NEW AND EMERGING FORMS OF CORRUPTION IN INDONESIA AND THE EFFECTIVE COUNTERMEASURES: CORRUPTION IN THE STOCK MARKET SECTOR

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I.   INTRODUCTION

A characteristic of a developed country is the existence of an advanced stock market. The stock market refers to an equity market and is one of the important areas of a market economy as it gives firms access to capital while both the existing and potential investors could also be part of a company's ownership through the acquisition of shares.[1] The stock market also provides information about the economic condition of a country, through the composite stock index report. Stock Market development plays a crucial role in the national economy and finance.[2] If the composite stock index shows a declining trend, it indicates that there is an economic crisis in a country. Several countries in Asia, including Indonesia, have been hit by a financial crisis, and Indonesia has been hit by the crisis for a long time due to its fragile economic foundation. Some factors causing the crisis are mismanagement by the company's management and corruption.

Corruption cases are not only an issue for national development in Indonesia but also have been an issue of global development.[3] In Indonesia, corruption was widespread in government at both central and local levels, and no exception to the business sector involving state companies (state-owned enterprises), that have core business in banking, taxation, capital market, trade and industry, commodity futures, or in the monetary and financial sector.

In 2020, the Attorney General Office of the Republic of Indonesia (AGO RI) in this case Deputy Attorney General on Special Crime Affairs[4] investigated corruption at PT Jiwasraya[5] with a state financial loss amount of Rp16.81 trillion (equivalent to USD1.1 billion).[6] Then in 2021, AGO investigated corruption at PT Asabri[7] with a state financial loss amount of Rp22.788 trillion (equivalent to USD1.5 billion).[8]

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[1] Kennedy, Osoro. 2013. *Kenya's Foreign Trade Balance: An Empirical Investigation*. European Scientific Journal July 2013 edition vol.9, No.19 ISSN: 1857 – 7881. School of Economics, University of Nairobi, Kenya.

[2] Hasan Ayaydın, Nuri Baltacı. 2013. *Corruption, Banking Sector, And Stock Market Development: A Panel Data Analysis*, European, Journal of Research on Education.

[3] Zulkipli. 2016. *Legal Policy of Corruption Eradication At State-Owned Enterprises Sector In Indonesia*, International Journal Of Scientific & Technology Research Volume 5, Issue 02, February 2016.

[4] At the Attorney General Office of the Republic of Indonesia, special/specific crimes refer to corruption, tax crimes, customs crimes, economic crimes, and serious human rights violations crimes (genocide and crimes against humanity).

[5] A state-owned enterprise (BUMN) with a core business in the insurance sector.

[6] https://www.bpk.go.id/news/kerugian-negara-kasus-jiwasraya-rp1681-triliun.

[7] Other state-owned enterprises (BUMN) with a core business in the insurance sector.

[8] https://papua.bpk.go.id/bpk-kerugian-negara-dari-kasus-korupsi-asabri-rp-2278-triliun/

The results of the investigation revealed that PT Jiwasraya and PT Asabri invested their funds in shares affiliated with Heru Hidayat and Benny Tjokrosaputro. Then the shares were pumped and dumped at the desired value so that it seemed like PT Jiwasraya and PT Asabri were making a profit. In Indonesia, corruption cases in the capital market are new and emerging forms of corruption. Corruption in the capital market is very complicated because it involves so many parties i.e., brokers, investment management, Indonesia Stock Market, Financial Service Authority, nominees, more than 100 companies affiliated with Heru Hidayat and Benny Tjokrosaputro, and more than 200 bank accounts belonging to suspects and nominees.

II. ATTORNEY GENERAL OFFICE AT A GLANCE

The Attorney General Office of the Republic of Indonesia is the state agency that implements state power, especially in the field of prosecution. The Attorney General is a competent authority in law enforcement and justice, elected by and responsible to the President.

The Attorney General Office has wider core duties and powers, from the investigation of special crimes up to the execution of court sentences and criminal decisions. These are added by the duties to upkeep public order and stability, and supervision of religious and traditional beliefs which might be a threat to the state and public interest.

