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Optimizing Asset Recovery Through the Implementation of Article 12 B (Gratification) and Money Laundering in Handling Corruption Crimes

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Abstract: One of the goals of the Corruption Eradication Law is asset recovery. This is evident in the Law Number 20 of 2001 modification to Law Number 31 of 1999 for the Eradication of Corruption. This is inextricably linked to lawmakers' understanding that corruption is a serious crime that harms the country's economy by causing state assets to be unlawfully transferred to corrupt officials and their associates. This research aims to analyze how law enforcement officials, specifically the Corruption Eradication Commission (KPK), can implement existing articles and laws to maximize the recovery of state financial losses due to corruption before the asset confiscation law is enacted by the government. This research uses an empirical legal research method, examining how the law works to achieve its objectives. The theory used is Nonet and Selznick's responsive legal theory. This theory teaches that law is not merely a system of regulations but examines the impact of the application of legal norms on the objectives of the law itself. According to the study's findings, law enforcement officials at the Corruption Eradication Commission (KPK) can use information from the State Officials' Wealth Report (LHKPN) to spot increases in the wealth of suspected corruption offenders in order to achieve one of the goals of the corruption law, which is the recovery of state financial losses or asset recovery, prior to the implementation of the asset confiscation law. This data is combined with secondary data from field surveys on the wealth ownership of suspected corruption perpetrators and data from other stakeholders such as the Financial Transaction Reports (PPATK), Banking, Taxation, National Land Agency (BPN), and others. This spike in wealth is then analyzed in relation to the period of the spike and correlated with the position of the suspected corruption perpetrator at the same time. Furthermore, Article 3 of Law Number 8 of 2010 concerning the Crime of Money Laundering, as well as Article 12B (Gratification) of Law Number 31 of 1999, as amended and supplemented by Law Number 20 of 2001, apply.

Keywords: Asset Recovery, Gratification, Money Laundering

INTRODUCTION

The following explanations of Law No. 31 of 1999 concerning the Eradication of Corruption, points a and b, demonstrate one of the effects of corruption on the national economy: a. that corruption is harmful to state finances or the national economy and impedes national development; as a result, it must be eliminated in order to achieve a just and prosperous society founded on Pancasila and the 1945 Constitution. b. that corruption's current effects not only hurt the national economy or state finances, but also impede the expansion and continuation of national development, which necessitates high efficiency. It is clear from the law's considerations that the legislators are well aware of the detrimental effects that illegal acts of corruption, particularly on the nation's economy, can have. Therefore, it is imperative that criminal acts of corruption be eradicated immediately.

The spectrum of corrupt practices in Indonesia has entered a widespread and profound condition, meaning that it extends from Sabang to Merauke and is deeply embedded in every level of government, from the central to the regional levels. Corruption has infiltrated every aspect of life to the point that it has become almost commonplace, despite being truly reprehensible and having a profoundly negative impact on the nation and state. Therefore, eradicating corruption has always been a priority agenda in every government, including during the administration of the 8th President of the Republic of Indonesia, Prabowo Subianto, with a term of office from 2024 to 2029. In his leadership vision and mission known as *Asta Cita*, President Prabowo has a vision and mission, one of which is strengthening political reform (Subianto, 2017; p. 27), law, and bureaucracy, as well as strengthening the prevention and eradication of corruption (Subianto, 2017; p. 112). This vision and mission were then embodied in the form of strengthening the institutions of law enforcement officers and enhancing laws and regulations, which were consistently emphasized through anti-corruption narratives linked to budget leaks resulting in state financial losses, in every oration and official speech of President Prabowo Subianto.

Apart from efforts to eradicate criminal acts of corruption, as considered in the law on the Elimination of Corruption and also linked to the direction and objectives of President Prabowo Subianto's government, to restore economic damage and budget leaks due to criminal acts of corruption, efforts to recover state financial losses or asset recovery are needed. It has recently become an important issue, even becoming one of the public's demands for the government to immediately take efforts to recover state financial losses, one of which is by passing the Asset Confiscation Law. It is inseparable from the unequal distribution of wealth in society, as explained by President Prabowo Subianto, that 1% of the Indonesian people control 49% of Indonesia's wealth (Subianto, 2017). This condition is contrary to the 5th Principle of Pancasila, Social Justice for All Indonesian People. Based on Pancasila, all Indonesian people must enjoy Indonesia's wealth fairly, not concentrated in one group of people.

