



Optimizing Recovery of State Losses: Effective Strategy for Tracing Corrupt Assets at the Investigation Stage

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Abstract—Asset tracing is a crucial investigative method used to recover funds lost by the state due to criminal acts such as corruption and money laundering (TPPU). The objective of this process is to locate and identify assets that have been obtained through illegal activities, with the intention of seizing them and recovering the financial damages incurred by the state. The primary impediments to tracking and regaining assets in Indonesia are the intricate nature of financial schemes and the restricted level of international cooperation. This study examines the efficacy of asset tracing and recovery in situations of corruption and TPPU, as well as potential improvements to the current legal framework. The research methodology employed is a normative juridical examination of the laws and regulations pertaining to asset monitoring and recovery of state losses, along with specific case studies conducted in Indonesia. The research findings indicate that it is essential to enhance scientific capabilities and law enforcement expertise, establish appropriate legislative frameworks, and foster more efficient international collaboration. The PT Asuransi Jiwasraya case exemplifies the intricacy of tracking assets in the context of bogus investment schemes and the dispersion of assets across multiple nations. To summarize, enhancing the capabilities of law enforcement personnel and maximizing global collaboration are the essential factors for overcoming challenges in the process of tracing and retrieving assets. Enhancing and refining the existing legislation, along with incorporating exemplary practices from other nations, can bolster Indonesia's legal framework. By implementing these strategic measures, it is anticipated that law enforcement would be able to operate with more efficiency, exert a substantial influence in eliminating criminal acts of corruption and money laundering, and achieve optimal restitution of state losses.

Keywords—Asset Tracing; Corruption Crimes; Investigations.

I. INTRODUCTION

Corruption falls within the classifications of both egregious crimes and non-violent crimes.[1] This characteristic is a result of its methodical style and repetitious mode of operation, which poses challenges for law enforcement authorities in terms of detection.[2] In nowadays day, instances of corruption have become more intricate and are sometimes accompanied by money laundering activities to conceal illicit gains. According to Article 1 number 3 of Law no. 31 of 1999, commonly known as the Eradication of Corruption Crimes Law (UU PTPK), as revised by Law no. 20 of 2001, it is established that not only individuals, but also corporations can be held legally accountable for committing acts of corruption. Corporate criminal liability enables law enforcement agencies to pursue legal entities or businesses implicated in acts of corruption.

Fines that are not included in the Criminal Code (KUHP) can be found in other laws and regulations, including the Law on General Provisions and Tax Procedures (UU KUP).[3] Within the realm of taxation, criminal fines are mostly linked to a nation's economic challenges and serve the purpose of recouping the financial losses incurred by the state.[4] The KUP Law categorizes criminal sanctions into two types: criminal sanctions for material offenses and criminal sanctions for formal offenses. Article 38 and Article 39 govern the

criminal penalties for material offenses, while Article 39A governs the criminal penalties for formal offenses. Criminal punishments are determined by the extent of financial damage incurred by the state's revenue. Articles 2 to 13 of the PTPK Law govern the regulation of criminal fines. The calculations are not based on the worth of state financial losses, but rather on a specific amount established by legislation. This category is distinct from customs law, as it imposes criminal fines that are determined by a specific quantity and are not connected to the customs values or import duties that need to be settled.

Prior to its amendment by the Law on Harmonization of Tax Regulations (UU HPP), the imposition of fines under the KUP Law was ineffectual due to the preference of many offenders to opt for incarceration instead of paying fines. This law is enforced based on the provisions outlined in Article 30, paragraph (3) of the Criminal Code, which states that the maximum duration of jail instead of a fine is six months. The HPP Law, enacted in 2021, implements a novel strategy for enforcing criminal tax laws by emphasizing the restitution of lost state revenues instead of resorting to physical penalties such as incarceration. Article 44B paragraph 2a of the HPP Law stipulates that the focus in dealing with tax crime cases should be on recovering the financial losses incurred by the state.

Asset recovery, which involves the return of assets obtained via criminal acts of corruption, provides a crucial part in the eradication of corruption.[5] The effectiveness of eliminating criminal acts of corruption is determined not only by the number of convicted offenders, but also by the degree of success in recovering misappropriated state assets. According to Article 18, paragraph (1), letter b of the PTPK Law, the amount of replacement money shall be equal to the value of the assets acquired by acts of corruption. To ensure the maximum recovery of state losses, the procedure of tracing assets and confiscating them, which are acquired by criminal activities, should be initiated from the investigation stage.

