

The Role of the Prosecutor's Office in Safeguarding State/Regional Assets as an Efforts to Prevent Corruption in Indonesia

Ricky Setiawan Anas¹, Faisal Santiago²

Borobudur University, Indonesia^{1,2}

Email : jaksa_ricky@yahoo.co.id, ¹ faisalsantiago@borobudur.ac.id²

Author's correspondence : jaksa_ricky@yahoo.co.id

Abstract. The office of the prosecutor, in its efforts to combat corruption, needs to collaborate with the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office to protect and reclaim state financial losses. The research aims to understand the role of the prosecutor's office in asset recovery to prevent corruption crimes in Indonesia. The research method used is normative juridical. The findings indicate that asset recovery starts from monitoring the wealth of potential suspects and is followed by an investigation. The government should put in place measures to prevent crime, such as verifying the identities of public officials and their families and monitoring their bank accounts to stop the laundering of criminal proceeds. In 2022, the prosecutor's office successfully recovered IDR 39.207 trillion and has recovered by 2024 of IDR 23 trillion. The conquest demonstrates the effectiveness of the prosecutor's office challenges, including a lack of witnesses, limited resources, lengthy audit processes, inadequate indictment applications, differences in understanding between prosecutors and judges, and difficulties in asset seizure and tracking.

Keywords: Criminal Acts; Role of the Prosecutor's Office; State/Regional Assets

1. INTRODUCTION

Article 33 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia mandates that branches of production that are important to the state and that control the basic needs of the people must be controlled by the state. In addition, in Article 33 Paragraph (3), the earth, water, and natural resources must be controlled by the state and utilized for the welfare of the people. The regulation reflects that the state is responsible for managing important assets and natural resources for the public interest and emphasizes the need for supervision so that no party exploits them carelessly. To manage these state assets, it is certainly necessary to have a management system in a state financial management system and state treasury.

The management of state finances and state treasury, as outlined in Article 33 Paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, must be carried out with the principle of maximizing the welfare of the people. The principle is reflected in the State Budget (APBN) and the Regional Budget (APBD). It is by the Legal Considerations of the Panel of Judges in the Constitutional Court Decision Number 35/PUU-XI/2013 Paragraph (3.20), the Court stated that the 1945 Constitution does not regulate the reasons and process for changes to the APBN in the form of the determination of the APBN-P. However, Article 23 Paragraph (1) of the 1945 Constitution explicitly states that the purpose of managing state finances in the form of the APBN is for the greatest prosperity of the people. By adhering to the constitutional

principle, changes to the APBN in the middle of the budget year are constitutional as long as they are aimed at the interests of the people's prosperity.

State financial management is regulated by Law Number 17 of 2003 concerning State Finance and Law Number 1 of 2004 concerning State Treasury. These two laws establish rules on the management and accountability of state finances, including the management of state/regional assets. In addition, there are special regulations such as Decree of the Minister of Home Affairs Number 153 of 2004 and Regulation of the Minister of Finance Number 172/PMK.06/2020, as well as Decree of the Minister of Finance of the Republic of Indonesia Number 288/Km.6/2023, which further regulate the management of state/regional assets.

Special arrangements for state/regional assets are important because these assets must be managed differently compared to other civil legal entity assets by Constitutional Court Decision Number 25/PUU-VII/2009. The main principle is that the management and utilization of assets must be optimal for the community's prosperity. However, in practice, there are often cases of misuse, disorderly administration, and problems such as lack of proof of ownership, disputes, seizures, and illegal sales of assets. These cases are often related to corruption, which indicates the need for better supervision and management. Corruption, according to Law Number 31 of 1999 as amended by Law Number 20 of 2001 (Corruption Law), is the abuse of authority and office for personal gain that is detrimental to the public and state interests and hinders national development by wasting potential resources that should be used for the welfare of the community.

