". The concept of reverse burden of proof seems to imply that the assets owned by the convict were obtained from an unfair process, and are reasonably suspected of being obtained from the proceeds of a crime, this is in line with the principle of presumption of guilt, namely that a person is considered guilty until the court declares him not guilty.

## **3.2. Confiscation of Assets Proceedings of Corruption Through Civil Lawsuits (civil procedure)**

Efforts to seize assets resulting from corruption through civil lawsuits in the Corruption Eradication Law are an alternative method if the confiscation of assets through criminal prosecution cannot be carried out for reasons justified by law, such as the death of the suspect or defendant, as well as other reasons as stated in the statutory regulations.



Criminal asset confiscation (in personam) is essentially based on the purpose of criminal law itself, namely to punish the perpetrator, and the confiscation of assets imposed on the perpetrator is a criminal sanction as a punishment that must be accepted by the perpetrator. The imposition of this criminal sanction must be based on a court decision. However, there are several circumstances that result in in personam asset confiscation not being able to be carried out if:

- 1) The corruption court is of the opinion that one or more elements of the crime of corruption have not been fulfilled, even though there has clearly been a state financial loss.
- 2) The suspect or defendant dies during the legal enforcement process before the origin of his assets can be proven because the death of the defendant results in the loss of the authority to sue as referred to in the provisions of Article 77 of the Criminal Code.<sup>9</sup>, while in reality there has been a state loss.
- 3) After the court decision has obtained permanent legal force, it is known that there are still assets belonging to the convict which are suspected or can be suspected of originating from criminal acts of corruption which have not been confiscated for the state.

Further provisions regarding the confiscation of assets resulting from criminal acts of corruption through civil lawsuits (civil procedure) can be found in the provisions of Article 32, Article 33, Article 34, and Article 38 C of the Corruption Eradication Law, which will be explained as follows:

#### Article 32

(1) In the event that the investigator finds and is of the opinion that there is insufficient evidence for one or more elements of the crime of corruption, while there has clearly been a state financial loss, the investigator will immediately submit the case files resulting from the investigation to the State Attorney for a civil lawsuit or submit them to the injured agency to file a lawsuit.

(2) An acquittal in a corruption case does not eliminate the right to sue for losses to state finances.

#### Article 33

In the case of a suspect who dies during an investigation, while there has clearly been a state financial loss, the investigator will immediately submit the case files resulting from the investigation to the State Attorney or submit them to the injured agency to file a civil lawsuit against the heirs.

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<sup>9</sup>See Article 77 of the Criminal Code "The authority to prosecute criminal charges is removed if the accused dies."

#### Article 34

In the event that the defendant dies during the examination in court, while there has clearly been a state financial loss, the public prosecutor will immediately submit a copy of the trial minutes to the State Attorney or submit it to the injured agency to file a civil lawsuit against the heirs.

#### Article 38 C

If after the court decision has obtained permanent legal force, it is discovered that there are still assets belonging to the convict which are suspected or can be suspected of also originating from criminal acts of corruption which have not been confiscated for the state as referred to in

#### Article 38 B paragraph (2),

Then the state can file a civil lawsuit against the convict and/or his heirs.

The provisions as mentioned above provide authority to the State Attorney or other agencies who feel they have been harmed to be able to file a civil lawsuit against the convict and/or his/her heirs in order to obtain fulfillment or recovery of state financial losses.

Article 67 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (UU TPPU) gives investigators the authority to submit an application to the District Court so that the Court decides that assets known or reasonably suspected to be the result of a crime become state assets or are returned to those entitled to them.

#### Article 67

(1) In the event that no person and/or third party submits an objection within 20 (twenty) days from the date of the temporary suspension of the Transaction, the PPATK will hand over the handling of Assets known or reasonably suspected to be the proceeds of the crime to investigators for investigation.

(2) In the event that the alleged perpetrator of the crime is not found within 30 (thirty) days, the investigator may submit an application to the district court to decide that the assets are state assets or to be returned to those entitled to them.

(3) The court as referred to in paragraph (2) must make a decision within a maximum of 7 (seven) days.

The provisions of Article 67 of the TPPU Law cannot yet be implemented because there is no procedural law for law enforcement officers to carry out efforts to confiscate assets resulting from criminal acts of corruption, except as stipulated in the provisions of Article 18 of the Corruption Eradication Law.