Law enforcement officers frequently encounter challenges while seizing assets (asset forfeiture) derived from illicit activities. The obstacles encompass insufficiency of appropriate legislative instruments, suboptimal international coordination, and a lack of comprehension regarding the techniques employed by law enforcement officials for asset confiscation. Article 39 of the Criminal Procedure Code (KUHAP) governs the regulations on confiscation. Asset seizure is governed by specific legislation, including Law No. 35 of 2009 on Narcotics and Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering. To effectively combat corruption, a comprehensive and pragmatic law enforcement strategy is necessary. The imposition of criminal sanctions in tax and corruption cases should be aimed at restitution of state losses, rather than only inflicting hardship on the wrongdoer. The HPP Law's new strategy prioritizes the recovery of losses in state revenues, aiming to enhance taxpayer compliance and improve the efficiency of law enforcement. International collaboration and the enhancement of law enforcement officers' capabilities to trace and seize assets derived from illegal activities are essential for bolstering efforts to repatriate such funds.

II. LITERATURE REVIEW

A. Asset Tracing

Asset tracing is a method employed by forensic investigators or auditors to gather evidence pertaining to assets acquired through criminal activities such as corruption and money laundering. The objective of this strategy is to regain the state's financial losses caused by these illegal activities. As per the Attorney General's Regulation of the Republic of Indonesia Number 7 of 2020, which pertains to the Second Amendment to the Attorney General's Regulation Number PER-027/A/JA/10/2014, asset tracing refers to a sequence of activities involving the search, request, acquisition, and analysis of information in order to ascertain or reveal the source, existence, and ownership of assets. The objective of asset tracing encompasses various facets, specifically the identification and monitoring of assets associated with criminal acts of corruption and money laundering, both domestically and internationally; unveiling the source of assets to ascertain their acquisition method and whether they were derived from illegal activities; seizing and forfeiting these assets through lawful procedures; and utilizing the proceeds from asset confiscation to recoup state losses. Asset tracing is the process of locating and identifying assets:

1. A variety of investigative techniques, such as forensic financial analysis, examines financial statements, bank records, and other financial documents to identify suspicious money flows;
2. use of information technology such as data analysis software and the Internet to track complex and cross-border financial transactions;
3. International cooperation with law enforcement authorities and international financial institutions to access information that is outside state jurisdiction[6];
4. We are examining official documents such as ownership certificates, contracts, and other legal documents showing asset ownership.

Asset tracking is also crucial in tax collection. This search aims to identify items belonging to taxpayers and taxpayers that can be used to pay off tax debts.[7] The usual steps taken in tracing assets for tax collection

purposes include identifying taxpayers and tax bearers by collecting basic information about them, including financial data and assets owned; asset ownership analysis by examining asset ownership records such as property, vehicles, and investments registered in the taxpayer's name; evaluate the value of assets to ensure that they are sufficient to cover the amount of taxes owed; as well as collection actions by taking legal action to confiscate and sell identified assets to pay off tax debts. Even though it is important, asset tracing faces various challenges, including the complexity of financial structures, which often involve complex and hidden financial structures, limited access to information, especially if assets are located overseas or hidden through secret bank accounts, and international cooperation, which requires cross-border cooperation—strong country and sometimes challenging to achieve, especially if there is no mutual legal assistance agreement. Asset tracing is a crucial component in efforts to recover state losses resulting from criminal acts of corruption and money laundering. This process involves sophisticated investigative techniques and requires close collaboration between various government and international agencies. With the right strategy, asset tracing can be an effective tool in ensuring that the proceeds of crime are returned to the state and provide a deterrent effect to perpetrators of criminal acts.

B. State Losses

As per Law Number 1 of 2004 regarding State Treasury, state or regional losses are specifically described in Article 1, paragraph 22).[8] This paragraph defines state/regional losses as a specific and quantifiable scarcity of funds, assets, and commodities resulting from illegal actions, whether deliberate or careless. This concept highlights the importance of losses being precise and quantifiable in value, as well as originating from illegal activities or negligence. As per the Financial Audit Agency of the Republic of Indonesia (BPK RI) in 1983, state loss refers to a decrease in the wealth of the state resulting from illegal actions or negligence by individuals, as well as unforeseen circumstances and events beyond human control (*force majeure*). *Force majeure* encompasses events that are inevitable, even with the implementation of reasonable measures.