With numerous duties applied for the legal field, the AGO as one of the law enforcement authorities is demanded to perform more roles in law enforcement that are free from corruption, collusion, and nepotism, the upholding of legal supremacy, protecting the public interest, as well as the preservation of human rights. Referring to Legislation Number 16/2014 and Number 11/2021, the AGO as a government institution exercising the prosecutorial power of the state must be independent in performing the functions, duties, and powers, unbounded to any influence, either from the governing power or other parties.

Besides a role in a criminal case, prosecutors also have other roles in the Civil Code and the State Administration, which may represent the Government in a Civil Case and the State Administration for the State Attorney Prosecutor.

III. CORRUPTION CASES IN THE LAST TEN YEARS

The Government of Indonesia has implemented strategies and approaches to combating corruption, by Law Number 31/1999 on Eradication of Corruption, as amended with Law Number 20/2001 on the Amendment of Law Number 31/1999 on Eradication of Corruption. The law regulates seven types of corruption, i.e.:

- unlawful acts that cause state financial or economic loss;
  The formulation of the element of "*state financial losses*" in the provision has the consequence that there should be a state financial loss caused by an unlawful act or abuse of power.
- bribery;
- embezzlement;
- extortion;
- fraud;
- conflict of interest; and
- gratification.

In Indonesia, three institutions have the authority to investigate corruption cases, i.e., the Attorney General's Office, the Indonesian National Police, and the Corruption Eradication Commission (KPK-RI).

In the last ten years, many corruption cases have been revealed by these three institutions. Most cases are corruption in the procurement of goods and services sector. Based on the performance report of the Prosecutor's Office of the Republic of Indonesia in 2021, the investigation stage is 1,856 cases, the prosecution stage is 1,633. Statistically, when compared to the previous years, the number of cases handled tends to increase, with details as follows:

Table 1. Corruption Cases Handled by the INP,[9] the AGO-RI, and the Corruption Eradication Commission (KPK-RI) from 2012-2021

No	Period	INP & AGO RI	KPK-RI[10]
1	2	3	4
1	2021	1.633[11]	122[12]
2	2020	1.275[13]	81[14]
3	2019	1.596[15]	234[16]
4	2018	1.803[17]	151[18]
5	2017	1.918[19]	103[20]
6	2016	2.434[21]	76[22]
7	2015	2.446[23]	95[24]
8	2014	2.225[25]	45[26]
9	2013	2.013[27]	73[28]
10	2012	1.511[29]	45[30]

[9] Indonesian National Police (Polri).
[10] Corruption Eradication Commission of the Republic of Indonesia.
[11] Secretariat of Deputy Attorney General on Special Crime Affair, (2022) *Recapitulation of Corruption Cases in 2021*, Jakarta.
[12] KPK-RI, (2022), 2021Annual Report, p. 40.
[13] Ibid.
[14] KPK-RI, (2021), 2020 Annual Report, p. 50.
[15] Deputy Attorney General on Special Crime Affair, (2022), *Recapitulation of Corruption Cases in 2021*, Jakarta.
[16] KPK-RI, (2020), 2019 Annual Report, p. 64.
[17] Attorney General Office, (2019), *2018 Annual Report*, Jakarta: AGO, p. 47.
[18] KPK-RI, 2018 *Annual Report*, p. 73.
[19] Ibid.
[20] Ibid.
[21] Attorney General Office, (2017), *2016 Annual Report*, Jakarta: AGO, p. 64.
[22] Ibid.
[23] Attorney General Office, (2016), *2015 Annual Report*, Jakarta: AGO, p. 58.
[24] KPK-RI, *2015 Annual Report*, Jakarta: KPK-RI, p. 72-102.
[25] Attorney General Office, (2015), 2014 *Annual Report*, Jakarta: AGO, p. 53.
[26] KPK-RI, 2014 *Annual Report*, Jakarta: KPK-RI, p. 41.
[27] Attorney General Office, (2014), 2013 *Annual Report*, Jakarta: AGO, p. 49.
[28] KPK-RI, 2013 Annual Report, Jakarta: KPK-RI, p. 59-83.
[29] Attorney General Office, (2013), *2012 Annual Report*, Jakarta: AGO, p. 47.
[30] KPK-RI, 2011 *Annual Report*, p. 64-72.

