

## The Indonesia Government's Strategy in Arrest and Confiscation of Criminal Corruption (Corruptor) Assets Abroad

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### Abstract

Eradication efforts of corrupting in Indonesia have been carried out, but until now there are still many corruption cases that have not been resolved in various ways by the perpetrators or corruptors. Corruptors often drain the funds from the results of corrupting, even the corruptors then go or run abroad. This raises problems in the process of law enforcement and recovery of financial and economic losses in the country, namely the mechanism for returning assets resulting from criminal acts of corrupting abroad. Therefore, the objectives of this study are to (1) Explain how is Indonesia Government's strategy in arrest and confiscation of criminal corruption (corruptor) assets abroad. (2) Explain how is international treaties concerning the seizure of assets resulting from criminal acts of corrupting are abroad. The research method used in this research is qualitative with a juridical legal approach normative. The results showed that the cooperation between countries is the best strategy that can be done by the Indonesia government in overcoming problems of sovereignty. Some examples of these forms of international cooperation are extradition treaties (extradition), Mutual legal assistance in criminal matters (MLA). The mechanism for the return of assets in MLA consists of four stages of the asset return process (Article 46 Chapter IV, UNCAC).

**Keywords:** international cooperation; eradication of corruption; confiscation of assets; extradition; mutual legal assistance in criminal matters.

### Abstrak

*Upaya pemberantasan korupsi di Indonesia sudah dilakukan, namun hingga saat ini masih saja banyak kasus korupsi yang belum terselesaikan dengan berbagai cara yang dilakukan oleh para pelaku atau koruptor. Para Koruptor seringkali mengalirkan dana hasil korupsi ke luar negeri bahkan para koruptor tersebut kemudian pergi atau lari ke luar negeri. Hal tersebut menimbulkan permasalahan terhadap proses penegakan hukum dan pemulihan kerugian keuangan dan perekonomian negara yakni tentang mekanisme pengembalian harta kekayaan hasil tindak pidana korupsi yang berada di luar negeri. Oleh karena itu, tujuan dari penelitian ini adalah untuk: (1) Menjelaskan mengenai bagaimana strategi Pemerintah Indonesia dalam penangkapan pelaku tindak pidana korupsi (koruptor) di luar negeri (2) Menjelaskan bagaimana perjanjian internasional tentang perampasan harta kekayaan hasil tindak pidana korupsi yang berada di luar negeri. Metode penelitian yang digunakan dalam penelitian ini adalah kualitatif dengan pendekatan hukum yuridis normatif. Hasil penelitian menunjukkan bahwa Kerjasama antar negara merupakan strategi terbaik yang dapat dilakukan oleh pemerintah dalam mengatasi permasalahan kedaulatan. Beberapa contoh bentuk kerjasama internasional tersebut adalah perjanjian ekstradisi (extradition), bantuan hukum timbal balik di bidang pidana (mutual legal assistance in criminal matters). Mekanisme proses pengembalian aset dalam Bantuan Hukum Timbal Balik (Mutual Legal Assistance) yang diatur dalam Pasal 46 UNCAC Bab IV khususnya terdiri dari empat tahap proses pengembalian aset.*

**Kata kunci:** kerjasama internasional; pemberantasan korupsi; perampasan harta kekayaan; ekstradisi; bantuan hukum timbal balik di bidang pidana.

## Introduction

Corruption is still a major issue in Indonesia. It has occurred in all aspects of public life and is endemic to the executive, legislative, judicial and business sectors (Sunaryanto, Husodo, Yuntho, et.al, 2012). Efforts to tackle and eradicate corruption in Indonesia have been carried out, but until now there are still many corruption cases that have not been resolved in various ways by the perpetrators of criminal acts of corruption or corruptors. Countries participating in United Nations Convention Against Corruption (UNCAC) are concerned and feel the problems and threats resulting from corruption (Integrito, 2018). These countries also agree that corruption is no longer a local problem, but an international phenomenon that affects entire societies and economies (Melani, 2005; Marsono, 2007; Kusuma 2011).

