
PARTICIPANTS' PAPERS

EFFECTIVE MEASURES IN TRACING AND RECOVERING PROCEEDS OF CORRUPTION USING CASH TRANSACTION MODES AND THIRD PARTY INVOLVEMENT

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I. INTRODUCTION

Corruption in Indonesia is regulated under Law no. 31 of 1999 on the Eradication of Corruption as amended by Law no. 20 of 2001; corruption in Indonesia is classified as follows:

- 1) Corruption-related losses to the state;
- 2) Corruption related to bribery;
- 3) Corruption related to fraud in incumbency;
- 4) Corruption associated with the act of extortion;
- 5) Corruption related to skullduggery/manipulation;
- 6) Corruption related to conflicts of interest in procurement;
- 7) Corruption associated with gratification;
- 8) Other criminal acts related to corruption (for example hindering the investigation, giving false testimony, etc.).

All countries have similar perceptions on corruption, and it is classified as an extraordinary crime done by highly educated and intellectual people. The more a country increases its firmness in implementing its corruption provisions and punishes the perpetrators, the more the perpetrators will also increase their level of sophistication to anticipate the government's efforts to combat corruption. The unclear rules or even the absence of rules have become a legal loophole that perpetrators use to avoid investigations and prosecutions. It forces the law enforcement agencies to utilize existing rules while hoping the legislative branch will enhance the rules that are not clear, or even create a new, more progressive set of laws or regulations to optimize their performance.

The magnitude and danger of corruption and its consequences have encouraged many countries in the world to create a concept of deterrence against corruption perpetrators where the perpetrators are not punished enough with only imprisonment, but the corruption proceeds that have been enjoyed by them also have to be forfeited and returned to the state to be used entirely for the general welfare. This is because what the criminals took was originally intended for the people, so it is only fair to be forfeited and returned to the people. And not only are the assets recovered, but fines are being imposed upon the perpetrators, which is what Indonesia has done.

The passion to severely condemn corruption perpetrators and recover their stolen assets has lately become a discourse that continues to be encouraged to be realized in our country. Utilizing today's existing regulations, we, at CEC, for the last two years have done investigation and charged indictments against money laundering for several cases with indications of concealment and disguised proceeds of corruption. This was done in order to recover proceeds of crime that the perpetrators have

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received and enjoyed on behalf of the state. To achieve that goal, in Indonesia, we already have legislation governing money laundering, and we are currently making draft laws related to the deprivation of assets and proceeds of crime.

II. MAIN DISCUSSION

A. Perpetrators, Corruption Modes and the Proceeds of Corruption.

In Indonesia, corruption is committed by the Board of Legislative Members, Executives (central government officials, regional heads at provincial and district levels), and law enforcers such as police officers, prosecutors, judges and even court clerks can utilize their authorities to engage in corruption to benefit from their positions. They engage in corruption because there are interested parties involved, such as private companies, and in practice the corruption is jointly planned and agreed to.

Corruption in the legislature is done in various ways. Legitimate authority, such as the authority to make laws, budgeting and provide government oversight, gives Members of Parliament a chance to pressure the government to fulfill their own desires. In Indonesia, members of the House of Representatives (HoR/Parliament) are usually affiliated with particular companies who are used to join the procurement process/auctions for projects conducted by government agencies. Members of Parliament begin the process of budgeting by providing corrections and additions to the budget and to proposed projects submitted by government agencies. The budgeting process is used by Members of Parliament to direct the types of projects and the size of the budget that will be given to the agency after adjusting for the wishes of Members of Parliament who had plotted together with the companies affiliated with them. When budgeting is completed and approved, the company is subsequently approached by the leaders and procurement officials of government agencies that will implement the project which has been set by Members of Parliament. That approach means that the company will win the procurement process/auction in a way that appears as if the process of procurement is done properly and according to proper procedures. These companies have even set up other companies which act as competitors in the auction process. In fact, the competitor company has been paid off or is just a company on paper where legally permissible, but actually the company has no offices, employees, and no business activity and no financial statements. The companies are just established to manipulate the auction process.