In criminal law, state losses are closely related to criminal acts of corruption and other unlawful acts that harm state or regional finances. This provision provides the basis for law enforcement and accountability in managing state finances.[9] Every action that causes state losses must be accounted for through criminal, civil, or administrative legal mechanisms. Determining state losses also requires a verification and audit process by authorized institutions, such as the BPK or Inspectorate. This process involves collecting and analyzing evidence that indicates a shortage of money, securities, or goods in a certain amount. Once the loss is proven, the perpetrator of the unlawful act or negligence can be subject to sanctions by applicable legal provisions.

In practice, recovering state losses involves legal efforts to demand their return. This can be done through criminal prosecution, by demanding that the perpetrator of the crime pay compensation, or through civil action, by filing a civil lawsuit to obtain compensation for losses. In addition, assets related to state losses can be confiscated or confiscated in some cases based on court decisions that have permanent legal force. Thus, understanding state losses is essential not only for law enforcement and accountability but also to prevent future misuse of state finances. The definition and concept of state losses regulated in legislation provide a strong foundation for maintaining integrity and transparency in the management of state finances.

C. Recovery of State Losses

Loss recovery is a legal process that aims to convert assets found through asset tracing into assets handed over to the winning party in dispute resolution.[10] This process involves various legal steps, including investigations into evidence regarding property ownership, freezing or blocking accounts at banking and other financial institutions, and other blocking actions. According to Article 1 paragraph (22) of Law Number 1 of 2004 concerning State Treasury, state/regional losses are defined as a shortage of money, securities, and goods in real and definite amounts as a result of unlawful acts, whether intentional or negligent. The legal theory supporting the loss recovery process is restitution in integrum, which means restoring the situation as before the loss occurred.

Legal experts, such as Satjipto Rahardjo, believe that the law must function as a tool to achieve social justice, including in terms of recovering state losses. This argument is in line with the views of M. Yahya Harahap, who emphasizes the importance of legal action in returning state assets that criminal acts of corruption or money laundering have harmed.[11] The relevant legal basis in Indonesia for the recovery of losses includes Law Number 31 of 1999, which has been amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, which in Article 18 regulates the payment of compensation money in a maximum amount equal to property obtained from criminal acts of corruption. In addition, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, provides the authority to freeze and confiscate assets originating from criminal acts.

The loss recovery process can be carried out domestically and abroad, depending on the location of the assets that must be returned.[12] Asset tracing and investigation are crucial first steps in this process, where

investigators must collect and analyze evidence related to asset ownership. After evidence is collected, the next step is to freeze or block accounts at financial institutions to prevent perpetrators from moving or losing these assets. Thus, when a money laundering or corruption crime occurs that is detrimental to the state, losses are recovered by returning assets to the state. This action ensures that state losses can be minimized and provides a deterrent effect for the perpetrators of these criminal acts. This process confirms the state's commitment to upholding law and justice and maintaining the integrity of state finances.

III. METHOD

Research on Asset Tracing resulting from Corruption Crimes or Money Laundering Crimes (TPPU) at the Investigation Stage in the Context of Optimizing Loss Recovery was conducted using a normative juridical approach.[13] This method analyzes statutory regulations, legal doctrine, and court decisions that regulate asset tracing and recovery. Primary legal materials include laws related to corruption and money laundering and attorney general regulations regarding asset recovery. Secondary legal materials include legal literature, journals, and expert commentary. The analysis was conducted to identify and interpret the legal provisions governing the asset tracing process and evaluate how these provisions are implemented in practice. Comparative studies are also carried out by examining the legal systems of other countries to find best practices that can be adopted in Indonesia. The research results can provide academic and practical contributions to law enforcement efforts and provide solutions to increase the effectiveness of Indonesia's asset-tracking legal system.

IV. RESULT AND DISCUSSION

Asset tracing is an essential investigative technique to recover state losses from corruption and money laundering crimes (TPPU).[14] This process aims to find and identify assets derived from these crimes so that they can be seized and the state's losses recovered.[15] Asset tracing involves several crucial steps, including asset identification, financial analysis, international cooperation, asset freezing and seizure, and asset recovery. The first step in asset tracing is asset identification, which involves collecting data on assets owned by suspects or defendants of corruption and TPPU crimes. This data includes property, vehicles, bank accounts, investments, and other assets. According to Article 18, paragraph (1) letter b of Law No. 31 of 1999 on the Eradication of Corruption Crimes, "The payment of compensation is at most equal to the assets obtained from the corruption crime." This regulation means that assets obtained from corruption crimes must be replaced with equivalent values, making asset tracing a crucial initial step in determining the replacement value to be paid. This article aims to ensure that the state can reclaim the assets that have been corrupted, thereby optimally recovering state losses. Additionally, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes gives law enforcement authorities the power to freeze and seize assets suspected of originating from crimes. Article 16 of Law No. 8 of 2010 emphasizes that all forms of assets derived from crimes must be traceable, frozen, and seized to ensure that perpetrators cannot enjoy the proceeds of their crimes.