Corruptors are increasingly creative by committing acts of corruption in their home countries and fleeing to other countries along with the assets they have taken planted in the country where they are hiding (Syarifuddin, 2016). The corruptors hide the proceeds of corruption through money laundering using effective international transfers (Nurmalawaty, 2006). They run abroad to avoid arrest attempts and law enforcement processes. Indonesia Corruption Watch (ICW) said there were 40 fugitives for corruption criminal cases in Indonesia. The forty people were fugitives from 1996 to 2018. The fugitives on the ICW list were people who were processed by the police and the prosecutor's office. The following is a list of fugitives in the corruption criminal case (Detik.Com, 2019):

No.	Police	Attorney
1	Honggo Wendratmo (case Pertamina condensate)	Adelin Lis (forest encroachment in Mandailing Natal, North Sumatra)
2	Anton Tantular (Century case)	Yusuf Rumatoras (bad credit North Maluku Bank)
3	Hendro Wiyanto (Century case)	Soedirjo Aliman (corruption leasing state land)
4	Dewi Tantular (Century case)	KKT (Corruption Communication Network PT Telkom Div Regional Sulawesi South)
5	Hendra Lee (Global Bank corruption)	Lidya Muchtar (BLBI corruption)
6	Budianto (Bank Global corruption)	Hendra Rahardja (BLBI corruption)
7	Amrilriawan (Bank corruption Global)	Harry Matalata (BLBI corruption)
8	Rico Santoso (Bank corruption Global)	Toni Suherman (BLBI corruption)
9	Irawan Salim (Bank corruption Global)	Ede Utoyo (BLBI corruption)
10	Lisa Evijanti (Bank corruption Global)	Eddy Junaidi (BLBI corruption)
11	Hendra Liem (Bank corruption Global)	Hendro Bambang Sumantri (corruption BLBI)
12	Gunawan (renting IBRA assets)	Nader Thaher (BLBI corruption)
13	Irawan Haryono (leasing assets IBRA)	Agus Anwar (BLBI corruption)
14	Setiawan Haryono (leasing assets IBRA)	Eko Adi Putranto (BLBI corruption)
15	Hendrawan Haryono (rented IBRA assets)	Bambang Sutrisno (BLBI corruption)
16	Robert Dale Mc Cuthen (the case of the thermal power plant earth)	Rasat Ali Rifzi (bank corruption Century)
17	Maria Pauline Lumowa (BNI Bank break-in)	Eddy Tansil (Bank corruption Bapindo)
18	Alfan Susanto (placement Askrindo investment)	Djoko S Tjandra (Bank corruption Bali)
19		Hentje Abraham (Fund for purchasing land and branch office buildings Maluku Bank)
20		Sukmawati Makatita (DAK of the Islands District Education Office Aru)

21	Handoko Lie (conversion of land use for KAI in Medan)
22	Hesham Al Waraq (Century Bank case)

The perpetrators are fugitives in high-profile corruption cases, such as the BLBI and Century Bank cases. Their cases, some have entered trial, some are still being investigated. Currently, only a few of these fugitives have been arrested and processed in court, such as Djoko Chandra and Maria. Many of these fugitives have not been successfully prosecuted and held accountable for their actions. This obstacle is because the fugitives are not in Indonesia but outside the territory of Indonesia or in other countries. ICW stated that the fugitives on the list were overseas, such as China, Singapore, and Hong Kong.

Indonesia cannot enter and arrest criminals who are in another country without the permission of that country because the sovereignty of other countries is limited. Every country has its own sovereignty, a fundamental principle that forms the basis of relations between countries (Kimberly Prost, 2021). A mechanism is needed that can bridge countries to overcome problems of territory or sovereignty, differences in the legal system, bureaucratic clashes between countries, and help each other in law enforcement. Therefore, in resolving cases of corruptors abroad, the strategy is needed on law enforcement in cases of corruption abroad so that these corruptors can be arrested and tried.

Many cases of corruption have resulted in a slowdown in a country's economic growth, decreased investment, increased poverty and increased income inequality (Anti-corruption Learning Centre (ACLC), 2021). Kurnia Ramadhan, Indonesia Corruption Watch (ICW) researcher said that state losses due to corruption crimes increased 4 times in 2020 compared to 2019. ICW data shows that the total state losses due to corruption cases handled by the KPK amounted to 114.8 billion and those handled by the Attorney General reached 56.7 trillion (Kompas.com, 2021).