Corruption, as an extraordinary crime, requires special and intensive handling. According to Law No. 30 of 2002, amended by Government Regulation instead of Law No. 1 of 2015 and Law No. 19 of 2019 (KPK Law), widespread and systematic corruption crimes violate the social and economic rights of the public and must be addressed seriously. Faisal Santiago states that combating corruption requires an understanding of the threat it poses to national ideals and more intensive legal handling. The Attorney General's Office of the Republic of Indonesia, by Law No. 16 of 2004, amended by Law No. 11 of 2021, plays a role in enforcing anti-corruption laws, including detecting and identifying state/regional assets that are held unlawfully, and coordinating with the government for criminal, civil, and administrative legal actions in cases of missing assets.

In general, the Prosecutor's Office prioritizes criminal law efforts to seize lost assets, by Article 46 paragraph (2) of the Criminal Procedure Code. Unfortunately, the criminal law process is frequently lengthy, and it does not always uphold the principles of swift and affordable justice. Additionally, there is a possibility that assets may be siphoned off during

the process. While criminal law efforts include coercive measures such as detention and confiscation, the main challenge is to ensure that the process runs quickly and effectively without ignoring existing legal rights. In the development of law enforcement, the focus has shifted from punishing perpetrators of crimes to recovering losses, including state/regional assets. Therefore, legal efforts now prioritize asset recovery. The Republic of Indonesia Prosecutor's Office has various fields to handle the recovery of state/regional assets:

- a. Civil and State Administration (Datun) Division: By Prosecutor's Regulation Number 7 of 2021 (Perja 7/2021) and the Presidential Regulation on the Prosecutor's Organization, this area handles legal aid, legal services, law enforcement, legal considerations, and other legal steps to save and restore state assets.
- b. Intelligence Division: By Article 30B of the Prosecutor's Law, this division is responsible for conducting investigations, securing, mobilizing, and prevention efforts in cases of corruption, collusion, and nepotism.
- c. Special Crimes Division: Managing corruption cases related to lost or damaged state/regional assets.

The three divisions within the Attorney General's Office—Civil and State Administration, Intelligence, and Special Crimes—have authority over the recovery of state/regional assets. However, there are legal issues related to the effectiveness and coordination between these divisions. The legal principle "*id perfectum est quad ex omnibus suis partibus constant*" emphasizes that optimal asset recovery occurs only if the entire legal process functions comprehensively. To understand the role of the Attorney General's Office, a thorough analysis of the functions of each division is necessary, focusing on effectiveness, challenges, and issues in asset recovery. With this understanding, a comprehensive approach to handling and preventing the recovery of state/regional assets from corruption can be developed, ensuring assets are managed and utilized optimally and supporting the realization of "Social Justice for All Indonesian People," by the justice theory embraced by Indonesia.

2. METHOD

Method

The research method utilized for this writing is normative legal research, involving the examination of literature and secondary data. The approach taken is normative juridical (statute approach), with a descriptive-analytical nature.

Approach

The normative approach is a method used to examine issues within the context of law and regulations, including rules that can be used as a basis for analyzing problems and their legal consequences. In this case, examples include Law No. 17 of 2003 on State Finances, Law No. 1 of 2004 on State Treasury, and Law No. 31 of 1999 on the Eradication of Corruption Crimes. The normative approach is applied to specific regulations or written laws related to law enforcement in tackling corruption crimes. This research describes the situation of the object being studied, focusing on regulations and concepts related to corruption crimes.