Table 2.   Recapitulation of Asset Recovery in 2012-2021[31]

No	Period	Asset Recovery by AGO		Asset Recovery by KPK-RI	
		Trillion Rupiah	Million USD (1USD~ Rp15,247)	Billion Rupiah	Million USD (1USD~ Rp15,247)
1	2	3	4	5	6
1	2021	22.135	1,453	249.6	16.4
2	2020	19.563	1,284	122	8
3	2019	2.237	147	330.63	21.7
4	2018	0.843	55.3	528.12	34.6
5	2017	0.734	48.2	315.15	20.7
6	2016	0.579	37.9	512.3	33.6
7	2015	1.347	88.4	211.92	13.9
8	2014	1.614	105.8	112.7	7.4
9	2013	0.607	39.8	260.62	17.1
10	2012	0.404	26.5	146.38	9.6

IV. CORRUPTION IN THE STOCK MARKET SECTOR

The Deputy Attorney General on Special Crime Affairs focuses on corruption with a large scale of state financial losses and complex case corruption that is difficult to prove. As per the Corruption Crime Law, Indonesia categorizes corruption as a crime that is challenging to prove, with the following indicators:

a.   cross-sector;
b.   conducted using advanced technology; or
c.   committed by the suspect/defendant as a state administrator.

The explanation of Article 27 of the Corruption Crimes Law states that those categories include: corruption in the banking sector, taxation, capital market, trade and industry, commodity futures, or in the monetary and financial sector.

In the last ten years, AGO-RI has shown a significant role in dismantling and proving cases that are categorized as difficult. Cases categorized as complex cases include the following:

1.   the perpetrator is a high-ranking public official;
2.   the perpetrator is from the private sector (corporations and other businesses);
3.   using a pattern of financial transactions that are complicated;
4.   capital market and banking sector;
5.   export/import of commodities needed by the public, especially during periods of crisis;
6.   enormous state losses.

In handling complex cases, the Investigators and Prosecutors of the AGO no longer perform a simple proof mechanism but have also optimized scientific evidence, including electronic

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[31] Processed from the Annual Reports of the Attorney General Office of the Republic of Indonesia and Corruption Eradication Commission (KPK-RI) from 2012-2021.

evidence. Forensic analysis of electronic evidence is one of the important sources of information used in investigations, including interception technology.

Several other methods are used in the investigation of trading on the stock market, investigation of companies that are nominees who are facilitators of corruption, and concealment of corruption proceeds.

These "high profile" cases also involve foreign jurisdictions in concealing the proceeds of corruption. For example, in the Jiwasraya corruption case, the Investigator utilized electronic evidence to prove the corruption, by analysing electronic data from computers, mobile phones and other electronic devices.

A. Summary of the Jiwasraya Corruption Case

Jiwasraya's finances, which have been worsened since 2008, were used by the suspects (Benny Tjokrosaputro, Heru Hidayat, and friends) to benefit themselves by pretending to have saved Jiwasraya's finances. First, Heru Prasetyo, Finance Director of Jiwasraya, made an agreement with Heru Hidayat and Benny Trokrosaputro, that Jiwasraya would place its funds in shares owned by Heru Hidayat and Benny Tjokrosaputro. Jiwasraya bought shares owned by Benny and Heru Hidayat without proper analysis. The shares purchased are third-liner shares which are not liquid and are "pump and dump" shares. The shares were pumped and dumped for window dressing so that Jiwasraya's financial statements seemed to be making a profit.

Because the composition of shares affiliated with Heru Hidayat and Benny Tjokro in the Jiwasraya portfolio exceeded the regulatory limit, then Hery Prasetyo made an agreement with 13 Investment Managers to create a special Mutual Fund (Reksa Dana) for Jiwasraya only. The mutual funds (reksa dana) are not managed professionally by Investment Management but are controlled by Benny Tjokro and Heru Hidayat through Joko Hartono Tirto. Underlying the Mutual Funds (Reksa Dana) are also shares owned by Benny Tjokro and Heru Hidayat. The shares as an underlying Mutual Fund are also third-liner shares which also are not liquid and are "pump and dump" shares.