The corruption case certainly causes huge losses to the Indonesian economy, so a firm action is needed so that the Government of Indonesia can overcome the problem so that it can restore or recover financial losses or the country's economy. The Borun of Corruption Crime Cases cannot be ignored and free from the process law enforcement so that the corruptors get a deterrent effect and the lost state assets can be returned (Kholis, 2010). In order to be able to restore or recover the financial or economic losses of the country due to the criminal act of corruption, when the criminals are successfully arrested and tried, it is necessary to impose additional penalties in the form of compensation payments accompanied by confiscation of assets (asset) the defendant proven to have obtained the result of a criminal act of corruption. Confiscation of assets (asset) the defendant who was the result of a criminal act of corruption who was abroad also needed international cooperation on how to recover the country's financial and economic loss mechanisms by seizing assets from the crime of corruption abroad.

The urgency of this research is about how to enforce the law against perpetrators of criminal acts of corruption (corruptors) who fled abroad and how the mechanism of

confiscation of assets resulting from criminal acts of corruption abroad. The results of this study can be used as a reference for the Government of Republic Indonesia to be able to overcome corruption cases abroad and be able to restore or recover financial or economic losses of the country.

## **Research Problems**

Based on the exposure, so the aims of this research are: 1) Explain how is Indonesia Government's strategy in arrest and confiscation of criminal corruption (corruptor) assets abroad; (2) Explain how is international treaties concerning the seizure of assets resulting from criminal acts of corrupting are abroad.

## **Research Methods**

This research used normative legal research. Data collecting techniques were done through literature and documents from primary legal materials and secondary legal materials that related with the issues of this thesis. After that, the researcher selected, classified, and analyzed the data.

## **Discussion**

### **The Indonesia Government's Strategy in Arresting Criminal Corruption (Corruptor) Abroad**

Efforts to eradicate corruption are not easy, even though various efforts have been made to eradicate corruption (Setiadi, 2018). In many cases, many criminals, which after committing crimes within the territory of a country then fled to the territory of another country and were in that country within that territory for a long time in order to avoid criminal prosecution from the country where he committed the crime. In essence, every country has criminal jurisdiction or authority over a crime incident that occurs within or outside the territory of a country. States have rights, powers full, or the authority to make, enforce, implement and/or impose national laws or regulations on legal objects with international dimensions, whether in the form of persons or legal entities, movable or immovable objects, as well as all kinds of existing crimes or occurs both within territorial sovereignty and outside the boundaries of its territory (Siregar, 2015; Suarda, 2012). This is called state jurisdiction under international law (jurisdiction of state under international law). So the source of these rights, powers and authorities is international law (Parthiana, 2006). However, the jurisdiction of the country will be difficult to apply outside the territory of the country. This obstacle is because the jurisdiction of a country is limited by the sovereignty of other countries. Each country has its own sovereignty. To enter another country, there must be prior approval or international cooperation from the country to be entered (Samekto, 2009).

The commitment of the international community to tackle trans-border crimes through international cooperation can be seen from international legal instruments. This determination was manifested by his birth United Nations Convention Against Transnational Organized Crime (Palermo Convention). The purpose of the convention is international cooperation, which is clearly stated in Article I of the Convention, namely: "to promote cooperation to prevent and combat international organized crime more effectively ". This Convention regulates the setting of standards against the national laws of each of the participating countries, the emphasis on the differences in the legal systems of the participating countries, and the cooperation that can be fostered among participating countries on the eradication of transnational organized crime or transnational organized crime (TOC) (Setiawan, 2004).

Therefore, in eradicating a corruption, it is necessary to carry out integrated enforcement, international cooperation and harmonious regulations. Related to cooperation in eradicating criminal acts of corruption or what is commonly known as white collar crime (white collar crime), the international community considers it necessary international regulation which explicitly and specifically regulates preventing corruption globally by conducting international cooperation together. To do steps eliminating worldwide corruption. Based on this, the next was held United Nations Convention Against Corruption (UNCAC).

The convention was accepted by the United Nations General Assembly (UN SMU) on October 31, 2003 through UN SMU Resolution A/58/4. The UN SMU also stated that the Convention is open for signature by UN countries in a special event in Merida, Mexico on 9-13 December 2003. Until now there have been 140 signatory countries and 187 have to submit themselves as state parties. The Convention has entered into force since December 14, 2005 and it is The First Legally Binding Global Anti-corruption Agreement (Legally Binding First Agreement Regarding Anti-Corruption).