3. RESULT AND DISCUSSION

The Role of the Prosecutor's Office in Rescuing State/Regional Assets as a Form of Efforts to Prevent Corruption in Indonesia

The functions and duties of the Indonesian Attorney General's Office are regulated in the Law of the Republic of Indonesia Number 16 of 2004 concerning the Indonesian Attorney General's Office. This regulation is the legal basis for the Attorney General's Office in carrying out its duties and steps as an investigator and public prosecutor. The prosecutor's office has the following functions:

- a. Preparation of technical policies for special criminal justice activities, including providing direction and guidance by their field of duty.
- b. Planning, implementation, and additional examination in the process of prosecution, execution, and implementation of legal decisions and court decisions, including supervision of conditional decisions and other legal follow-ups and their administration.
- c. Development of cooperation, implementation of coordination, and provision of direction and technical instructions in handling special criminal cases with related agencies and institutions, including investigations and inquiries by-laws regulations, and policies set by the Attorney General.
- d. Providing advice, concepts, and legal considerations from the Attorney General regarding special criminal cases and other legal issues in the context of law enforcement policies
- e. Improving the ability, skills, and personal integrity of law enforcement officers in the field of special criminal acts within the prosecutor's office.

- f. Technical handling and implementation of the duties and authorities of the Prosecutor's Office in the field of special criminal acts by laws regulations, and policies set by the Attorney General.

The prosecutor functions as a state apparatus in law enforcement, tasked with maintaining law, justice, and protection of human dignity, as well as maintaining order and legal certainty. According to Article 1 paragraph (1) of Law Number 16 of 2004, a Prosecutor is a functional official who is authorized to act as an investigator, public prosecutor, and enforcer of court decisions that have permanent legal force, and has other authorities based on the law. The Attorney General's Office of the Republic of Indonesia, as a government institution in the field of prosecution, must be free from political influence and other powers.

Prosecution must be carried out independently, without being influenced by government power or other powers. As a law enforcer, the Attorney General's Office must play a role in upholding the supremacy of law, protecting public interests, upholding human rights, and eradicating corruption, whether high, medium, or low. The Prosecutor is responsible for fostering public security and order and implementing law enforcement by applicable laws and regulations, especially in handling criminal acts of corruption that harm society, the nation, and the state.

The Attorney General's Office coordinates with the Attorney General's Office, the High Prosecutor's Office, and the District Prosecutor's Office in eradicating corruption. Efforts to save and return state financial losses involve comprehensive monitoring of all assets of potential suspects before starting an investigation. The state is required to take steps by national law to prevent and detect the transfer of proceeds of crime, including checking the identity of customers and high-value accounts and suspicious transactions. Detection of corruption requires reporting to the authorities, who must then try to overcome corruption and recover corrupted assets. Success in eradicating corruption is measured not only from the aspect of criminalizing the perpetrators but also from the effectiveness in returning state assets that have been corrupted.

The management of evidence by the Attorney General's Office is not carried out directly, but rather through a process that involves internal bureaucracy and ensures transparency and work efficiency. This process is regulated in the Criminal Procedure Code (KUHAP) and other related laws. The confiscation of evidence is regulated in Article 1 Paragraph (6) of the Criminal Procedure Code, which includes investigators' actions to control evidence, both movable and immovable, for legal purposes.

After the investigator submits the evidence to the Public Prosecutor, the Prosecutor is responsible for the evidence and the suspect. The evidence is then submitted to the Head of the Evidence Management Section (Kasi BB) to be stored and recorded, ensuring its security for the trial. If the judge decides that the evidence is to be destroyed, the Prosecutor will coordinate with the Kasi BB for destruction. If the state confiscates the evidence, the Prosecutor and Kasi BB will generate a report that alters the status of the evidence to confiscated items, marking the first phase in its handling.

Evidence to be converted into confiscated property must meet certain requirements, including a court decision ordering confiscation for the state, a seizure report, and other related documents. The prosecutor, as the executor of the court's decision, has the authority to manage the property designated as confiscated. The management of grabbed property by the prosecutor's office can be carried out through several methods, such as auction, designation of usage status, or donation to local government agencies.