The consequences of the actions of the suspects have caused a state financial loss of Rp16.81 trillion (equivalent to USD1.1 billion).

B. Money-Laundering

State financial losses amounting to Rp16.8 trillion (equivalent to USD1.1 billion) were received by Benny Tjokrosaputro and Heru Hidayat, through the accounts in the names of Benny Tjokrosaputro and Heru Hidayat and on behalf of several nominees. For example, from 26 November to 22 December 2015, Benny Tjokrosaputro received payment of the Medium Term Note (MTN) of PT Armidian Karyatama and PT Hanson International, in the amount of Rp880 billion. Furthermore, Benny Tjokrosaputro hid or disguised the origin of the funds, used the proceeds to purchase property in Jakarta, Bekasi, Maja, Lebak, Jogjakarta, Singapore, New Zealand, and also used the proceeds to purchase shares in the name of another person (nominee) and companies.

The money-laundering carried out by Benny Tjokrosaputro and Heru Hidayat involved more than 100 companies affiliated with Heru Hidayat and Benny Tjokrosaputro, more than 200 bank accounts belonging to suspects and nominees.

C. Asset Recovery

Benny Tjokrosaputra and Heru Hidayat have testified at trial that they purchased assets in Singapore and New Zealand. Accordingly, AGO RI pursued international cooperation to recover the proceeds of crime.

To recover the state's financial losses, the AGO has made efforts to request cooperation with several regional countries to assist the Government of Indonesia in the forfeiture of assets by sending requests for mutual legal assistance (MLA). The AGO also cooperates with New Zealand in asset recovery in the country through the informal asset recovery network, ARIN-AP.

Regarding asset recovery, Indonesia issued Law No. 8/2010 on Anti-Money Laundering, which provides more opportunities to investigate with a "follow the money" approach. This law has been implemented in Indonesia as an instrument to recover assets from the perpetrators of corruption. With the Anti-Money Laundering Law, crime proceeds can be recovered and controlled by the state. These have been done by forfeiture and prosecution so that the assets can be recovered by the State, following the asset recovery strategy of UNCAC.

AGO RI has investigated and prosecuted the Jiwasraya corruption for 5 (five) months, from 27 December 2019 to 11 May 2020. In the forfeiture of assets, Investigators and Prosecutors seized assets of the suspects worth Rp18.5 trillion (equivalent to USD1.17 billion) in the form of land, buildings, apartments, hotels, factories, coal mining, cash, mutual funds, insurance policies, and securities/shares as well as companies.

V. CHALLENGES OF ASSET TRACING AND ASSET RECOVERY

Modern communication tools as well as the easy mobility of assets and funds allow individual perpetrators to transfer their illicit proceeds around the globe. So that requires very close cooperation on a supranational level, especially in Asia and the Far East. Secondly, laws in the relevant jurisdictions need to provide powerful tools to freeze assets, which are potentially proceeds of corruption.

The international community has recognized the importance of asset tracing and recovery, i.e., *First*, the United Nations Convention Against Corruption considers the return of stolen assets one of its fundamental principles, and requires its signatories to provide a factual and legal framework for the effective cross-border recovery of assets. *Secondly*, the European Union has introduced several legal instruments aimed at simplifying asset recovery and tracing – considered to be a strategic priority – across the jurisdictions of its member states.[32]

In the Jiwasraya corruption case, until now after the final judgment, not a single asset from overseas has been recovered by AGO RI. The Government of Indonesia has requested assistance through an MLA request to Singapore for the freezing and returning of the following assets:

1. Forfeiture of 28 apartment units;

2. Freezing of 7 bank accounts.

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[32] Knoetzl, B. and Marsch, P. 2016. Article: Challenges of Asset Tracing and Asset Recovery. <www.whoswholegal.com>

Based on court sentences/criminal decisions, all assets indicated above stemmed from corruption. Hence, AGO RI requested help from Singapore to freeze and forfeit all these assets. However, until now, no agreement has been met to obtain the MLA agreement approval.