After the company is awarded the project, the company provides a fee between 18% to 22% of the budget of the project obtained by the company to be distributed to interested parties such as ministers, procurement officials and Members of Parliament who have assisted in budgeting, so companies that have projects with budget values in accordance with their wishes are entrusted to Members of Parliament. Usually the fee for members of Parliament is allocated at around 5% into 7% of the project budget, even for the Members of Parliament who have been paid before the auction begins and the budget is approved. Otherwise, of course, the company also wants to have profit from the project. Companies usually take profits of around 20%, so that the project budget is actually only about 58% of the value of the overall project budget; 42% has been used for fees given to Members of Parliament, procurement officials and corporate profits. Consequently, the project is not carried out in accordance with the specifications because the budget has been cut for fees to related parties.

Corruption in Indonesia is also committed by several regional leaders, the Governor and the Regents, for example, in procurements conducted by local government agencies with nearly the same mode as the mode of corruption as described above. Then there are some regional leaders who engage in corruption by diverting central government grants, such as funds for the construction of roads, schools, ports, etc. The permitting process is also one of the ways that corruption is committed by the Regional Head, for example, licensing submitted by a company that will invest, such as companies that will develop an area for housing, cemeteries, shopping centers or for other purposes. The permit applications will be granted if the companies have offered money to regional leaders or officials.

Several law enforcement officers are still tempted to engage in corruption, ranging from police, prosecutors, judges, and even court clerks are also entangled in corruption. Corruption committed by law enforcement officials is mostly done related to the handling of the case. Corruption by law enforcement officers occurs through the intermediary of a lawyer who represents his clients with the aim of seeking penalties as low as possible or not linking the case with others.

In the field of taxation, some officials from the tax office commit corruption by asking for some money and facilities of the taxpayer with the purpose to minimize the taxes charged to the company or to get reimbursement for excess taxes that have been paid, though that reimbursement should not be granted because the financial statements have been manipulated by the company in cooperation with officials from the tax office.

Perpetrators of corruption in Indonesia receive the proceeds of corruption by cash and through a third party. This mode is quite difficult for us as law enforcement officers to discover and to associate the parties with the proceeds of corruption. Then, the proceeds of corruption are used by the perpetrators to buy assets such as cars, land and houses on behalf of a third party or his family. In our country, the number of large cash transactions for the purchase of these assets is still possible because until now there is no rule that expressly restricts cash transactions for the purchase of assets of a specific amount; however, it is currently being discussed to make such rules.

One of the latest modes is where the proceeds of corruption are saved in an insurance company. The perpetrator asks a third party to purchase many insurance policies on behalf of a third party, but those who enjoy the benefits of the insurance are the perpetrators and their families. The type of insurance policies purchased consist of education insurance, life insurance and health insurance. Another recent mode is where the perpetrators save the proceeds of corruption by paying the money toward his credit card bills in an amount that exceeds the balance due, so the perpetrators can easily save and spend the money deposited on several credit cards freely without the knowledge of law enforcement officers.

B. Identification and Recovering Proceeds of Corruption Concealed and Camouflaged through Third Parties or Their Families by the Cash Transaction Method.

In 2006, Indonesia enacted the Law of the Republic of Indonesia Number 7 of 2006 on the Ratification of the United Nations Convention against Corruption, 2003. In general, the law explained the significance of this for the application of UNCAC in Indonesia, namely:

- The ratification of this Convention is a national commitment to improve the image of Indonesia in the international political arena.
- Increasing international cooperation particularly in the tracing, freezing, confiscation and recovery of assets and proceeds of corruption that are stationed overseas;
- Improving international cooperation in realizing good governance;
- Improving international cooperation in the implementation of treaties on extradition, mutual legal assistance, delivery of inmates, transfer of criminal proceedings, and law enforcement cooperation;
- Encouraging the establishment of technical cooperation and exchange of information in the prevention and eradication of corruption, economic development cooperation and technical assistance including bilateral, regional, and multilateral; and
- Harmonization of national legislation in the prevention and eradication of corruption in accordance with this Convention.

Article 31 of UNCAC has been determined regarding freezing, seizure, and confiscation which explicitly states that “Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of proceeds of corruption.”