In addition, the attempt to seize criminal assets as one of the Asset Recovery efforts in the TPPU Law can be found in the provisions of Article 79 paragraph (4) which states that "In the event that the defendant dies before the verdict is rendered and there is sufficient evidence that the person concerned has committed the crime of Money Laundering, the judge at the request of the public prosecutor decides to seize the Assets that have been confiscated". In connection with the Asset Recovery efforts through the TPPU Law, the PPATK has submitted a letter to the Supreme Court, the Attorney General's Office, the Indonesian National Police, the Ministry of Finance, the Corruption Eradication Commission and the National Narcotics Agency through Letter S-90/1.02.1/PPATK/03/12 dated March 8, 2012 regarding the Procedural Law of Article 67 of the TPPU Law which conveys the proposed procedural law procedure for examining Article 67 of the TPPU Law. This is to avoid a vacuum in the procedural law for enforcing the procedural law of Asset Recovery by using the instrument of Article 67 of the TPPU Law.<sup>10</sup>

One of the elements and special characteristics of corruption is the existence of state financial losses. Therefore, the state financial losses must be returned or replaced by the perpetrators of corruption through the concept of Asset Recovery. Then the question arises, why must the state financial losses be returned by the perpetrators of corruption? To answer this question, it can be analyzed based on the Utilitarianism thought put forward by Jeremy Bentham, with the principle of the principle of utility which states the greatest happiness of the greatest number (the greatest happiness of the greatest number of people). This principle of utility becomes the norm for personal actions or government policies through the formation of laws. Thus, laws that provide happiness to the greatest part of society will be considered good laws. Therefore, the task of the law is to maintain goodness and prevent evil. Specifically, to maintain utility.<sup>11</sup> Therefore, based on the Utilitarianism thought, it is very important in law enforcement to consider the happiness of all parties, one of which is the victim. One way to fulfill the happiness of the victim is to fulfill, restore, and provide all that is the victim's right.

The restoration of the rights of victims (the state) in corruption cases can be carried out with the concept of Asset Recovery, because through Asset Recovery the state seeks to regain its rights. However, this concept has not been implemented optimally, one of the factors being the absence of regulations that specifically regulate the process, procedures, and methods in Asset Recovery efforts. The preparation of regulations related to Asset Recovery must be

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<sup>10</sup>Muhammad Yusuf, *Confiscating Corruptors' Assets: A Solution to Eradicating Corruption in Indonesia*, (Jakarta: Kompas 2013), p. 168

<sup>11</sup>Muhammad Erwin and Amrullah Arpan, *Philosophy of Law*, (Palembang: UNSRI Publisher, 2007) p. 42

prepared in such a complete manner that all actions to fulfill Asset Recovery can be covered in it.

a. *Asset Recovery* in Singapore

Singapore is one of the countries in Southeast Asia that has succeeded in minimizing and overcoming the occurrence of corruption. Based on a survey by Transparency International conducted in 2021, Singapore received a score of 85 and was ranked 4th out of 180 countries with the highest Corruption Perceptions Index in the world.<sup>12</sup>

The asset recovery process in Singapore can be categorized into two phases, namely investigation and recovery.<sup>13</sup> Generally, the Investigation phase consists of efforts to track and collect evidence related to the movement of assets from the perpetrator. In this phase, the investigation team is required to be careful in order to find and find assets from the perpetrator. The next phase in the Asset Recovery concept in Singapore is the recovery phase. In this phase, the investigation team will take further action after conducting an investigation. Actions taken by the investigation team include freezing, confiscation, and finally returning assets found by the investigation team to the victim, in this case the state as the victim in a corruption case.

*Asset Recovery* In Singapore, it is done in 4 stages:

1) Asset Tracing

The first stage in the Asset Recovery effort in Singapore is to conduct Asset Tracing. At this stage, the investigation team when conducting Asset Tracing coordinates with the Suspicious Transaction Reporting Office (STRO), which is an agency under the Singapore police. STRO receives Suspicious Transaction Reports (STRs) and other financial information such as Cash Movement Reports (CMRs) and Cash Transaction Reports (CTRs) and analyzes them to detect Money Laundering, Terrorism Financing, and other serious crimes. If there are indications of Money Laundering, Terrorism Financing, and other serious crimes, STRO can coordinate with relevant law enforcement officers. Coordination between the investigation team and STRO is one of the good steps to conduct Asset Tracing. It is stated that "Between 2011 and 2014, STR information has directly or indirectly led to approximately S\$200 million seized in money-laundering investigations<sup>14</sup>". At the Asset Tracing stage, the investigation team is given the authority to coordinate with foreign countries, in order to find the

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<sup>12</sup> Accessed from [2021 Corruption Perceptions Index - Explore the... - Transparency.org](#) November 09, 2022

<sup>13</sup>Dennis Tan Chuin Wei, *The Practitioner's Guide for Asset Recovery in Singapore*, attorney general's chambers, 2016. Pp. 5

<sup>14</sup>Ibid. p. 6

perpetrator's assets hidden in other countries, search for evidence, and obtain bank records from related financial institutions.

