

Proceeding

Andalas International Conference

2014

Eradicating Corruption : An Inter-Disciplinary Perspective

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Term of Reference (ToR)

Andalas International Conference

"Eradicating Corruption: An Inter-Disciplinary Perspective"

Mercur Hotel Padang, Indonesia, 5 - 6 June 2014

A. Background

Indonesian struggle to defeat corruption as one of the great enemies of the Indonesian nation is still far from expectations. Preview corruption still haunt the nation of Indonesia is reflected by various news about the corruption that still dominate the mass-media. Another indication that shows the "failure" of the Indonesian fighting against corruption is also reflected on the Corruption Perception Index of Indonesia, which have not shown significant improvement since the commencement of the reform. This is evident from the Corruption Perception Index released by Transparency International annually. Indonesia was in position 114 out of 177 countries measured in 2013, with the score of 3.2. This position shows an increase from the previous year position 118 out of 174 countries. Indonesia has not shown improvement in terms of the score, which is categorized as a country with a very high level of corruption. Compared to the previous year and the position of the numbers achieved by the Indonesian nation, it is still far from the efforts and expectations.

Corruption being corruption does not only spark the national attention of a state but it also attracts that of international community. The pronouncement of the 2003 UN Convention on Corruption evidenced the increasing interest of international community to deal with this issue. The Convention requires cooperation among state parties to seek and find a proper mechanism or instrument in preventing and combating corruption. Indonesia has attempted hard to develop laws and institutions to deal with the corruption but the issue grows faster than the legislation and institution developments.

Recognizing that the eradication of corruption is not an easy task, Faculty of Law Andalas University feel necessary to assist the Government's effort by identifying the hurdles and offering the

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PREFACE

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ASSET RECOVERY EFFORTS OF CORRUPTION ABROAD

By: Hery Firmansyah

BACKGROUND

Corruption in Indonesia begins to penetrate into all aspects of people's and statehood life. In development, corruption is not only increasingly widespread, however, it is systematically undertaken, so it's not solely inflict state financial loss but also it has violated social and economics of people. Therefore, corruptions are classified as extraordinary crime.¹

Indonesia is like paradise for corruptors, moreover, for those who have links with power and conglomerates, when their case are processed, it's merely a formal procedure, with the reasons meet public demand, although, there might be proceed to the court and sentenced by judge's verdict, they are just petty corruptors, whereas many high class corruptors are acquitted or even escaped abroad first.²

When focusing on the legislative policy, basically, corruption occurs systematically and widespread, it also has violated social and economic rights of the people. As the logical consequences, accordingly, to actualize an equitable and prosperous society, there should be a continuous action and also what can't be set aside is preventive efforts, eradication of corruption (repressive) and restorative approach. Preventive action can be defined to develop public perception in which, there is no safe place in the world for the corruptors to conceal their assets. Subsequently, repressive action can be defined as how the corruptors sentenced in accordance with principle of justice and proportional sentencing based on levels of guilt. Restorative action, one of which is asset recovery efforts of corruptor in criminal action, civil lawsuit, which is *perampasan In Rem*, a state action to take their assets through court decisions in civil case based on stronger evidence whether the assets allegedly come from criminal act or used for criminal act as well as international cooperation and mutual assistance in criminal matters between corruption victim state or country of origin and custodial state of corruption assets or custodial state.³

In line with public demand to confiscate⁴ and to seize assets or corruptor's wealth, President Susilo Bambang Yudhoyono issued a Presidential Instruction No.5 of 2004 which ordered law enforcement officer to recover state assets (asset recovery). In practice it is not easy to confiscate assets of corruptors, because corruption is generally done by persons belonging to white collar, that is those who have the authority and / or expertise in their field, so that the exposure of the corruption takes longer time after the act is done and when the results of corruption has been secured by the corruptor. The security of corruption assets was carried out with sophisticated engineering and tidy utilizing legal loopholes which are well-protected.

In accordance with the development of types and modes of crimes as mentioned above, the acts taken to punish the criminals in the conventional manner is by applying imprisonment for criminals. However this procedure is not always successful in reducing the crime rates. Aside from giving a deterrent effect for criminals, punishment must be able to disarm the criminals in relation with

¹ Iwan Kawanto, 2009, Bribery in Corruption, Jakarta : Pusat Pendidikan dan Pelatihan Kejaksaan Press, hlm, 1.

² Wilno Sumaryanto, January 2005, "Investigation Model Draft of Corruption in Indonesia", Law Enforcement, page. 12; see also Cornelis Klaigis, "Corruption as a criminal act that should be eradicated: Character and Practice of Law in Indonesia", *Jurnal Hukum*, Vol. 11 No.2, August 2006, page. 152

³ Iwan Kajiadi, 2006, Asset Recovery of Corruptors based on Indonesian Corruption Act Post-Ratification of the UN Convention against Corruption, 2003, page.1-2

⁴ Freezing or seizure is different from confiscation. Confiscation as provided in Article 54-55 of the UNCAC, definition as contained in Article 2 (g) of UNCAC is "repeal wealth permanently". In contrast to freezing or seizure as stipulated in Article 2 (f) of UNCAC, means prohibition of transfer, alteration, diversion or transfer of property, which is temporary.