The Effectiveness of the Role of the Prosecutor's Office in Rescuing State/Regional Assets as a Form of Effort to Prevent Criminal Acts of Corruption in Indonesia

Corruption crimes, especially those that harm state finances, are a top priority for the Prosecutor's Office in eradicating them. Law Number 17 of 2003 concerning State Finances defines state finances as the rights and obligations of the state that can be valued in money, including everything related to these rights and obligations, whether in the form of finance or goods that can become state property. In a narrow sense, state finances include legal entities that have the authority to manage and be accountable for them.

According to Law Number 31 of 1999 concerning the Eradication of Corruption, state finances include all state assets in any form, whether separated or not separated, including state assets and rights and obligations arising from the control, management, and accountability of state institution officials, both at the central and regional levels, as well as BUMN/BUMD, foundations, legal entities, and companies that include state or third party capital based on agreements with the state.

The Prosecutor's Office is dedicated to maximizing the recovery of state financial losses as a key objective of the Corruption Eradication Law (Law Number 31 of 1999, amended by Law Number 20 of 2001). In the enforcement of the law, particular attention is given to recovering state losses in corruption cases. The successful recovery of state losses relies heavily on the collaboration between law enforcement agencies such as the Police, Prosecutors, and the Corruption Eradication Committee. Practically, the Prosecutor's Office initiates efforts to

recover state losses from the very beginning of an investigation. This process involves gathering testimony from witnesses and involved parties, as well as collecting compelling evidence to identify the suspect and quantify the loss. As per the Attorney General's Instructions, the Investigating Prosecutor is mandated to seize the assets of the suspect, their family, and related parties from the commencement of the investigation to safeguard the state's finances and economy from the impact of corruption. The Deputy Attorney General for Special Crimes' Instructions underscores that in handling corruption offenses, the primary focus is on recovering and protecting state finances, alongside deterring future incidents. This endeavor aims to bolster public trust in the Indonesian Prosecutor's Office. The effectiveness in handling corruption cases is assessed based on the number of resolved cases and the amount of saved state losses. If a suspect demonstrates remorse and agrees to return the state's financial losses, the Prosecutor's Office can opt to halt the investigation for a specific case, especially if the loss amount is relatively minor compared to the cost of legal proceedings. This decision is made with consideration for the efficiency and impact of process costs on the state.

The guidelines from the Deputy Attorney General for Special Crimes emphasize that for perpetrators of corruption who have voluntarily returned state financial losses, especially in cases with minor financial impact, it should be considered not to proceed with prosecution unless the case continues. The cessation of a case must go through an exposure process and cannot be done arbitrarily. If the exposure recommends continuation, the case cannot be stopped. Although there are no restrictive guidelines from the Attorney General regarding case cessation, previous guidelines emphasize that corruption cases must involve significant financial loss to proceed. To recover state financial losses, the Attorney General's Office uses criminal routes such as tracing, freezing, seizing, prosecuting for restitution, executing, and confiscating the defendant's assets. Meanwhile, the recovery of losses through civil routes is regulated in Articles 32, 33, and 34 of Law No. 31 of 1999, as amended by Law No. 20 of 2001.

In handling corruption crimes, the Prosecutor's Office can stop a case at the investigation stage based on the reasons and considerations stipulated in Article 109 paragraph (2) of the Criminal Procedure Code. The Indonesian government has established several regulations to support the recovery of state financial losses due to corruption, including Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law No. 7 of 2006 concerning the Anti-Corruption Convention, Law No. 15 of 2002 as amended by Law No. 25 of 2003 concerning the Crime of Money Laundering, and Law No. 1

of 2006 concerning Mutual Assistance in Criminal Matters. To improve asset recovery efforts, the Prosecutor's Office has established an Asset Recovery Center (PPA) through Attorney General Regulation Number Per-006/A/JA/3/2014. PPA, previously a task force, now functions as part of the Attorney General's Office manages asset recovery, and coordinates with cooperation networks at national and international levels.