In the two conventions, there are several legal institutions with regard to the efforts of a country to obtain a criminal who is in the territory of another country, namely by cooperating with the country where the perpetrator is located to be able to detain, arrest, detain and hand over the person to the crime. Countries that have the jurisdiction to judge and punish him (Mega Jaya, 2020). Cooperation between countries is a formal solution that can be done by the government in overcoming problems of sovereignty. Some examples of these forms of international cooperation are extradition treaties (extradition), mutual legal assistance in the criminal field (mutual legal assistance in criminal matters) (Palermo Convention, and Chapter IV UNCAC). The following is an explanation of the legal system:

1. Extradition

Extradition is the practice of taking and bringing a person who is a criminal or handover from one country to another because the perpetrator commits a serious crime in the jurisdiction of the country requesting extradition (Harrington, 2018). According to Law No.1 of 1979 concerning Extradition, the surrender of a person who is suspected

or convicted of committing a crime outside the territory of the surrendering country and within the jurisdiction of the territory of the country requesting the surrender is carried out because the country requesting the authority to judge and convict him (Article 1 of Law of the Republic of Indonesia Number 1 of 1979 concerning Extradition). Law Number 1 of 1979 concerning Extradition is a guideline for the Government of the Republic of Indonesia in requesting and/or providing mutual assistance and making agreements with foreign countries and as far as possible assisting law enforcement in other countries as long as it does not conflict with the interests and laws of the State of Indonesia.

Extradition is made with the aim of making the perpetrator responsible for the actions he has committed, something that is against justice if a criminal is not punished for his actions. If there is no extradition, the criminals who have fled abroad will not be penalized because the country in which they are located does not have jurisdiction for this (Waryenti, 2012). Based on Article 2 Law Number 1 of 1979 concerning Extradition, extradition can be carried out by prior agreement or by the principle of reciprocity (reciprocity). Extradition treaties are an effort of international respect in preventing, eradicating and punishing perpetrators of international crimes as well as perpetrators of crimes with international or transnational dimensions (Kalalo, 2016).

The country where the perpetrator is located (Country Requested or Requested State) enter into an international treaty regarding the extradition with the requesting State, because the Requesting State has the authority to try the perpetrator (Gunawan & Wilanti, 2015). The extradition treaty must contain rules regarding the meaning of extradition, principles and objectives of extradition, conditions of extradition, extradition process, types of crimes for which the perpetrator can be extradited, officials involved, and everything related to extradition (Gunawan & Wilanti, 2015). A criminal act can be extradited without considering whether the act alleged to the person requested has been committed in whole or in part in the territory of the requested party (Setiadi, 2016).

For the implementation of extradition can submit a request in writing. The written request can be submitted via diplomatic channels or submitted directly to Ministry of Justice in the destination country at the request of the Attorney General of the Republic of Indonesia or the Chief of Police of the Republic of Indonesia, the Minister of Justice of the Republic of Indonesia on behalf of the President (Article 44 of Law Number 1 Year 1979 concerning Extradition). The request must be completed with the necessary documents, including the identity, nationality, description of the alleged criminal act, supporting evidence, a letter requesting detention and others (Elucidation of Law Number 1 of 1979 concerning Extradition). After submitting a request for extradition, the response to the request from the country that has jurisdiction is then conveyed also through diplomatic channels. If the request is granted, the letter of notification of granting may be accompanied by details regarding the place and time the requested person will be submitted (Parthiana, 2006).

In connecting the agreement, Indonesia has made agreements with several countries, especially countries that are often used as places of refuge (Hartono & Hapsari, 2019). Until now, Indonesia has made several extradition treaties, namely: 1974 with Malaysia, 1976 with the Philippines, 1978 with Thailand, 1992 with Australia, 1997 with Hong Kong and Korea, and the last was 2007 with Singapore (Darwis, 2018). Extradition can also be carried out based on the principle of reciprocity. This means that without an international agreement, a State can return a perpetrator to the Requesting State, provided that the act is then repaid by the requested State. The principle of reciprocity is also regulated in Law Number 1 of 1979 concerning Extradition. This principle includes the same political interests, there are the same advantages and there are the same goals, as well as respect for the principle of "state sovereignty". The principle of reciprocity does not require an agreement but sufficient with "arrangement" Only applies on the basis of "on case by case basis (Syarifuddin, 2016). Therefore, the Indonesian government should be able to immediately carry out an extradition process with other countries to take and bring fugitives for corruption cases from where the perpetrators are to Indonesia either by agreement or on the principle of reciprocity, then further processing it with national law.