Long before the existence of UNCAC, in 1999 the State of Indonesia enacted Law no. 31, 1999. Article 37, paragraph (3) provides that “*the defendant is obliged to provide information about all of their possessions and belongings wife or husband, children, and property of any person or corporation who allegedly had links with the case.*” Further Article 37, paragraph (4) states: “*In case the defendant can not [sic] prove about wealth disproportionate to his income or source of additional wealth, then the information can be used to strengthen existing evidence that the defendant has committed the crime of*

corruption".

In Law no. 20 of 2001 on the amendment of Law no. 31 of 1999 on eradication of corruption, Article 38 B requires persons accused of corruption to prove the contrary for his assets which has not been charged but are also thought to have come from corruption. If the person suspected of corruption cannot prove that his or her wealth was legitimately acquired, then the assets are deemed to be proceeds of corruption and the judge can decide to seize the property for the state. A claim for confiscation of assets is filed by the prosecutor when the prosecutor reads the criminal charges in court; the defendant is subsequently given the opportunity to defend, and then the judge must decide the status of those assets that the prosecutors seek to confiscate. Article 38 B states that if, after the judge's decision becomes binding, there are still unknown assets believed to have also come from corruption that have not been confiscated, then the state can perform a civil lawsuit against the convicted and or their heirs.

In Indonesia, state officials are required to report their wealth to the CEC periodically or when they get a promotion. State officials are the officials who perform the functions of the executive, legislative, and judicial branches, etc. Perpetrators of corruption in Indonesia are mostly state officials, and the reports of the perpetrator wealth are used for the early identification and tracing of proceeds of corruption. This is done by examining the reported assets and comparing them to the suspect's actual assets because they will not report their assets obtained from illicit activities. Starting from here the asset tracing team in our office works closely with investigators and prosecutors to uncover the proceeds of corruption.

Then a search of the perpetrator's house and other places suspected of being used to hide documents related to his assets will be key to the success of identifying, tracing and confiscation of proceeds of corruption. Although the assets of the perpetrators may be held by or in the name of a third party, the perpetrators usually still keep the documents related to their assets. After the documents are found, then the investigator analyses to seek association with the perpetrator to prove that the asset belongs to the perpetrator and is the proceeds of corruption.

In Indonesia, money laundering has been regulated since 2002 and was last updated and refined in Law no. 8 of 2010 on AML. Currently, Indonesia is also making a draft law on deprivation of assets derived from criminal acts. The general explanation for the draft law is that the State needs the power to deprive assets for the development of the legal system because of the increasing sophistication of the perpetrators who conceal and disguise the proceeds of crime. The legal system developed both through litigation and non-litigation as an effort to seize all proceeds of crime. Seizure and confiscation of proceeds of crime is carried out by criminal law enforcement procedure, but in line with the enforcement of the anti-money-laundering regime, which has been widely applied in various countries by a system of deprivation through the procedures of a civil suit against the object (*forfeiture in rem*), as well as through appropriation system administration procedures (*administrative forfeiture*). Based on the facts of the cases that we have handled, efforts to conceal and disguise the proceeds of corruption are becoming more sophisticated and difficult, so that deprivation of assets and proceeds of corruption is not complete. Another effort in our country is a plan to place restrictions on cash transactions, with the aim that certain transactions must be through financial institutions, and thus are recorded and easy to trace, although the transaction was made in cash and by third parties.

III. CONCLUSION

A. Perpetrators of corruption can be derived from legislative, executive and judicial officials. Currently, perpetrators of corruption have a variety of ways to conceal and disguise the proceeds of crime by purchase of their assets in cash and on behalf of third parties. Other modes used by perpetrators to hide the proceeds of corruption, include purchasing a number of insurance policies on behalf of a third party, where the perpetrator and their families are the ones who enjoy the benefits. There are also perpetrators who keep the proceeds of corruption by overpaying credit card bills; they accumulate money on the credit card account, and subsequent perpetrators spend the saved money without being known by the financial supervisory authority and law enforcement officers.

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B. The early identification of asset tracing is done by examining and analysing the wealth reports of the perpetrators, i.e., the reported assets compared to actual assets. This is because they will not report their assets obtained from the illicit income. Then a search of the perpetrator's house and other places suspected of being used to hide documents or assets becomes an effective step to trace the proceeds of corruption. Furthermore, regulations on confiscation of assets and restrictions on cash transactions should be made to maximize the recovery of the proceeds of corruption.