The occurrence of control of Indonesia's wealth by a group of capital owners is suspected to be through unlawful efforts or actions, including illegal control of state-owned forest land, land grabbing, and use of forest land not in accordance with its intended use, exploration and exploitation of natural resources not in accordance with applicable regulations. President Prabowo Subianto's administration responded to this by issuing a Presidential Decree establishing a Forest Area Control Task Force (Satgas PKH). The task force was formed to regulate the use of forest areas by unscrupulous entrepreneurs who deliberately use forest areas not in accordance with their intended use, or encroach on forest areas to be used as palm oil plantations, and some encroach on forest land to be used as mining land. Forest management efforts carried out by these investors have generated profits of trillions of rupiah, but none of these profits have gone into the state treasury as they should because the forest management is carried out illegally. Ultimately, these profits flow entirely

to the investors, making them even wealthier. Due to the inequality in the distribution of state wealth and the fact that investors have acquired this wealth illegally, the Indonesian people are demanding that the government take action. One such measure is the enactment of an asset confiscation law, which, in simple terms, mandates that owners of illegitimately or illegally acquired wealth have their wealth confiscated by the state. These public demands have been echoed for the past few years, but until the end of the 2019-2024 term of the Indonesian House of Representatives, the asset confiscation law has not been discussed. DPR members are likely reluctant to discuss the asset confiscation law due to the potential for implicating themselves.

This situation is interesting to the author and raises the question of whether there is no other way to recover state wealth other than enacting an asset confiscation law. Is it possible to fill the legal vacuum due to the non-issuance of the asset confiscation law, law enforcers can optimize the application of articles in the anti-corruption law and articles in the money laundering law supported by data on the wealth of suspected perpetrators of corruption crimes available in the State Officials' Wealth Report (LHKPN) and data from other stakeholders such as the PPATK, BPK and Banking. For this reason, the author is interested in writing with the title "Optimizing Asset Recovery in handling corruption cases through the application of Article 12 B (gratification) and the TPPU Article."

METHOD

This study uses an empirical legal research method to examine how the law works in achieving its objectives. The theoretical foundation is the responsive legal theory of Nonet and Selznick. This theory teaches that law is not just a system of regulations, but also considers the impact of legal norms on the law's objectives. The empirical method was chosen to show that optimizing asset recovery under the Corruption Law and Money Laundering Law is truly applicable, not just a theory that cannot be implemented. Through responsive legal theory, we can analyze how asset recovery may be optimized. This is done by comparing the value of state losses decided by judges with the value of assets declared by corrupt officials in the LHKPN.

RESULT AND DISCUSSION

The recovery of state assets lost due to corruption has become an attractive option amidst the increasing state budget to finance national programs such as free nutritious meals (MBG), infrastructure improvements, and other national projects. On the other hand, Indonesia's debt continues to increase and needs to be managed immediately, through payment rescheduling, debt interest rate reductions, and other efforts. The government is urged to immediately adopt and implement legal norms on illicit enrichment, influence trading, private sector corruption, and foreign public official bribery. By virtue of Law Number 7 of 2006 about the Ratification of the United Nations Convention Against Corruption, the Indonesian government has ratified the UNCAC, which already contains these four legal standards, 2003 (United Nations Convention Against Corruption, 2003). However, not all legal norms in the UNCAC are regulated in the Indonesian Corruption Law. This is as stated by Yasona Laoli, Minister of Human Rights and Law for the years 2019–2024, "Trading in influence, unlawful enrichment, bribery in the private sector, and bribery of foreign public authorities and international organization officials are the four categories of crimes that are not yet covered by national regulations." (Belia, 2023).

