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# Asset Recovery in Corruption Crimes

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Abstract

Efforts to return stolen state assets (stolen asset recovery) through criminal acts of corruption (TIPIKOR) tend not to be easy to carry out. Corruption perpetrators have extraordinarily wide and difficult access to hide or launder money from the proceeds of their criminal acts of corruption. The problem becomes increasingly difficult for recovery efforts because the haven for the proceeds of crime extends beyond the borders of the country where the criminal act of corruption was committed. This research aims to determine the mechanism for returning assets in criminal acts of corruption through criminal channels. The type of research used is normative research and the data collection technique is library research. The research results show that the mechanism for returning assets in criminal acts of corruption through criminal channels has four stages: tracking assets, freezing or confiscating assets, confiscating assets, and returning and handing over assets to the victim's country.

Keywords: TIPIKOR, return asset, recovery

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## Introduction

Criminal acts with economic motives that were initially conventional, such as theft, fraud, and embezzlement, have now become increasingly complex because they involve educated perpetrators and are often transnational or cross-border. Apart from generating a lot of wealth, this type of crime also involves a lot of funds to finance the equipment, facilities, and infrastructure that support the implementation of the crime. With this kind of complexity, the handling of criminal acts becomes increasingly complicated for law enforcement to handle. As we already understand, the main goal of perpetrators of criminal acts with economic motives is to obtain as much wealth as possible. Logically, wealth for criminals is the blood that feeds criminal acts, so the most effective way to eradicate and prevent criminal acts with economic motives is to kill the life of the crime by confiscating the proceeds and instruments of the criminal act. This argument certainly does not minimize the meaning of corporal punishment for perpetrators of criminal acts. However, it must be acknowledged that simply imposing corporal punishment has proven to have no deterrent effect on perpetrators of criminal acts.

The criminal act of corruption is one part of a special criminal act, in addition to having certain specifications that are different from general criminal acts, namely by deviation from formal criminal law or procedural law. Rampant acts of corruption are a form of resistance to the law carried out by some communities or a small number of certain members of society who take refuge behind power or authority for their interests by harming the State's finances. Law enforcement and recovery of criminal assets are two sides of the coin that cannot be separated in eradicating criminal acts, especially corruption. As a crime that is based on calculations or calculations, managing and securing the proceeds of crime is a basic need for white-collar crime perpetrators. It is called that because this crime was committed by intellectuals who were highly educated and well-off, in other words, this crime was committed by someone who was very honorable and had a high social status in his work.

In its procedures regarding legal regulations in Indonesia regarding the eradication of corruption, it prioritizes sanctions for those who commit criminal acts of corruption, rather than pursuing or prioritizing the return of assets from perpetrators of criminal acts of corruption. So, to handle cases of criminal acts of corruption, maximum handling is required in carrying out the return of State assets, both based on applicable laws and regulations and law enforcement officials who must act as fairly as possible so that a deterrent effect can be created on perpetrators of criminal acts of corruption and their return can be saved. State finances for losses that have occurred. Confiscating and confiscating the proceeds and instruments of criminal acts from the perpetrators of criminal acts not only transfers several assets from the perpetrators of crimes to the community but will also increase the possibility of society realizing its common goal, namely the establishment of justice and prosperity for all members of society. The 1945 Constitution of the Republic of Indonesia article 28D paragraph 1 states that every person has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. Meanwhile, article 28H (Howard-Hassmann, 2013); (Jacobs, 2010) states that everyone has the right to own private property rights and these property rights may not be taken over arbitrarily by anyone.

The Indonesian government has ratified several United Nations conventions, including the International Convention on the Eradication of the Financing of Terrorism and the Convention and the Convention against Corruption. The Convention regulates, among other things, provisions relating to efforts to identify, detect, and freeze as well as confiscate the proceeds and instruments of criminal acts. As a consequence of this ratification, the Indonesian government must adapt existing statutory provisions to the provisions in the convention (Wibawa et al., 2023); (Widayanti et al., 2022). Forms of crime have developed with the existence of forms of organized crime (Di Nicola, 2022); (Van Uhm & Nijman, 2022). Apart from involving a group of people who have expertise in carrying out criminal acts, this form of crime is also supported by various criminal instruments so that they can collect very large amounts of criminal proceeds. Efforts to cripple this form of crime will only be effective if the perpetrators of the crime are found and punished and the proceeds and instruments of the crime are confiscated and confiscated by the state.