## 2) Gathering the evidence

In addition to the Asset Tracing Steps, the investigation team also carries out a series of actions to search for evidence (Gathering the evidence), both related to evidence in the main case, and evidence related to assets being traced. In addition, Singaporean law enforcement can also assist in the Investigation or Prosecution of other countries in Asset Recovery efforts carried out in the country concerned. The assistance that can be provided is divided into two categories, namely; Requests based on the Mutual Legal Assistance in Criminal Matters Act (MACMA), and the second is assistance outside of what is specified in the Mutual Legal Assistance in Criminal Matters Act (MACMA). Restraint and Confiscation

When the investigation team has found the perpetrator's assets, the next step is to identify the assets that have been found and correlate the assets obtained with the crime committed. If the results of the identification state that the perpetrator's assets are related to the crime committed, then the assets will be subject to Restraint (asset freezing) and confiscation (confiscation). The freezing of assets is carried out by the investigation team so that the perpetrator cannot move the assets or hide the assets that have been found, the freezing can be done to wait for the Confiscation permit from the Court. At this stage, the Singapore authorities can also assist in the freezing and confiscation of assets related to crimes from other countries.

## 3) Asset disposal and return

The final stage is the stage of handing over assets to the victim which is carried out based on the provisions of the relevant laws. Regulations related to Asset Recovery in Singapore not only regulate the Asset Recovery process within the country, but Asset Recovery regulations in Singapore also regulate the provision of Asset Recovery assistance for foreign countries which are regulated in the Mutual Legal Assistance in Criminal Matters Act (MACMA). This is as mandated by the UNCAC which requires the parties to provide cooperation and assistance to each other in Asset Recovery efforts.

The discussion on Asset Recovery Regulation also intersects with the Discussion on Corruption Crimes, considering that the Corruption Eradication Law also briefly regulates Asset Recovery efforts which are regulated in the provisions of Article 18 of Law No. 31 of 1999. Donal Fariz stated that there are at least four weaknesses in the Corruption Eradication Law.<sup>15</sup> First, the confiscation of

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<sup>15</sup>See Donal Fariz, The Need for Illicit Enrichment Rules to Prevent Corruption Because there are weaknesses in the Corruption Eradication Law regarding the return of state

corruptors' wealth can only be carried out on goods used, or obtained from corruption. This provision is as regulated in Article 18 letter (a). The logical consequence of this is that it is not possible to confiscate other wealth outside the case being processed. In fact, it is not impossible for corruption convicts to have wealth that is quite large beyond reasonable limits compared to legitimate income. Second, compensation for state losses as in Article 18 letter (b)<sup>16</sup>not optimal. The reason is, in a number of cases, Asset Recovery through payment of compensation is often not optimal because the large amount of losses caused by the actions of certain officials cannot be returned. Additional punishment in the form of compensation is only the maximum enjoyed by corruption convicts. Third, there is a legal loophole for not paying compensation. According to him, if no assets of the convict are found, the obligation to pay compensation can be replaced with imprisonment. He believes that it is a weakness in eradicating corruption if from the beginning of the investigation and inquiry, Asset Tracing and confiscation are not carried out. If Asset Tracing is carried out after a verdict, it is possible that the perpetrator has transferred, hidden or sold assets. Fourth, difficult proof. Donal Fariz is of the opinion that confiscation of assets or payment of compensation from the convict's assets can only be carried out after his corruption has been proven in court. According to him, these efforts greatly hinder the eradication of corruption, especially if other assets from the corruptor are found whose origins are unknown.

Reflecting on the regulation of The Practitioner's Guide for Asset Recovery in Singapore and the weaknesses of Asset Recovery which are currently briefly regulated in the provisions of Article 18 of the Corruption Eradication Law, it is hoped that regulations on Asset Recovery in the future can be regulated comprehensively regarding the scope of Asset Recovery both criminally and civilly, the authority given to law enforcement officers to maximize their role in carrying out Asset Tracing efforts during the investigation and inquiry process so that when the corruption crime has been decided and the prosecutor's decision is in force, the executor can immediately seize the assets that have previously been confiscated and used to cover state financial losses.

