

## Returning Corrupt Assets Through International Cooperation: Joko Widodo's 10 Years in Power

Adi Mansar<sup>1</sup>, Vania Micha Dwilizadi<sup>2</sup>

<sup>1</sup>Universitas Muhammadiyah Sumatera Utara

<sup>2</sup>President University

Email: [adimansar@umsu.ac.id](mailto:adimansar@umsu.ac.id) (Corresponding Author)

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### *Abstract*

*The United Nations Convention Against Corruption (UNCAC) is a compact step by countries in the world to cooperate in the field of law and corruption, especially extradition and return of corruption proceeds that have been taken abroad. The follow-up to the birth of the convention for member countries is by ratifying it by making national regulations into Laws or Presidential Decrees. The Presidential Decree as the legal standing of corruption law politics, especially to obtain money as state income, is very useful, especially since the world is currently in a crisis. What is the state policy in returning corruption assets abroad? What form of legal efforts are effective and systematic in returning corruption proceeds? The research approach is taken comprehensively descriptively by using literature as a basis for research. The state policy since 2006 began with the ratification of existing regulations and the formation of regulations for the elimination of taxes to facilitate the return of funds to the country, forming a task force for the return of former BLBI assets to the formation of regulations for the confiscation of assets from corruption.*

**Keywords:** *Corrupt Asset Recovery, International Cooperation.*

### INTRODUCTION

Law Number 7 of 2006 concerning the Ratification of the 2003 United Nations Convention Against Corruption, which involved 140 countries in giving birth to the United Nations Convention Against Corruption "UNCAC", has so far been ratified by Indonesia more than 30% (*Www.Kpk.Go.Id, n.d.*). The birth of Law No. 7 of 2006 as the ratification of "UNCAC" is the initial step of Indonesia's role in international relations regarding the eradication of criminal acts of corruption systematically and continuously (Penjelasan UU No. 7 Tahun 2006 Tentang Pengesahan Konvensi PBB Anti Korupsi Tahun 2003, n.d.). The crime of corruption is no longer just a national (local) problem but an international phenomenon that can affect the entire society and economy of a country, so there needs to be international cooperation initiated by President SBY because corruption has become a problem for Indonesia (*Detik.Finance, n.d.*). The New Order during its 32 years in power Corruption became a national

economic disaster, with the existence of BLBI and the banking restructuring policy (BPPN). Indonesia has been making efforts to eradicate corruption for a long time and in the history of the development of laws and regulations on eradicating corruption, several regulations have been found on the return and mechanism for returning assets resulting from corruption. However, various laws and regulations that regulate the return of assets still have weaknesses. First, the main focus of the provisions on the return of assets resulting from corruption is still limited to the return of assets domestically and there are no provisions regulating the mechanism for returning assets resulting from corruption placed abroad. Second, the laws and regulations have not regulated the legal basis and authority to carry out international cooperation in returning assets resulting from corruption. Third, the laws and regulations are no longer in accordance with the current development of corruption, compared to the provisions on corruption, especially the provisions on the return of assets in the UNCAC (I Wayan Parthiana, 2004).

UNCAC is a new breakthrough in eradicating corruption, especially in terms of asset recovery in various countries, especially Indonesia. However, as a (relatively) new regulation and Indonesia as one of the countries that has ratified this convention through Law No. 7 of 2006, there are problems that ultimately cause Indonesia to be unable to maximize asset recovery efforts. One of them is the lack of integrity, accountability, and good governance management. One of the main objectives of UNCAC is to strengthen corruption prevention and eradication measures more efficiently and effectively, thus requiring closer cooperation between countries because in reality the proceeds of corruption from third countries are often placed and invested in other countries based on conventional bank secrecy. The transfer of 18 T through Standard Carter Bank from Indonesia to England with 81 Indonesian citizens simultaneously is a structured and systematic action (<https://www.liputan6.com/bisnis/read>, n.d.).