In Indonesia, several criminal provisions regulate the possibility of confiscating and confiscating the proceeds and instruments of criminal acts. However, based on these provisions, confiscation can only be carried out after the perpetrator of the criminal act has been legally and convincingly proven in court to have committed the criminal act (Kholik et al., 2024); (Meneghini & Calderoni, 2022) Various possibilities could prevent the completion of such a prosecution mechanism, for example, the failure to find or die or the existence of other obstacles that result in the perpetrator of a criminal act not being able to undergo examination in court or insufficient evidence being found to file a lawsuit in court and other reasons.

Developments in law in the international world show that confiscation and forfeiture of the proceeds and instruments of criminal acts are an important part of efforts to reduce crime rates (Mamak et al., 2022). Apart from uncovering criminal acts and finding the perpetrators, confiscation, and confiscation of the proceeds and instruments of criminal acts is a major part of the investigation, investigation, and prosecution of criminal acts. In addition, to strengthen existing criminal provisions, several countries adopted provisions derived from civil provisions to demand the return of criminal proceeds. Civil prosecution can be carried out separately from criminal prosecution of perpetrators of criminal acts. Based on existing experience, the application of this approach in several countries has proven effective in increasing the value of criminal proceeds that can be confiscated.

The criminal act of corruption is one part of the special criminal acts (ius singular, ius speciale, bijzonder strafrecht) which are regulated in the provisions of positive law (ius constituted) in Indonesia, regulated in Law no. 31 of 1999 as amended by Law no. 21 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes or commonly referred to as (UUPTK). The term criminal act is a technical juridical term from the Dutch language "Stafbar feit" or "Delict" with the meaning of an act that is prohibited by criminal law regulations and can be subject to criminal sanctions for anyone who violates it. In the criminal law literature, acts that may be punished, as well as criminal violations. In this case, the term corruption comes from the Latin Corruptio or Corruptus. It is further stated that Corruptio comes from the word Corrumpere, an older Latin word. This term from Latin has been passed down to many European languages, such as English (Corruption, Corrupt), French (Corruption), and Dutch (Corruption). The word corruption has the following meaning:

a. Crime, corruption, bribery, immorality, depravity and dishonesty.
b. Bad acts such as embezzlement of money, and receiving money.
c. Actions that in reality give rise to bad conditions, evil and disgraceful behavior, bribery, and other forms of dishonesty.

Actions that are extraordinary crimes that can be classified as corruption according to the Corruption Eradication Commission based on Law no. 31 of 1999 jo. Law no. 20 of 2001 concerning the Eradication of Corruption is as follows:

1) State Losses (Articles 2 and 3).
2) Bribery (Article 5 Paragraph (1) letters a and b; Article 12 letters a, b, c and d; Article 13).
3) Embezzlement in office (Article 8, Article 9, Article 10 letters a, b and c);
4) Extortion (Article 12 letters e, f, and g).
5) Fraudulent acts (Article 7 paragraph (1) letters a, b, c, and d; Article 7 paragraph (2); and Article 12 letter b).
6) Conflict of interest in procurement (Article 12 letter i).
7) Gratuities (Article 12 B in conjunction with Article 12 C)

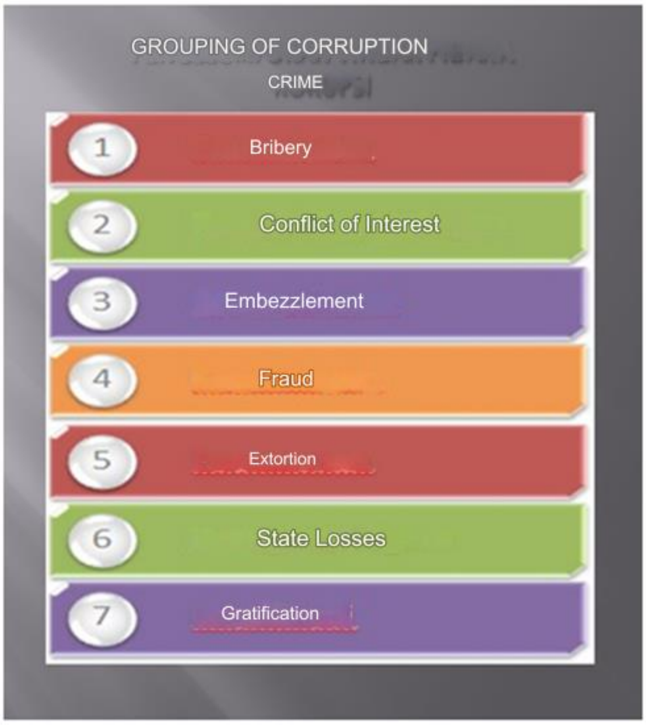


Figure 1. TIPOKOR semester V teaching materials, Faculty of Law, Universitas Sawerigading