Subsequently, financial analysis involves examining financial records, bank transactions, and other financial documents to trace suspicious money flows. Effective asset tracing requires advanced investigative techniques and solid cross-border cooperation.[5] The investigative techniques used include forensic financial analysis, examination of financial reports, bank records, and other financial documents to identify suspicious money flows. Financial forensics plays a crucial role in unraveling the complexity of financial transactions, which are often deliberately complicated by perpetrators to hide their tracks. Information technology, such as data analysis software and the internet, is crucial in tracing complex and cross-border financial transactions. This technology allows investigators to analyze large amounts of data and identify suspicious patterns. This step provides a detailed picture of transaction patterns and financial relationships that can lead to the identification of hidden assets. However, this process requires particular expertise and access to information, which is often only possible to obtain with international cooperation. Therefore, enhancing the capacity and training of law enforcement officers in financial analysis and increasing cooperation with international financial authorities are essential solutions.

International cooperation is also crucial in asset tracing, especially in tracking assets located abroad. Based on Article 16 of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes, international cooperation is regulated in preventing and eradicating TPPU.[16] This article provides the legal basis for Indonesia to cooperate with other countries to trace and seize assets outside Indonesia's jurisdiction. Corruption and TPPU crimes often involve complex and cross-border financial schemes, challenging asset tracing and recovery efforts. According to Article 1, number 3 of Law No. 31 of 1999 on the Eradication of Corruption Crimes, amended by Law No. 20 of 2001, corruption crimes can be committed by individuals and corporations as legal entities responsible. This regulation means law enforcement can pursue criminal liability from legal entities or corporations involved in corruption crimes.

However, applying this article in practice often faces various obstacles, particularly regarding the complexity of proof and the identification of corporate perpetrators and complex financial schemes. The main

legal issues discussed in this research are the effectiveness of asset tracing and state loss recovery in corruption and TPPU crimes. The critical question is how the existing legal system can be optimized to support efficient and effective asset tracing and recovery efforts. One of the main obstacles is the limitation of existing legal instruments, which often need to be revised to address complex and cross-border financial schemes. For example, although Indonesia has ratified the United Nations Convention Against Corruption (UNCAC), implementing international cooperation in asset tracing and recovery still needs to be improved. The limitation of international cooperation is also a significant obstacle.

In many cases, law enforcement in Indonesia needs help to obtain assistance from other countries in tracing and seizing assets located abroad. This law is due to differences in legal systems, a need for mutual legal assistance treaties (MLAT), and complex bureaucracy. Article 16 of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes regulates international cooperation, but its implementation still faces various challenges. International cooperation with law enforcement authorities and international financial institutions is necessary to access information outside the country's jurisdiction. This cooperation becomes crucial in the context of globalization and increasing cross-border transactions. International instruments such as Mutual Legal Assistance Treaties (MLAT) and cooperation through organizations like the Financial Action Task Force (FATF) provide a framework to assist countries in cross-border asset tracing and recovery. However, applying this cooperation must overcome bureaucratic obstacles and differences in legal systems between countries.

The next step is asset freezing and seizure, which involves taking legal action to freeze or seize identified assets so the suspect cannot transfer or remove them. Article 39 of the Criminal Procedure Code (KUHAP) regulates the seizure of goods in the judicial process, allowing law enforcement to seize evidence related to crimes, including assets derived from corruption and TPPU crimes. After the legal process is completed, the final step is asset recovery. The seized assets are then sold or transferred to the state to recover the losses incurred. Article 18 of Law No. 31 of 1999 stipulates that replacing money through identified, analyzed, and seized assets is the final step in recovering state losses.