Corruption involving banking and state institutions is one model that is relatively difficult to detect by anti-corruption agencies such as the KPK, because sociologically, the PPATK has the information and forwards it to the KPK, or the Directorate General of Taxes from the Indonesian Ministry of Finance. In my opinion, to avoid the transfer of money from Indonesia to other countries, it is very appropriate if international cooperation is increased, politically so that the world recognizes that the law in Indonesia is very sovereign. Law Number 31 of 1999 replaced the old Law No. 3 of 1973 indicating that the Reformation brought a clearer direction in the context of law enforcement, then the birth of Law No. 20 of 2001 as a reinforcement of the commitment and efforts to eradicate corruption nationally. In 2006 the Indonesian government ratified the UN Convention "UNCAC" on corruption, manifested in the birth of Law No. 7 of 2006 concerning the Ratification of UNCAC in 2003.

The Bali Convention is a form of national effort in eradicating criminal acts of corruption with the existence of extradition agreements with several countries, so that the movement begins with the ratification of the UN convention as an effort to improve Indonesia's image in the eyes of the world and can track, freeze, confiscate, and return assets resulting from criminal acts of corruption that are placed abroad.

## **METHOD RESEARCH**

Normative research, also known as doctrinal research, is a legal research method that focuses on the analysis of applicable laws and regulations that are relevant to the legal problem being studied. This research places more emphasis on the internal aspects of law, such as legal concepts, legal principles, and legal rules, by considering law as an autonomous institution.

## **DISCUSSION**

### **1. Problems that are done and the development of society**

How the Indonesian Government's efforts to return assets resulting from corruption abroad can be returned voluntarily and/or forcibly.

There are two efforts made by the government:

- a. Voluntarily requested to all Indonesian citizens to return assets that have been moved abroad.
- b. Forcibly picked up directly or assisted by friendly countries by deporting Indonesian citizens who are automatically returned to their homeland.

The government voluntarily asks Indonesian citizens to return assets they own or control but placed abroad so that they can be returned immediately and utilized domestically with the aim that the capital in the country will increase and become stronger from a fiscal perspective, this is based on the regulation of Law Number 11 of 2016 concerning Tax Amnesty. Philosophically, this tax amnesty is carried out in accordance with the principles:

- a. Legal certainty;
- b. Justice;
- c. Benefit;
- d. National interest (Article 2 paragraph (1) of Law No. 11/2016).

The government is not only opening up the opportunity to return assets parked abroad to be returned voluntarily, but preparing a repressive strategy if preventive and preemptive efforts are not maximally successful, these efforts are realized through cooperation efforts with friendly countries. Indonesia has made extradition agreements with several countries as an effort to eradicate criminal acts of corruption, including:

- a. Malaysia
- b. Australia
- c. Philipina
- d. Tiongkok dan Hongkong
- e. Thailand
- f. Korea Selatan
- g. Singapura.

According to Matthew H. Fleming, in the international world there is no mutually agreed definition of asset return (Maiyasak Johan, 2010). Fleming himself did not put forward a definition, but explained that asset recovery is the process of criminals who are deprived, seized, and removed from their rights from the proceeds of crime. Fleming's opinion in his book *Asset Recovery and Its Impact on Criminal Behavior, An Economic Taxonomy: Draft for Comments*, sees asset recovery as: first, asset recovery as a process of revocation, seizure, removal; second, what is revoked, seized, removed is the result or profit from the crime; third, one of the objectives of revocation, seizure, removal is so that the perpetrator of the crime cannot use the results and profits from the crime as a tool or means to commit other crimes. Asset recovery does not have a standard definition. To provide a comprehensive explanation, based on the views of previous scholars, it is necessary to formulate the definition of asset recovery from corruption as follows:

Asset return is a law enforcement system carried out by the victim state of corruption to revoke, seize, and eliminate the rights to assets resulting from corruption from the perpetrators of corruption through a series of processes and mechanisms. Both criminally and civilly, assets located in or stored abroad, which are tracked, frozen, seized, confiscated, and returned to the victim state of corruption, so that they can return financial losses due to corruption. Also included to provide a deterrent effect to perpetrators and/or potential perpetrators of corruption.

One of the convention's recommendations is also a mechanism for carrying out the process of returning assets resulting from corruption, namely: first by tracking, then assets that have been tracked and identified are then frozen, finally, frozen assets are then confiscated and seized by the authorized body of the country where the assets are located, and then returned to the country where the assets were taken through certain mechanisms. The agreement on asset return was reached because of the need to recover assets resulting from corruption as must be reconciled with the laws and procedures of the countries requested for assistance. The importance of asset return, especially for developing countries is based on the fact that corruption has robbed the wealth of these countries, while resources are greatly needed to reconstruct and rehabilitate society through sustainable development.