Based on data on handling corruption crimes carried out by the Indonesian Attorney General's Office, at the investigation and prosecution stage through the Special Crimes Division, the Attorney General's Office has succeeded in saving state finances in 2022 amounting to IDR 39,207 trillion, then in 2024 the Attorney General has saved IDR 23 trillion, while for state recovery amounting to IDR 636 billion. The Attorney General's Office's success in saving and restoring state finances shows a picture of the level of success/effectiveness of the Attorney General's Office in returning state financial losses due to corruption crimes that occurred.

Obstacles faced by the Prosecutor's Office in Rescuing State/Regional Assets as a Form of Efforts to Prevent Corruption in Indonesia

Corruption crimes are becoming increasingly complex with advancements in technology and more sophisticated methods used by perpetrators. It poses various challenges for law enforcement, including the Attorney General's Office, in uncovering and combating corruption cases. These difficulties often extend the investigation time and require special approaches to handling. Some of the challenges faced by the Attorney General's Office in combating corruption crimes include:

i. Lack of witnesses to support evidence in corruption cases

In Indonesian judicial practice, witness testimony serves as a primary form of evidence in criminal cases, including corruption offenses. In general criminal cases, witnesses, particularly victims, have personal stakes as they feel harmed by the defendant's actions. They endeavor to prove their losses in court and support the prosecution's charges. Conversely, in corruption cases, there are no direct victims since the harmed parties are government institutions or the state. Witnesses in corruption cases do not have material interests and often attempt to avoid involvement due to the burden of responsibility, wasted time, or fear of being perceived as implicated. Nonetheless, witness testimony remains crucial in corruption cases as it can significantly impact legal decisions regarding the accused.

ii. *Limitations in Facilities and Infrastructure in Corruption Eradication*

The Attorney General's Office faces challenges combating corruption due to inadequate facilities and infrastructure. To assess physical work, the office must hire experts and equipment, such as coordinate drills, which incur high costs and require limited time. Additionally, the office lacks the facilities necessary for investigating crimes within the banking sector, such as tracing accounts and assets, which are vital for uncovering corruption through banking activities. These limitations hinder the effectiveness of investigations and efforts to combat corruption.

iii. *Lengthy Investigative Audit Processes and Financial Loss Calculations by Authorized Officials*

Apart from the lengthy process of calculating state financial losses and investigative audits, a significant delay also occurs in submitting the results of investigative audits or financial loss calculations, which must be approved by the Central Financial and Development Supervisory Agency (BPKP). These processes can take three months to one year, presenting a significant obstacle for the Attorney General's Office in accelerating corruption eradication efforts.

iv. *Inappropriate Application of Subsidiary Charges under Articles 2(1) and 3 of the Corruption Eradication Law*

In handling corruption cases regulated under Articles 2(1) and 3 of Law No. 31 of 1999, amended by Law No. 20 of 2001, subsidiary charges are often applied, where the primary charge is under Article 2(1) and the subsidiary charge is under Article 3. If the financial loss exceeds IDR 1 billion, Article 2(1) with a penalty of more than four years is applied. However, if the loss is below IDR 200 million, the application of Article 2(1), which carries a minimum sentence of four years, seems unjust, especially if the subsidiary charge under Article 3 could be proven. Article 3 is often considered a subset of Article 2(1), making it difficult to apply the subsidiary charge if the primary charge is proven. This issue affects the effectiveness of handling corruption cases, particularly when the financial loss is low and the accused has returned the loss.

v. *Differences in Understanding Between Prosecutors and Judges Regarding Evidence in Corruption Trials*

Prosecutors handling corruption cases in the Corruption Court often encounter differences in legal understanding with judges, leading to frequent appeals. The main discrepancy lies in proving the elements of self-enrichment or enrichment of others. Judges often rule that

this element is not proven if there is no significant increase in the defendant's wealth and no supporting evidence. Conversely, prosecutors argue that any increase in wealth, however small, is sufficient to prove self-enrichment, especially when accompanied by state financial losses.