Therefore, through this meeting, AGO RI hopes to develop solutions with other countries in the region to provide practical steps for each country facing obstacles in enforcing corruption laws overseas. We hope to get assistance in the form of a quick reaction that is certainly beneficial for asset recovery, as envisioned by UNCAC.

VI. COUNTERMEASURES

A. Imposing Maximum Penalties in Corruption Cases

According to the Supreme Court's decision, Heru Hidayat and Benny Tjokrosaputro were sentenced to life imprisonment, as well as compensation for state financial losses of Rp 10.78 trillion (Heru Hidayat) and Rp6,078 trillion (Benny Tjokro). Meanwhile, Hary Prasetyo, Hendrisman Rahim, and Joko Hartono Tirto were sentenced to 20 years in prison. Syahmirwan was sentenced to 18 years in prison.

This is an historical judgment in the effort to eradicate corruption in Indonesia and proves that the Attorney General's Office of the Republic of Indonesia is very serious about eradicating mega corruption.

B. Forfeiture of All Proceeds of Crime and Criminal Instruments

In the Jiwasraya corruption case, investigators and prosecutors carried out asset tracing and recovery with an estimated value of around Rp18.5 trillion in the form of property, cash, mutual funds, insurance policies, and securities/shares as well as companies.

C. Implementation of Corruption Impact Assessment

The Deputy Attorney General on Special Crime Affairs is committed to implementing the Corruption Impact Assessment as a key mechanism to identify and remove corruption-causing factors in legislation and supporting institutional arrangements.

The corruption impact assessment is designed to examine, evaluate and remove, where appropriate, corruption-causing factors in laws, regulations, and other legal instruments.

The Guidelines are designed to assist government agencies with identifying corruption-causing factors in legislation, regulations, and other legal instruments and the supporting institutional arrangements, and to develop and implement appropriate strategies to remove identified corruption-causing factors.

VII. CONCLUSION

From the above description, the following conclusions can be conveyed:

1. In the last ten years, AGO has revealed many cases of corruption, and new and emerging forms is corruption are arising in the stock market sector;

2. Corruption in the stock market sector is a "high profile" and very complicated case because it involves so many parties, i.e., brokers, investment management, nominees,

more than 100 companies affiliated with Heru Hidayat and Benny Tjokrosaputro, and more than 200 bank accounts belonging to suspects and nominees;

3. Effective countermeasures include the imposition of maximum penalties, forfeiture of assets, and the application of the Corruption Impact Assessment (CIA); and

4. The effectiveness of asset tracing and recovery will depend on the degree of cooperation between countries, especially in Asia and the Far East.

VIII.   RECOMMENDATION

AGO-RI supports regional solutions to provide practical steps for each country facing obstacles in enforcing corruption laws overseas. The Deputy Attorney General of Special Crime Affairs hopes to get assistance in the form of a quick response that is certainly beneficial for asset recovery, as envisioned by UNCAC.

IX. CLOSING

The work of AGO RI in dealing with corruption cases has increasingly gained trust and appreciation from the public. This is shown by the results of the 2022 national survey regarding the Public Evaluation of Government in the field of Economy, Politics, Law Enforcement, and Corruption Reduction, which shows an increase in public trust toward AGO RI.

Previously on April 2022, AGO RI placed eighth on the survey. The institution has now climbed to fourth place in July 2022 with 74.5 per cent. This is a result of our success in handling and resolving massive and complex cases, and resulting in significant state loss, and even impact on the state economy. We managed to handle the Jiwasraya case with a state financial loss totalling Rp16.81 trillion (equivalent to USD1.1 billion), the Asabri case with Rp22.788 trillion (equivalent to USD1.5 billion), and a corruption case committed by a public administrator resulting in the rarity of cooking oil in a period of crisis with current calculated loss of 20 trillion rupiahs, and Duta Palma which caused state financial losses and state economic losses of around Rp78 trillion (equivalent to USD5 billion), both of which are still being tried.

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