Regarding the process of returning assets resulting from corruption, perpetrators of corruption are able to freely cross jurisdictional and geographical boundaries between countries. Meanwhile, law enforcers do not easily penetrate jurisdictional boundaries and enforce the law in the jurisdictions of other countries. For this reason, global cooperation is needed in pursuing and returning assets resulting from corruption. With the regulation of provisions regarding mutual legal assistance in the UNCAC, efforts to return assets can be carried out optimally. The easiest way to carry out the process of returning assets that are outside the jurisdiction of the victim's country is through mutual legal assistance. When assets resulting from corruption are placed abroad, the victim country represented by investigators, investigators, or authority institutions can request cooperation from the recipient country to carry out the asset return process. This is in accordance with what is regulated in Article 46 of the UNCAC, where countries receiving assets must provide assistance to the victim country in the process of returning assets.

It is further criticized that reciprocal assistance is the essence of international cooperation in asset recovery. UNCAC provides a very easy way out for victim countries in carrying out the asset recovery process. UNCAC requires each participating country to provide (reciprocal) assistance to victim countries in need. In fact, the author sees that this reciprocal assistance provides a breakthrough for victim countries to penetrate conventional boundaries that have so far been obstacles in the asset recovery process. In the case of countries with very closed banking systems, therefore UNCAC makes it easy for victim countries to be able to trace or access a country's banking system to obtain information on assets resulting from corruption. This is clearly regulated in Article 46 paragraph (8) (Adi Mansar, 2017).

## **2. What Form of Legal Effort is Effective and Systematic to Recover the Proceeds of Corruption?**

Fifteen years after Indonesia ratified the UNCAC (2003), Indonesia has made many changes and progress in its efforts to eradicate corruption. In 2001, a new institution was born under the command of the Police, the Anti-Corruption Prevention Agency, led by a two-star (Ijrend) who specifically handles corruption (the Cyber Pungli Team).

The Corruption Eradication Commission (KPK), which was born from the spirit of reform, indirectly coincided with the UNCAC, indicating that there was a change in concrete will to eradicate corruption in Indonesia (TAP MPR/Nomor.XI/MPR Tahun 1998 Tentang

Penyelenggara Negara Bersih KKN, n.d.). In its implementation, Indonesia has implemented the provisions of the UNCAC in general as a process of asset return carried out by Indonesia, such as conducting bilateral cooperation, providing mutual legal assistance, conducting asset tracing efforts through banks from other countries, and so on as explained above. In reality, the difference between assets resulting from corruption that are taken abroad and assets that are successfully returned to Indonesia is very large. The comparison of assets that are still abroad is still greater than assets resulting from corruption that have been successfully brought back to the country. It can even be said that not a single corrupt asset has been returned. This does not just happen, there are problems that in practice often arise and become the main factors that hinder the asset return process.

Inhibiting factors or problems include:

- a. National Legal Regulations that Do Not Support the Applicability of UNCAC in Indonesia Since UNCAC was adopted by the UN General Assembly based on resolution 58/4 dated October 31, 2003, Indonesia has ratified it through Law of the Republic of Indonesia Number 7 of 2006 concerning the Ratification of UNCAC on April 18, 2006. Until now, the government has not formed an implementing regulation for the applicability of UNCAC in Indonesia. UNCAC provides a means for victim countries to be able to carry out international cooperation in efforts to return assets, but each participating country must have a national regulation that can enforce the UNCAC. The problem here is that Indonesia's ratification of UNCAC does not make the implementation of the asset return process optimally implemented. Because Indonesia does not yet have a special regulation regarding the asset return process based on international cooperation (Tjandra Sridjaja Pradjonggo, 2010).
- b. The absence of good apparatus to realize the strong political will of the government towards efforts to eradicate corruption. The process of returning assets as one of the efforts to eradicate corruption requires strong support from government officials. The political will of the government is the main factor that determines the success or failure of efforts to eradicate corruption in a country, especially regarding the process of returning assets, but will fail if law enforcement institutions have not been able to escape from the confines of bad law enforcement personnel groups, for example the case of the National Police Chief's red book which was damaged and lost at the KPK (the National Police Chief at that time was Police General Muhammad Tito Karnavian) who is now the Minister of Home Affairs. (Adi Mansar, 2021).