2. Reciprocal Legal Assistance In Criminal Matters (Mutual Legal Assistance In Criminal Matters)

Apart from extradition, a form of cooperation between countries in the practice of customary international law can be done through the cooperation of Mutual Assistance in Criminal Matters (Mutual Legal Assistance in Criminal Matters or abbreviated as MLA) (Firdaus, 2017). Mutual legal assistance in criminal matters (MLA) is a form of legal cooperation in the framework of criminal law enforcement, among others, to eradicate criminal acts of corruption, especially against criminal acts of corruption that have transnational or international elements. The cooperation is related to requests for assistance with respect to investigations, prosecutions and examinations at court proceedings in accordance with the provisions of the laws and regulations of the requested State (Article 3 of Law No.1 of 2006 concerning Reciprocal Assistance in Criminal Matters).

In the beginning, mutual legal assistance originated from cooperation between countries in a process of mutual assistance in investigating criminal matters that began with cooperation between police and "letters rogatory" which is a system of requests for assistance based on mutual respect in order to obtain evidence, which then develops into a form of agreement and various other forms of assistance (Cyrer, Hakan, et.al, 2010). Forms of international cooperation include Mutual Legal Assistance Treaties there have been more and more agreements both multilateral and bilateral. In multilateral agreements, for example, it is regulated quite comprehensively United Nations Convention Against Corruption 2003, United Nations Conventions Against Transnational Organized Crime 2000. At the ASEAN Regional level, it has been agreed Treaty Mutual Legal Assistance in Criminal Matters 2004. In a bilateral agreement,

Indonesia has a reciprocal assistance agreement with the following countries: 1) Australia, 27 October 1995, was ratified by Law no. 1 year 1999; 2) China, July 24, 2000, was ratified by Law no. 8 of 2006; 3) South Korea, March 30, 2002 (still in the process of ratification) 4) Hong Kong SAR, April 3, 2008 (still in the process of ratification) 5) India, January 25, 2011 (still in the process of ratification) (Hartono & Hapsari, 2019).

These treaties have great respect for jurisdiction and rely on the provisions of the national laws of the participating countries. The MLA application process must still respect, respect and uphold the sovereignty of other countries related to the principles of certainty, confidentiality, openness, double crime, blasphemy, human rights, proportion-nality and reciprocity (Hartono & Hapsari, 2019).

Then it takes action and rules for coordinate these national activities so that they increase in line with the growth and development of international crimes (Indriati, 2009). In national regulations, Indonesia has ratified Law Number 1 of 2006 concerning Reciprocal Assistance in Criminal Matters as a legal basis for the Government of the Republic of Indonesia in requesting and/or providing mutual assistance in criminal matters and guidelines in making mutual assistance agreements in criminal matters with foreign country (Article 2 of Law No. 1 of 2006 concerning Reciprocal Assistance in Criminal Matters (Latifah, 2016). This Act regulates the scope of MLA, procedures Mutual Assistance Request (MAR) and the distribution of proceeds from confiscated crimes to the assisting state, among others, regarding the submission of requests for assistance, requirements for requests, assistance in finding or identifying people, assistance in obtaining evidence and assistance in getting the perpetrator's presence. In addition, MLA also includes facilitating the presence of witnesses and various other forms of assistance that are not prohibited by national law. Help though provided by a country is not necessarily limited to those mentioned above, other assistance can also be provided as long as it does not conflict with the national law of a country (Harris, Series No 5).

Just like extradition, based on Article 5 of Law No. 1 of 2006 concerning Reciprocal Assistance in Criminal Matters, MLA can be carried out either formally through an agreement or informally based on the principle of reciprocity. The article clearly states that MLA can be carried out based on an agreement and if there is no agreement then assistance can be provided on the basis of good relations or friendly relations guided by the national interest and based on to principles equation position, profitable, and taking into account, both national law and applicable international law.

Therefore, the Indonesian government should be able to immediately carry out a MLA with other countries to take and bring fugitives for corruption cases from where the perpetrators are to Indonesia either by agreement or on the principle of reciprocity, then further processing it with national law.