One of the four legal norms in the UNCAC that has received public attention is illicit enrichment. The public continues to urge the government to immediately adopt this legal norm in order to recover state financial losses due to corruption. State funds from corruption are suspected to be accumulated and controlled by certain state officials who, to date, possess

enormous wealth but still escape the clutches of corruption law. This is like what happened in the corruption case involving suspect Rafael Alun Trisambodo. He is suspected of possessing unreasonable wealth (not consistent with his profile as a civil servant in the taxation sector), and Rafael Alun Trisambodo has never been implicated in any corruption cases while carrying out his duties as a civil servant in the taxation sector. The corruption case involving Rafael Alun Trisambodo as a suspect began with the assault committed by Rafael Alun Trisambodo's son, Mario Dandi Satrio, who assaulted David on February 20, 2023, at the Grand Permata Complex, Pesangrahan District, Ulujami, South Jakarta (Diahsari, et al., 2023). The case then escalated into a corruption case due to pressure from netizens who requested that law enforcement investigate Rafael Alun Trisambodo's assets, which were suspected of coming from illegal sources (UNCAC, 2004; Article 20). The KPK's Directorate of LHKPN then summoned Rafael Alun Trisambodo for clarification regarding his wealth report and several assets suspected of belonging to Rafael Alun Trisambodo, which were later made public because they were uploaded on social media or known as flexing.

1. Facts At The Trial

The following details are included in the corruption case against Rafael Alun Trisambodo (Decision of the DKI High Court Number 8/Pid.Sus-TPK/2024/PT DKI dated February 2, 2024): From 1988 until 2023, Rafael Alun Trisambodo worked as a civil servant (PNS) at the Directorate General of Taxes (DGT) of the Republic of Indonesia's Ministry of Finance (when he became a suspect), with a history of positions including the following: In 2012 Rafael Alun Trisambodo served as Head of the Examination, Investigation and Tax Collection Division of the DJP Regional Office of Central Java I, this position was held until mid-March 2015. Then, in mid-March 2015, Mr. RAT served as Head of the Tax Audit, Collection, Intelligence, and Investigation Division of the Central Java I Regional Tax Office until August 2015. His three subsequent positions between 2016 and 2020 were Head of the Situbondo East Java Tax Representative Office (KPP Pratama), Head of the Foreign Investment Tax Office (KPP Penanaman Modal Asing Dua), and Head of the General Section of the South Jakarta II Regional Tax Office.

This is based on the Directorate General of Taxation's Vertical Agencies' Organization and Work Procedures Regulation Number 210/PMK.01/2017 issued by the Minister of Finance, Mr. RAT in his position above has the duties and authorities including carrying out tax audits by Tax Audit officers appointed by the Head of the Regional Office, providing guidance on tax audits and collection, monitoring the technical implementation of tax audits and collection, carrying out intelligence activities and tax observations, and carrying out investigative administration including examination of preliminary evidence of criminal acts in the field of taxation. According to Law Number 16 of 2000 of the Republic of Indonesia, which amends Law Number 6 of 1983 regarding general requirements and processes for taxation, Rafael Alun Trisambodo, as a Civil Servant investigator, has the duty and authority to search for and collect evidence that can make a tax crime clear and to find the suspect.

Rafael Alun Trisambodo then established PT Artha Mega Ekadhana (PT. AME), where he appointed his wife, Ernie Mieke Torendek, as President Commissioner. The company engaged in services, except for legal and tax services. However, PT AME actually provided tax consulting services by recruiting Ujeng Arsatoko, who had a tax consultant registration number, allowing him to represent PT. AME's clients in tax matters at the Directorate General of Taxes. In addition to establishing PT. AME, Rafael Alun Trisambodo, also established PT. Cubes Consulting appointed Mr. Gangsar Sulaksono, who is the younger brother of Rafael Alun Trisambodo and Ernie Mieke Torendek, Rafael Alun Trisambodo's wife, as shareholders and commissioners. PT. Cube Konsulting operates in the consulting sector, including tax consulting.