In his book, Ade Mahmud states that corruption, which is a white-collar crime, has its characteristics, including the following:
1) The process of obtaining assets fraudulently and against the law;
2) Actions carried out secretly during routine work activities (hidden game);
3) The perpetrator has high social status and education;
4) The object of this crime targets public funds such as the APBN and APBD.
Perpetrators of criminal acts of corruption carry out their actions using various modes. To cover up this behavior, perpetrators usually use the following methods. :
1) Misusing the State budget.
2) Mark up mode.
3) Bribing state officials.
4) Illegal levies.
5) Embezzlement of funds.
6) Fictitious reports.
7) Abuse of authority.
8) Gratification mode.
9) Cuts in central/regional budgets.
10) Fictitious project activities.

The methods used in Indonesia to hide the proceeds of crime by perpetrators of criminal acts of corruption include:
(1) Real Estate/Immovable assets
(2) Purchase of valuables (gold)
(3) Domestic shares

Efforts to return stolen state assets (stolen asset recovery) through criminal acts of corruption (TIPIKOR) tend not to be easy to carry out. Corruption perpetrators have extraordinarily wide and difficult access to hide or launder money from the proceeds of their criminal acts of corruption. The problem becomes increasingly difficult for recovery efforts because the haven for the proceeds of crime extends beyond the borders of the country where the criminal act of corruption was committed. Assets are part of something that is owned, controlled, and has value, which is divided into first, tangible goods owned in property rights, including money, supplies, equipment, real estate, receivables, and intangible goods such as goodwill. Second, all assets belonging to the person (especially those who are bankrupt or have died) can be used to pay off debts. The scope of the definition of assets is regulated in the Civil Code (KUHPer) article 499 which is called property, namely every item and every right, which can be controlled by property rights. Objects according to their shape are divided into bodily and non-bodied objects. Meanwhile, according to their nature, objects are divided into movable objects, namely those that can be spent and cannot be spent, and immovable objects.

This is by the definition of assets as regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, namely "Wealth is all movable or immovable objects, both tangible and intangible, which were acquired either directly or indirectly. Assets resulting from crime are usually defined as any property, whether tangible or intangible, whether movable or immovable, which is the result of a criminal act, obtained from the proceeds of a criminal act or as a form of profit from an act. Furthermore, not only assets that can be confiscated are limited to something obtained or a form of profit obtained from a criminal act. Assets used to finance (as "capital"), as tools, facilities, or infrastructure, even any assets related to a crime, or all assets belonging to the perpetrator of a crime can also be confiscated, according to the type of crime involved. with these assets. Thus, perpetrators of criminal acts or any person who is involved or who wishes to involve themselves in a crime or criminal organization will realize that apart from the possible profits they will gain, it turns out they are also faced with a large risk of losing their assets.

The phrase pecunia non olet (money has no smell) was the words of the Roman Emperor Vespansianus in response to his son's criticism of the imposition of a urine tax in Roman public toilets at that time. Money or assets resulting from criminal acts that have no smell are the main things for criminals. These assets are the target of efforts to return assets resulting from criminal acts, including assets resulting from criminal acts of corruption. This is a development with a new perspective in efforts to combat and eradicate crime. A development from a suspect-oriented perspective to a profit-oriented perspective, namely the eradication of crime which is oriented towards confiscating the proceeds of crime obtained and controlled by criminals. The pressure is no longer on the perpetrator of the crime or criminal person (in personam) but on the assets resulting from the crime or criminal property (in rem or Fructus sceleris). There are two fundamental things related to asset recovery, namely:

1. Determine what assets must be accounted for for confiscation; And
2. Determine the basis for confiscation of assets.

This perspective oriented towards assets resulting from crime is a development of a fundamental idea of justice which states that crime does not pay. This fundamental idea of justice is the same as the doctrine of unjust enrichment in an agreement or the doctrine of the adage ex turpi causa non oritur (a cause that is not lawful does not give rise to a claim) which is known in the agreement. We can find this doctrine in Article 1320 of the Civil Code, regarding the requirement for a halal cause, as one of the conditions for the validity of an agreement (Ruhaeni & Aqimuddin, 2023). Returning assets (asset recovery) at the same time will have a preventive impact on the development of crimes that are motivated by gaining profits in the form of proceeds of crime. The first preventive impact occurs in the absence of assets controlled by criminals so that the perpetrators lose the resources to commit other crimes. Second, by attacking directly the criminal motives of the perpetrators, the opportunity or hope of enjoying the assets resulting from the crime will no longer be eliminated, at least it can be reduced. The return of the assets eliminates the goal that was the motive for the crime committed by the criminal. The absence of opportunities to achieve these goals can eliminate the motives that drive people to commit crimes. Third, with the return of these assets, a strong message can be given to the wider community that there is no safe place in this world for criminals to hide the proceeds of their crime, while also providing a strong message that no one can enjoy the assets resulting from crime. as is the crime does not pay doctrine. These things will be able to weaken the desire of citizens, especially potential perpetrators, to commit crimes. Principles Related to Asset Confiscation :

1. Principles/Principles in Rem Asset Forfeiture
2. Principles/Principles of Non-Conviction Based Asset Forfeiture (NCB)
3. Principles/Principles of Unjust Enrichment/Crime Does Not Pay
4. Principles of Reverse Proof
5. Principles/Principles of Bona Fide/Presumption of Good Faith
6. General Principles of Civil Procedure Law
7. Principle of Transparency or Openness
8. Principle of Reciprocity

## Methodology

Based on this research issue, this type of research is normative research. Normative legal research or library research is research that examines document studies using various secondary data such as statutory regulations, court decisions, and legal theory, and can be the opinions of scholars. Normative legal research uses qualitative analysis by explaining existing data with statements not with numbers. Things studied in normative legal research include legal principles, legal systematics, legal inventory, clinical law, levels of legal synchronization, legal comparison, and legal history.

## Results and Discussion

### *Implementation of Return of Assets in Corruption Crimes Through Criminal Routes*

One of the elements in a criminal act of corruption is the loss of state finances (Firmansyah et al., 2020). In response to the state's financial losses, legislation has been made regarding criminal acts of corruption, both the old regulations, namely Law Number 3 of 1971, and the new regulations, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 which stipulates policies. that the state's financial losses must be returned or replaced by the perpetrators of corruption (Asset Recovery). In the Corruption Crime Law, recovery of state financial losses can be carried out through 2 (two) legal instruments, namely criminal instruments and civil instruments. The criminal instrument is carried out by the prosecutor by confiscating the perpetrator's property which has previously been sentenced by the court with an additional criminal decision in the form of compensation for state financial losses. Meanwhile, civil instruments can be executed through Articles 32, 33, 34 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes and Article 38C of Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption committed by State Attorneys or Agencies that suffer losses.

The mechanism for returning TIPIKOR assets through criminal law can be described as follows (Saputri, 2023); (Faharuddin & Jefferson Hakim, 2023). The first stage is asset tracking. This stage is very important and determines the next stages. The purpose of this investigation or asset tracking is to identify assets, asset storage locations, evidence of asset ownership, and their relationship to criminal acts committed. This stage also involves collecting evidence. For the investigation, a presumption is formulated that the perpetrator of the crime will use the funds obtained illegally for personal and family interests (Prøitz et al., 2017); (Jemberie, 2016); (Djuma, 2023). In such cases, there must be a disguised relationship between the individual and the assets. The second presumption is that third parties will be used in the process of hiding these assets.

The second stage is, the freezing or confiscation of assets. The success of the investigation in tracing assets obtained illegally allows the next stage of asset recovery, namely freezing or confiscation of assets (Van Oorschot et al., 2010). According to the United Nations Convention Against Corruption (UNCAC) 2003, freezing or confiscation means a temporary prohibition on transferring, converting, disposing or transferring assets or temporarily deemed to be placed under guardianship or supervision based on an order of a court or other authorized body (Birkett, 2020). The third stage is the confiscation of assets. Confiscation is an order from a court or authorized body to revoke the rights of perpetrators of criminal acts of corruption over assets resulting from criminal acts of corruption. Usually, a confiscation order is issued by a court or authorized body from the recipient country after a court decision has been issued that imposes a criminal sentence on the perpetrator of a criminal act (Ndaomanu, 2023). Confiscation can be carried out without a court decision if the perpetrator of the criminal act has died or disappeared or there is no possibility for the prosecutor as public prosecutor to carry out the confiscation order. prosecution.