## **The Mechanism of International Cooperation Regarding the Confiscation of Assets from Corruption Crimes Abroad**



In implementing the efficient and effective prevention and eradication of corruption crimes, the support of good governance management and international cooperation is required (Explanation of Law No. 7 of 2006 concerning the ratification of UNCAC). The majority of countries have agreed to hold international cooperation through several international conventions such as United Nations Convention Against Transnational Organized Crimes (UNTOC)/Palermo Convention 2000 and UNCAC. Indonesia is one of the countries that has followed the development of the prevention and eradication of corruption by joining international agencies or organizations and has signed several international conventions to eradicate corruption such as UNTOC which was ratified by Law No. 5 of 2009 concerning the Ratification of UNTOC and UNCAC which were ratified by Law No. 7 of 2006 concerning the Ratification of UNCAC (Syarifuddin, 2016).

This ratification is important for Indonesia for several reasons, namely to increase cooperation international especially in track, freeze, confiscate, and return assets resulting from criminal acts of corruption placed abroad (Integrato, 2018). Therefore, all mechanisms and arrangements in particular are related to asset recovery the proceeds of crime contained in UNTOC and UNCAC will apply to Indonesia. The Convention specifically regulates the return of assets (asset recovery) proceeds of corruption through confiscation and confiscation of assets resulting from criminal acts of corruption (Syarifuddin, 2016).

The return of state financial assets / losses through confiscation of assets resulting from corruption has the following objectives (Ali, 2013):

- 1) Recover the state losses to the victims of corruption that have been incurred by the perpetrators of criminal acts of corruption.
- 2) Prevent the use or utilization of these assets as tools or means by the perpetrators of criminal acts of corruption to commit other crimes, for example: money laundering and other transnational crimes.
- 3) Provides a deterrent effect for other parties who intend to commit a criminal act of corruption.

The importance of recovering assets is also evident from the efforts of the World Bank and the United Nations in launching a new initiative to realize the effectiveness of UNCAC at the UN headquarters in New York on 18 September 2007 in eradicating corruption, especially in developing and developed countries Stolen Asset Recovery Initiative (StAR). The Initiative for Returning Stolen Assets was formed to help developing countries that are experiencing difficulties in retrieving assets resulting from corruption hidden in developed countries (Ginting, 2011).

In carrying out international cooperation, either extradition or MLA, the handover of the perpetrator of the crime can be accompanied by the delivery of goods of the perpetrator, both movable property and goods used in the crime, or goods that are the result or result of the crime. This is regulated in Article 13 United Nations Convention Against Transnational Organized Crimes (UNTOC)/Palermo Convention 2000, which states that Mutual Legal Assistance in Criminal Matters (MLA) includes obtaining evidence and statements, providing legal document assistance, carrying out searches and

confiscation, carrying out inspection of objects and locations, providing information, evidence, expert judgment, documents and archives, identifying or tracing criminal processes, property, or equipment used for evidence and confiscation for confiscation (Mega Jaya, 2020).

Asset Return Mechanisms are also published in UNCAC on Chapter V. The implementation of this mechanism is aimed at handling cases of cross-border corruption and in particular the return of assets taken abroad. Article 51, Chapter V UNCAC, states that: "The return of assets pursuant to this chapter is a fundamental principle of this Convention, and Parties shall afford one another the widest measure of cooperation and assistance in this regard." That article explicitly states that the return of assets is a fundamental principle whereby countries members of the convention can work together to assist in the return of assets referred to in this convention. Through the provisions in Chapter 5 of UNCAC, many countries have succeeded in returning their assets (Article 13 United Nations Convention Against Transnational Organized Crimes/Palermo Convention 2000).

There are three attempts to restore foreign assets through UNCAC: First, by suing the corruptors through civil allegation (civil). This is intended to freeze state-owned assets so that they can be frozen in the country where the assets are stored. In addition, in order to prevent these assets from running away, the government will also do so full disclosure so as not to be able to be touched by corruptors' actions. Second, the government, through UNCAC, can forcefully seize physical assets owned by corruptors abroad. Third, use the power of the convention in countries suspected of being the hiding place for corruptors.