That, based on the evidence and statements in court, Rafael Alun Trisambodo, together with Ernie Mieke Torendek, are suspected of gradually receiving gratuities in the form of money totaling Rp. 27,805,869,634,- (twenty-seven billion eight hundred five million eight hundred sixty nine thousand six hundred and thirty-four rupiah) through PT. AME, PT Cubes Consulting, PT. Cahaya Kalbar, and PT. Krisna Bali International Cargo. These gratuities have been ongoing for years while Rafael Alun Trisambodo served as a civil servant at the Directorate General of Taxes, Ministry of Finance of the Republic of Indonesia. Then, in addition to the legal violations in the form of accepting gratuities, the establishment of a service company related to Rafael Alun Trisambodo's work and also the appointment of Rafael Alun Trisambodo's wife as a commissioner of the company, has given rise to a Complicity of Interest (CoI) for Rafael Alun Trisambodo regarding his work.

After a trial, the cassation panel ruled as follows:

1. Declaring that the Defendant Rafael Alun Trisambodo mentioned above has been legally and convincingly proven guilty according to the law of committing the crime of corruption as charged in the first indictment Article 12 B Jo Article 18 of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption as amended by the Republic of Indonesia Law Number 20 of 2001 concerning amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 55 paragraph (1) Ke-1 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code and the Crime of Money Laundering as charged in the Second Indictment Article 3 paragraph (1) letters a and c of the Republic of Indonesia Law Number 15 of 2002 concerning the Crime of Money Laundering as amended by the Republic of Indonesia Law Number 25 of 2003 concerning amendments to the Republic of Indonesia Law Number 15 of 2002 Regarding the Crime of Money Laundering in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code, and the Crime of Money Laundering as charged in the third indictment, Article 3 of Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code;
2. Rafael Alun Trisambodo, the defendant, was sentenced to 14 (fourteen) years in prison and a fine of Rp 500,000,000.00 (five hundred million rupiah), which, if unpaid, would be substituted with three (three) months in jail.;
3. The defendant, Rafael Alun Trisambodo, is subject to an additional penalty of Rp 10,079,095,519.00 (ten billion seventy-nine million ninety-five thousand five hundred and nineteen Rupiah) in replacement money. The penalty stipulates that the prosecutor may seize the defendant's property and sell it at auction to raise the replacement money if the defendant fails to make the payment within one (1) month of the decision's permanent legal force. If the defendant's assets are insufficient to cover the replacement cost,, then he is sentenced to imprisonment for 3 (three) years;

2. Case Analysis

According to the law, Rafael Alun Trisambodo, the defendant, was judged to have broken the charged articles legitimately and convincingly based on the evidence given during the trial and the panel of judges' decision. The panel fined him Rp 500,000,000.00 (five hundred million rupiah) and sentenced him to 14 years in prison, and compensation of Rp. 10,079,095,519.00 (ten billion seventy-nine million ninety-five thousand five hundred and nineteen Rupiah). This makes it clear that the legal process against Rafael Alun Trisambodo followed applicable legal regulations, rather than being an act of criminalization as some parties have argued.

The handling of the alleged corruption case allegedly committed by Rafael Alun Trisambodo did not begin with a report of the alleged corruption committed by the person concerned, but began with public pressure over suspicions that Rafael Alun Trisambodo had wealth obtained through illegal means. It became known to the public from social media posts showing off his wife and children's wealth, known as "Flexing." The Corruption Eradication Commission (KPK) responded to this public outcry, specifically the Directorate of State Officials' Wealth Reports (LHKPN), which summoned Rafael Alun Trisambodo for confirmation regarding the LHKPN report and the wealth his family displayed on social media. In addition to data from social media, the LHKPN Directorate assigned a team to search for and examine other assets that Rafael Alun Trisambodo might be hiding, both in the name of his family and in the names of others related to him.