Additionally, there are differences in assessing the amount of state financial loss that must be returned. Judges often only mandate the return of the amount enjoyed by the defendant, whereas prosecutors consider the total loss incurred by the defendant's actions. If the defendant collaborates with others, the financial loss is shared. These differences in understanding hinder the effectiveness of handling corruption cases in court.

vi. *Difficulties in Seizing and Tracing Defendant's Assets in Efforts to Recover State Financial Losses*

Tracing and seizing assets belonging to defendants to recover state financial losses is a complex process. During investigations, information about assets provided by defendants is often subjective and incomplete, potentially concealing the actual assets. The District Attorney's Office issues orders to trace these assets, but limitations in facilities and infrastructure often impede effectiveness. Additionally, if the value of the seized assets is small compared to the costs of seizure and auction, the Attorney's Office may hesitate to proceed. The office must also be prepared to face civil lawsuits if the seized assets are jointly owned by the defendant's family. These challenges represent significant obstacles in the Attorney's Office's efforts to maximize the recovery of state financial losses.

4. CONCLUSION

The Attorney General's Office, in combating corruption crimes, coordinates among the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office to safeguard and recover state financial losses. This process begins with monitoring the assets of potential suspects, followed by investigation. The state needs to implement preventive measures, including verifying the identities of bank account holders and their connections to public officials and their families, to prevent the transfer of criminal proceeds. In 2022, the Attorney General's Office of Indonesia successfully recovered IDR 39.207 trillion, and by 2024, IDR 23 trillion had been recovered, with state restitution amounting to IDR 636 billion. This success demonstrates the effectiveness of the Attorney General's Office in recovering state financial losses. However, challenges faced include a lack of supporting witnesses, limited facilities and infrastructure, lengthy investigative audit processes, inappropriate application of

subsidiary charges, differences in understanding between prosecutors and judges, and difficulties in seizing and tracing defendants' assets.

REFERENCES

- Chaerudin, et al. (2009). Strategi pencegahan dan penegakan hukum tindak pidana korupsi. Refika Aditama.
- Chazawi, A. (2016). Hukum pidana korupsi di Indonesia. PT Raja Grafindo Persada.
- Effendy, M. (2005). Kejaksaan RI: Posisi dan fungsinya dari perspektif hukum. PT Gramedia Pustaka Utama.
- Gunawan, I. (1994). Peran kejaksaan dalam menegakkan hukum dan stabilitas politik. Sinar Grafika.
- Hamzah, A. (2006). Pemberantasan korupsi melalui hukum pidana nasional dan internasional. Raja Grafindo Persada.
- Hartanti, E. (2022). Korupsi. Sinar Grafika.
- Kaligis, O. C. (n.d.). Pengawasan terhadap jaksa selaku penyidik tindak pidana khusus dalam pemberantasan korupsi. PT Alumni.
- Kasiyanto, A. (2018). Teori dan praktik sistem peradilan tipikor terpadu di Indonesia. Kencana.
- Oka. (1993). Undang-undang kejaksaan Republik Indonesia menetapkan kedudukan dan peranan kejaksaan. Pustaka Sinar Harapan.
- Redaksi Sinar Grafika. (2012). Undang-undang kejaksaan. Sinar Grafika.
- Soemitro, R. H. (1988). Metodologi penelitian hukum dan jurimetri. Ghalia Indonesia.
- Soerjowinoto, D. P. (2006). Buku panduan metode penulisan karya hukum (MPKH) dan skripsi. Fakultas Hukum, UNIKA Soegijapranata.
- Surachmin, & Suhandi, C. (2011). Strategi & teknik korupsi: Mengetahui untuk mencegah. Sinar Grafika.
- Susilo, R. (1984). Tugas kewajiban dan wewenang penyidik, jaksa, hakim (dalam penyelesaian perkara pidana menurut KUHAP). Politeia.
- Yanuar, P. M. (2007). Pengembalian aset hasil korupsi. Alumni.