The mechanism for the return of assets in Mutual Legal Aid (Mutual Legal Assistance) regulated in Chapter 4, especially Article 46 UNCAC, consists of four stages of the asset return process, as follows (Ginting, 2011):

- 1) Asset tracking to track assets;
- 2) Precautionary measures to stop the transfer of assets by means of a freeze or seizure mechanism
- 3) Confiscation.
- 4) Transfer of assets from the country receiving the assets to the victim country where the assets were obtained illegally.

Thus, the Indonesian Government can carry out an extradition process or MLA with other countries to retrieve and bring fugitives for corruption cases and assets resulting from criminal acts of corruption from where the perpetrator is in Indonesia either by agreement or on the principle of reciprocity. After the perpetrator is arrested and the assets are confiscated, then handed over to Indonesia, the suspect in the criminal case of corruption can be processed in court. Based on Article 7 of Law of the Republic of Indonesia Number 46 of 2009 concerning Corruption Crime Court, the court which has the authority to examine, try and decide corruption cases committed by Indonesian citizens outside the territory of the Republic of Indonesia is the Corruption Crime Court at the District Court Jakarta Center.

Based on Article 18 Paragraph (1), (2) and (3) Law Number 31 Year 1999 concerning Eradication of Corruption Crime as amended and supplemented by Law Number 20 Year 2001 regarding Amendments to Law Number 31 Year 1999 concerning Eradication of Corruption Crime. A suspect in a criminal act of corruption can be subject to the main criminal sanction as well as additional crimes in the form of confiscation of assets and the payment of replacement money.

This is part of an effort to recover state financial losses. According to Muhammad Yusuf, confiscation of assets in the eradication of corruption is very important. He stated that: "Based on the experience of Indonesia and other countries it shows that exposing criminal acts, finding the perpetrators and placing the perpetrators of criminal acts in prison (follow the suspect) it turns out that it is not yet effective enough to reduce the crime rate if it is not accompanied by efforts to confiscate and seize the proceeds instrument criminal act". Confiscation of assets must be based on a court ruling contained in the ruling with the stipulation of additional criminal confiscation of assets resulting from corruption and the payment of replacement money. If you are unable to pay replacement money within 1 (one) month from the time the verdict has obtained permanent legal force, the convict's assets (assets / assets of the perpetrator that are not obtained from the criminal act of corruption) can also be confiscated by the prosecutor for further auction to cover the replacement money (Article 18 Paragraph (2) of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes).

Assets belonging to perpetrators of corruption can be confiscated and auctioned even though the assets were not obtained from a criminal act of corruption, because the defendant's actions have caused state financial losses which are used for his personal interests, the defendant must be able to account for his actions by confiscating and auctioning off her assets (Article 18 Paragraph (2) of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes). In the event that a convicted person does not have sufficient assets to pay replacement money, he will be sentenced to imprisonment whose duration does not exceed the maximum threat of the main sentence in accordance with the provisions of this law and the duration of the sentence has been determined in a court decision (Article 18 Paragraph (3) of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes).

## Conclusion

Based on the results of the research and discussion presented by the author, it can be concluded that:

1. The Indonesian government must have a strategy in prosecuting corruptors who have fled abroad. To overcome the problem of state sovereignty in law enforcement, a mechanism that can bridge states is needed. Cooperation between countries is a formal solution that can be done by the government in overcoming the problem of sovereignty. The Indonesia government must immediately carry out an extradition process or mutual legal assistance in criminal matters (mutual legal assistance in criminal

matters) with other countries to retrieve and bring fugitives in corruption cases from where the perpetrators are to Indonesia either by agreement or on the reciprocity principle.

2. Asset Return Mechanisms published in UNCAC on Chapter V. The implementation of this mechanism is aimed at handling cases of cross-border corruption and in particular the return of assets taken abroad. The mechanism for the return of assets in Mutual Legal Assistance regulated in Article 46 UNCAC Chapter IV in particular consists of four stages of the process of returning assets, as follows: Tracking assets to track assets; Precautionary measures to stop the transfer of assets through a freeze or confiscation mechanism; Foreclosure; and Transfer of assets from the country receiving the assets to the victim country where the assets were obtained illegally.

## Suggestion

Government of Republic Indonesia must has a strategy to eradicate criminal acts of transnational corruption so that they have a deterrent effect and the state losses can be returned.

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