The Regulations Still Have Many Deficiencies, For Example:

- a. The Criminal Code is outdated (Law No. 1 of 1946).
- b. Military Authority Regulation Number (No.) Pert/PM/06/1957;
- c. Central War Authority Regulation No. PRT/PERPU/013/158;
- d. Government Regulation in Lieu of Law No. 24 of 1960 which was later ratified as Law No. 1 of 1961;
- e. Law No. 3 of 1971 as amended by Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law No. 20 of 2000;
- f. Government Regulation of the Republic of Indonesia No. 71 of 2000 concerning Procedures for the Implementation of Community Participation and the Granting of Awards in the Prevention and Eradication of Criminal Acts of Corruption;
- g. MPR Decree No: XI/1998 on the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism;
- h. MPR Decree No: VIII/MPR/2001 on Recommendations for Policy Directions for the Eradication and Prevention of Corruption, Collusion and Nepotism. The implications of MPR Decree No: VII/MPR/2001 are the enactment of Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 and based on Law No. 31 of 1999 in conjunction

with Law No. 20 of 2000 which orders the establishment of an independent institution to eradicate corruption,

- i. then enacted Law No. 30 of 2002 on the Corruption Eradication Commission;
- j. Law No. 15 of 2002 on Money Laundering as amended by Law No. 25 of 2003;
- k. Presidential Instruction No. 5 of 2004 on Acceleration of Corruption Eradication followed by the preparation of the National Action Plan for Corruption Eradication as ordered by Presidential Instruction No. 5 of 2004.
- l. Law Number 11 of 2016 on Tax Amnesty (Ermansjah Djaja, 2010).

The regulations used until now are still not in accordance with the spirit of UNCAC and the international world as a whole, this can be seen by the international world as the Indonesian government's lack of seriousness in returning corruption assets parked abroad. So it is appropriate if Indonesia is currently conducting a study to revise the corruption law enforcement system in Indonesia, for example the Attorney General's Office is more appropriate from a Career Prosecutor, the Chief of Police from a Career Police, the Chairman of the KPK must be from the community outside the Police, Prosecutor's Office and Supreme Court. Politically, if the law enforcement agency has represented a background that is in accordance with the knowledge and expertise of each, it is a must for each institution to run in accordance with the vision and mission of the state and not the vision and mission of the government. The police, if evaluated wisely from the number of personnel, the amount of state money spent, the amount of state money returned is not balanced, because the police's achievements in enforcing corruption laws are very small. In 2020, the Criminal Investigation Unit of the Indonesian National Police only handled 435 cases and 1,412 cases throughout Indonesia and saved state funds of 310 billion.<sup>20</sup> The Attorney General's Office only handled major cases totaling only 5 (five) cases, one of which was the case of Attorney Pinangki who was involved in a dispute with the party in the case, the question arises how could the perpetrators of the crime be given the obligation to resolve the crime? Even though they are individuals, these individuals are not able to work alone if there are no instructions or directions from their superiors.<sup>21</sup> The KPK as an anti-corruption institution has begun to reduce the meaning of this extraordinary institution by simplifying the KPK institutionally, starting with each personnel taking a national insight test (TWK) which is considered not academic but political in order to wisely dispose of KPK personnel who handle many major corruption cases.

### **3. Law Enforcement in the Era of President Joko Widodo**

In order for the Indonesian legal system on the enforcement of corruption law to be reviewed with the approach of the International legal system specifically for the return of assets from corruption that are still abroad. So that the process and mechanism for the return of assets regulated in the laws and regulations on the eradication of criminal acts of corruption and the Criminal Procedure Code are not too simple and still conventional as they are now, so that if maintained it will not allow for the return of assets effectively and efficiently. Once again, Indonesia needs to adjust its laws and regulations with the principles and standards that apply universally as stated in the UNCAC 2003 (Mahrul Ali, 2013).

Since Indonesia ratified the UNCAC, the process of eradicating corruption against the return of assets resulting from corruption has not resulted in a significant increase. Meanwhile, Indonesia already has all the equipment and facilities to return assets resulting from corruption. This is due to the government's weak political will in eradicating corruption committed by Indonesian officials, especially former President Soeharto. Indonesia needs to draft laws and implementing regulations that regulate the mechanism for returning assets, including mechanisms regarding international cooperation in preventing corruption from within or outside the country. In international relations, Indonesia must actively voice its actions regarding the eradication of corruption in its country in international forums such as the United

Nations (UN), so that the international community is aware and convinced that Indonesia has a strong determination in eradicating corruption, which will ultimately facilitate international cooperation with other countries in the process of returning assets.