The fourth stage, after going through the confiscation stage, the fourth stage can be carried out regarding the confiscated assets, namely the return and handover of the assets to the victim's country (Sakellaraki, 2022). To be able to return assets, both the recipient country and the victim country need to take legislative and other actions according to the national legal principles of each country so that the authorized body can carry out the return of these assets (Utari et al., 2023). Most countries do not specifically regulate the provisions for the distribution of frozen and confiscated assets, so in general, the issue of sharing assets is regulated in mutual legal assistance agreements between the victim country and the recipient country.

In this case, the confiscation stage before the return of assets for criminal acts of corruption is important, because without prior confiscation of assets suspected to be the result of corruption (Wahyudi, 2019); (Dwivedi et al., 2023), these assets cannot be taken by the state. This is based on Article 39 of the Criminal Code which mandates that only property that has been previously confiscated can be confiscated by the state. It is important to note that in every court decision relating to efforts to return assets from suspects, defendants, and convicts of corruption (and also other crimes) (Sinurat, 2024); (Muhammad Sofyan, 2019), especially if the assets are abroad, the court decision should order the confiscation of these assets expressly and in detail regarding the form of the material. and the whereabouts of the object and whose control or possession it is.

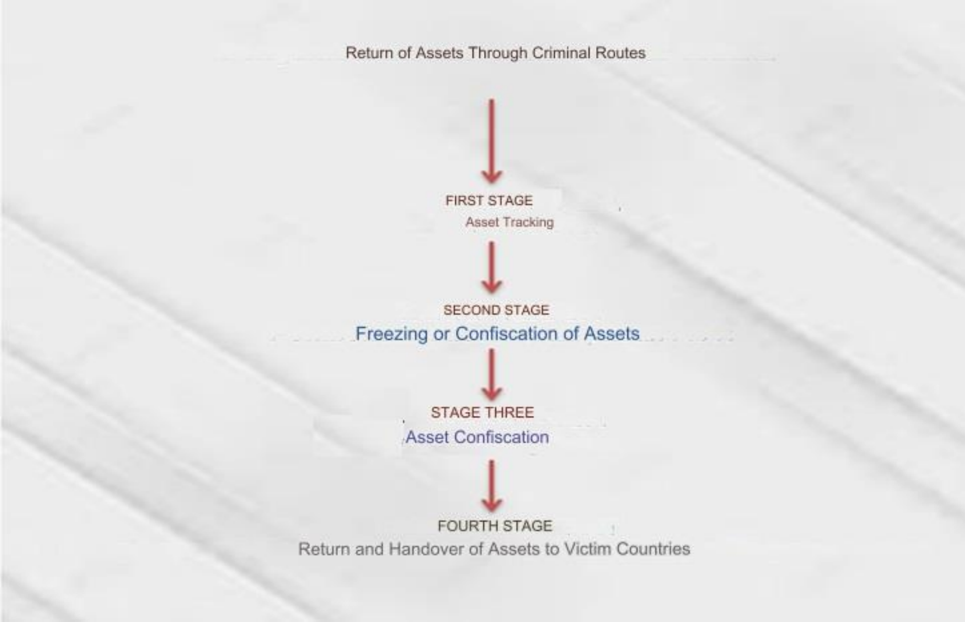


Figure 2. Asset return path/instrument

When compared with other asset recovery channels/instruments, namely civil law and administrative/political law instruments, there are prominent differences. Recovering state losses through criminal law is much harsher because even though the perpetrator has returned state losses during the investigation process, this will not eliminate criminal responsibility.

## Conclusion

The mechanism for returning assets in criminal acts of corruption based on the criminal route is the first stage, asset tracking; The second stage, freezing or confiscation of assets; The third stage, asset confiscation; The fourth stage, returning and handing over assets to the victim's country.

## Conflicts of Interest

The authors declare no conflict of interest.

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