Since 2013, the Attorney General's Office has planned to establish an Asset Recovery Center (ARO) and an Asset Management Office (AMO). This idea is considered an innovative breakthrough in managing confiscated assets. The Attorney General's Office PPA will later have two functions, namely as an Asset Recovery Office (ARO) and an Asset Management Office (AMO). The recovery

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losses.<https://www.hukumonline.com/berita/a/perlunya-aturan-illicit-enrichment-untuk-cegah-korupsi-lt5273ab9aace4d>accessed on november 10, 2022

<sup>16</sup>See Article 18 paragraph (1) letter b of the Corruption Eradication Law "payment of compensation in an amount that is as much as possible equal to the assets obtained from the criminal act of corruption"

function is data collection, tracking, confiscation, and return of assets. The management function is the function of securing, managing, and resolving assets that have been confiscated by the Attorney General's Office. The PPA is expected to implement a new paradigm, especially in its Human Resources (HR), where HR will strictly uphold values such as integrity, especially honesty, accountability, discipline, professionalism, courage and of course transparency. Its structure is also expected to be rich in functions that prioritize work effectiveness and efficiency.<sup>17</sup> However, before that can be realized, the prosecutor's office must be able to simplify and centralize the asset management function within the prosecutor's office. It is known that currently the asset management function in the prosecutor's office is still attached to several sub-directorates, one of which is the sub-directorate of asset tracking and evidence management under the auspices of the Director of Investigation at the Deputy Attorney General for Special Crimes. With the existence of the PPA function later as the Asset Recovery Office (ARO) and Asset Management Office (AMO), the duties, functions, and authorities in the sub-directorate of asset tracking and evidence management can be handed over to the PPA. So that later the PPA becomes a separate directorate that has special authority to carry out every action needed in asset management, including carrying out Asset Recovery, Asset Tracing.

Another important thing in the regulation on Asset Recovery is regarding Mutual Legal Assistance in Criminal Matters (MLA), which is a form of international cooperation according to UNCAC 2003 in addition to the extradition agreement. MLA has regulations that specifically regulate the scope, requirements, and procedures in MLA which are enacted in Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. This law also regulates efforts to confiscate assets resulting from criminal acts, which are regulated in Article 1 number 5 which states that "Confiscation is an attempt to forcefully take over the rights to wealth or profits that have been obtained, or may have been obtained by a person from a criminal act committed, based on a court decision in Indonesia or a foreign country". The existence of this MLA facilitates the exchange of information related to the recovery of assets that have been taken abroad. Mutual Assistance in Criminal Matters is one of the five forms of international cooperation according to the UN Convention on Corruption or UNCAC 2003. The return of criminal assets using the MLA method is a return procedure through formal channels whose stages are regulated through existing regulations and to be able to submit a request for the return of assets resulting from criminal acts through formal channels, a Mutual Assistance Agreement in Criminal Matters is needed between countries that wish to request cooperation related to transnational crimes in this case corruption. Given the importance of MLA to Asset Recovery efforts, the regulations that must be formed related to

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<sup>17</sup> accessed from <https://smartpos.id/F952A4F0FE01FA125/kejaksaan/detail-article.php?id=2> on November 10, 2022



Asset Recovery must be able to run in parallel with Law No. 1 of 2006 as the regulation governing MLA.

It is hoped that through the new regulation that specifically regulates Asset Recovery, the implementation of state loss recovery efforts can be carried out better, so that the Indonesian state does not only focus on law enforcement by prioritizing the concept of follow the suspect but can also prioritize the concept of law enforcement by following the money and following the asset.

#### **4. Conclusion**

In Indonesia, asset recovery has not been specifically regulated in separate laws and regulations, the regulation regarding asset recovery can be briefly found in Article 18 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001. Where the form of asset recovery is included in additional criminal penalties that can be imposed on perpetrators of criminal acts of corruption. In addition to being based on Article 18 of the Corruption Eradication Law, the implementation of asset recovery through the asset tracing mechanism is carried out based on the provisions of Article 39 paragraph (1) of the Criminal Procedure Code. However, this is also limited to several criteria for goods that can be confiscated based on the provisions of Article 39 paragraph (1) of the Criminal Procedure Code. Based on the Regulation of the Attorney General of the Republic of Indonesia Number Per-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia as amended by the Regulation of the Attorney General of the Republic of Indonesia Number 1 of 2021 concerning the Second Amendment to the Regulation of the Attorney General of the Republic of Indonesia Number Per-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia, namely with the addition of a new nomenclature, namely the Sub Directorate of Asset Tracking and Evidence Management which is under the structure of the Directorate of Investigation at the Attorney General for Special Crimes of the Attorney General's Office of the Republic of Indonesia, which has the task of carrying out the preparation of the formulation of technical and administrative policies, implementation and control, providing technical guidance, submitting considerations, opinions and suggestions, coordination and cooperation, data and information management, monitoring and evaluation and preparation of reports on the implementation of asset tracking and management of evidence in corruption and money laundering cases.

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