One concrete example of this challenge in Indonesia is the major corruption case involving PT Asuransi Jiwasraya. In this case, parties within the company misused investments, involving fictitious investment schemes and manipulation of financial reports. The complexity of this corruption scheme made the asset tracing and recovery process more manageable. Additionally, assets spread across various countries added challenges to law enforcement and international cooperation. In practice, asset tracing and state loss recovery face various shortcomings, such as limited human resources and technology and the need for more understanding among law enforcement officers about asset seizure mechanisms. One solution is to enhance the capacity and competence of law enforcement officers through continuous training and education and to strengthen the existing regulatory framework.

Furthermore, revisions and improvements to regulations related to asset tracing and state loss recovery are necessary to accommodate the evolving modus operandi of corruption and TPPU crimes, which are increasingly complex. Although there is a solid legal basis, implementation in the field still needs improvement. For example, although Article 16 of Law No. 8 of 2010 gives the authority to freeze and seize assets, difficulties often arise due to a lack of coordination among agencies and insufficient understanding of the proper procedures.

Asset tracing and state loss recovery in cases of corruption and TPPU crimes require a comprehensive and integrated approach.[17] It includes enhancing the regulatory framework, increasing the capacity of law enforcement officers, and more effective international cooperation. Thus, asset tracing and state loss recovery efforts are expected to be carried out more efficiently and effectively, significantly impacting the eradication of corruption and TPPU crimes in Indonesia. Solving such issues requires comparative legal studies to provide insights into best practices that can be adapted in Indonesia. Some countries, such as the United States and the United Kingdom, have more advanced asset tracing and state loss recovery systems supported by information technology and more effective international cooperation. Adopting best practices from these countries can help Indonesia strengthen its legal system and increase the effectiveness of asset tracing.

According to the theory of restitution in integrum, which means restoring the state to what it was before the loss occurred, asset tracing is an integral part of efforts to recover state losses.[11] Legal expert Satjipto Rahardjo states that law must function as a tool to achieve social justice, including in recovering state losses. It aligns with M. Yahya Harahap's view, emphasizing the importance of legal action in returning state assets lost due to corruption or TPPU crimes. This theory underscores that the primary goal of law enforcement is to recover the losses experienced by the state due to crimes. Enhancing the capacity of law enforcement officers and optimizing international cooperation is critical to overcoming these obstacles. Continuous training and technical capacity building for law enforcement officers are necessary so they can understand and apply advanced investigative techniques and appropriate legal procedures. Building closer cooperation networks with international authorities through bilateral and multilateral agreements can also help overcome obstacles in cross-border asset tracing and recovery.

Strengthening domestic regulations in asset tracing and recovery efforts is also essential. Revising existing laws to accommodate the latest developments in the modus operandi of corruption and money laundering crimes and applying the latest technology in financial investigations can provide a more robust legal foundation. These efforts must be carried out synergistically between the legislative, executive, and judicial branches to ensure that law enforcement can run effectively and efficiently. Despite the significant challenges in asset tracing and recovery from corruption and money laundering crimes, strategic steps involving enhancing law enforcement capacity, optimization of international cooperation, and regulatory adjustments can provide effective solutions. Thus, the primary goal of law enforcement, namely recovering state losses and preventing future crimes, can be achieved.

V. CONCLUSION

To enhance the implementation of asset seizure for corrupt criminal acts during the investigative phase, it is necessary to undertake a series of strategic measures. Firstly, it is crucial to enhance scientific proficiency uniformly among all relevant parties and law enforcement personnel through comprehensive and sustainable education and training initiatives. This program requires a standardized curriculum to ensure that all parties involved have a shared understanding and sufficient skills in dealing with asset confiscation for criminal acts of corruption. Furthermore, it is crucial to cultivate proficient talents and abilities among law enforcement personnel in order to effectively comprehend and implement established standards. Even in situations with low regulation, law enforcement should nevertheless prioritize fair law enforcement and not use this lack as an excuse. Law enforcement officials must also ensure strict adherence to the procedures outlined in the relevant legal regulations to ensure that law enforcement is conducted impartially and in accordance with existing provisions. Furthermore, it is imperative to establish appropriate legal mechanisms to enhance the regulation of asset confiscation during the investigative phase of corruption-related criminal activities. The establishment of this arrangement is crucial in order to provide a transparent and strong legal foundation for the process of asset confiscation, enabling law enforcement to operate with greater effectiveness and efficiency. By following these three phases in a coordinated manner, it is expected that the confiscation of assets related to corrupt criminal activities during the investigation phase can be maximized, leading to a substantial impact on the fight against corruption in Indonesia.

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