President of the Republic of Indonesia Ir. Jokowi issued Presidential Decree Number 6 of 2021 precisely on April 6, 2021, which consists of ST. Burhanuddin (Attorney General), Listyo Sigit Prabowo (Chief of Police), Mahfud MD (Coordinating Minister for Political, Legal and Security Affairs), Airlangga Hartarto (Coordinating Minister for Economic Affairs), Luhut Binsar Panjaitan (Coordinating Minister for Maritime Affairs and Investment), Srimulyani Indrawati (Minister of Finance), Yasona Laoly (Minister of Law and Human Rights). The Task Force (satgas) formed based on Presidential Decree Number 6 of 2021 is held by Rionald Silaban (Director General of State Assets), Secretary Sugeng Purnomo (Deputy for Law and Human Rights of the Coordinating Minister for Political, Legal and Security Affairs).

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The Government's efforts after issuing Presidential Decree Number 6 of 2021 include summoning BLBI defaulters, including:

- a. Nirwan Bakrie
- b. Agus Anwar
- c. Tommy Soeharto & Ronny Hendrato
- d. Kaharudin Ongko
- e. Setiawan Harjono (Steven Hui)
- f. Kwan Benny Ahadi
- g. Ronny H.R
- h. PT. Era Persada (Debtor)
- i. Thee Ning Khong (obligor)
- j. Yhe Kwen Le (obligor)
- k. PT. Jakarta Kyoei Steel Works L.td, tbk (Obligor)
- l. PT. Jakarta Stel Megah Utama (Obligor)
- m. PT. Jakarta Perdana Industry (Obligor).

The BLBI defaulters above since the issuance of Presidential Instruction Number 8 of 2002 when President Megawati Soekarno Putri was in power who is currently the General Chairperson of the Indonesian Democratic Party of Struggle (PDI-P) which is also the party supporting President Jokowi in power for two (2) terms. The next question arises whether the government is serious about resolving the BLBI case involving President Megawati's policies at that time? To get the answer to that question I quote Budi Manggala's writing entitled "investigative audit analysis of BLBI collateral assets at BPPN. The government and DPR really hope for BPPN's contribution from the sale of assets estimated at 16.7 trillion. But the government and DPR's wishes are difficult to realize because the sale of BLBI assets at BPPN is feared not to reach its true value, because it is prone to fraud and a decrease in asset value, for example there are actions:

- a. Against the law;
- b. Suing oneself or others;
- c. Harming state finances;

- d. Abuse of authority;
- e. Audit results are not accountable.

Para pengemplang BLBI ini masih merasa nyaman karena tidak akan ada tindakan represif dari negara karena tidak melibatkan institusi formal penegak hukum, untuk mengalihkan perhatian masyarakat Prof. Dr. Moh. Mahfud MD berbicara tidak akan bisa pengemplang BLBI (obligor) bersembunyi dari “kami”, walaupun narasi yang disampaikan tersebut tidak punya konsekwensi yuridis sama sekali, karena yang berbicara bukan pihak yang mempunyai kewenangan memaksa secara yuridis.

### **Conclusion**

Of the 140 participating countries of UNCAC, Indonesia is a country that is relatively fast in ratifying the Covenant into a law. The seriousness of the Government is being awaited by the people, because until now it is considered that international cooperation in returning assets from corruption abroad has not been effective. Law enforcement institutions such as the Police, the Prosecutor's Office and the Corruption Eradication Committee are unable to resolve major cases such as BLBI (former BPPN), because the three institutions are currently seriously ill and need to take extraordinary measures. A new institution under the Police and the Attorney General's Office should be born quickly so that the Corruption Eradication Committee has friends to return assets from abroad. Presidential Decree Number 6 of 2021 should not only be limited to a Task Force (SATGAS) but must be made permanent for a certain period of time (5) five years and then re-evaluated. Urging the enactment of regulations on the Confiscation of Corruptor Assets in Indonesia.

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