The results of the LHKPN Directorate team's research, which were then refined by the investigative task force and subsequently documented in the Case Files of Rafael Alun Trisambodo, were subsequently included in the Central Jakarta High Court's cassation decision and yielded the following data:

Table 1. Rafael Alun Trisambodo's Income Data in Rupiah on the LHKPN

No	Periodic Year	Rafael Alun's Income	Wife's Income	Other Income	Total Income
1	2011	228.411.972	360.000.000	697.015.133	1.285.427.106
2	2013	239.394.000	360.000.000	1.062.015.133	1.661.409.133
3	2015	579.965.000	459.900.000	1.567.015.133	2.606.880.133
4	2016	579.965.000	459.900.000	1.567.015.133	2.606.880.133
5	2017	765.385.676	469.900.000	1.567.015.133	2.802.300.809
6	2018	1.101.760.858	469.900.000	883.750.000	2.455.410.858
7	2019	1.105.642.770	469.900.000	577.270.000	2.152.812.770
8	2020	849.459.093	469.900.000	401.250.000	1.720.609.093
9	2021	823.980.268	423.900.000	313.500.000	1.561.380.268
10	2022	707.245.460	392.043.750	900.750.000	2.000.039.210

Table 2. Rafael Alun Trisambodo's Expenditure Data on LHKPN in Rupiah

No	Periodic Year	Routine Expenses	Other expenses	Expenditure of Assets	Total Expenditure
1	2011	706.000.000	-	-	706.000.000
2	2013	706.000.000	-	-	706.000.000
3	2015	935.000.000	-	-	935.000.000
4	2016	875.000.000	-	-	875.000.000
5	2017	766.000.000	50.000.000	-	816.000.000
6	2018	1.017.102.080	-	425.000.000	1.442.102.080
7	2019	1.032.182.128	-	40.000.000	1.072.182.128
8	2020	1.034.189.320	-	20.000.000	1.054.189.320
9	2021	777.283.186	-	120.000.000	897.283.186
10	2022	819.896.686	-	725.000.000	1.544.896.686

Table 3. Rafael Alun Trisambodo's Wealth Data in LHKPN in Rupiah

No	Periodic Year	Building Land	Transportation Equipment / Machines	Financial Instrument	Cash / Cash Equivalents	Other Assets	Total Wealth
1	2011	16.425.599.000	450.000.000	1.517.689.524	1.684.285.383	420.000.000	20.497.573.907
2	2013	17.718.251.000	450.000.000	1.624.708.192	1.245.175.308	420.000.000	21.458.134.500
3	2015	34.995.293.000	650.000.000	1.760.383.490	1.515.854.536	420.000.000	39.341.531.026

4	2016	34.995.293.00	650.000.000	2.210.383.490	1.611.961.965	420.000.000	39.887.638.445
5	2017	37.361.585.00	375.000.000	1.518.161.656	1.744.893.225	420.000.000	41.419.639.881
6	2018	39.706.217.00	525.000.000	1.513.143.296	1.916.204.298	420.000.000	44.080.564.594
7	2019	39.706.217.00	525.000.000	1.513.143.296	2.114.047.503	420.000.000	44.278.407.799
8	2020	51.532.031.00	425.000.000	1.506.707.379	1.744.911.097	420.000.000	55.652.278.332
9	2021	51.937.781.00	425.000.000	1.556.707.379	1.345.821.529	420.000.000	56.104.350.289
10	2022	51.962.781.00	1.005.000.000	1.506.707.379	1.451.057.705	420.000.000	56.764.586.465

The data above indicates a discrepancy between income and expenses, as well as total assets. This symptom was then investigated by a team from the LHKPN Directorate, followed by the investigative and criminal investigation task force, which traced and verified the flow of funds and assets related to Rafael Alun Trisambodo, his wife, other family members, and close friends. It is crucial, considering that the *modus operandi* of gratification crimes is always accompanied by money laundering, where the proceeds of the gratification are then transformed or disguised as other assets, either in the name of the perpetrator or in the name of another party affiliated with the perpetrator.

The process implemented by the Corruption Eradication Commission (KPK) in handling the case involving Rafael Alun Trisambodo closely resembles the concept of "illicit enrichment" under Article 20 of the UNCAC, which addresses corruption crimes involving illicit enrichment, in this case committed by Rafael Alun Trisambodo. This can be traced through the steps taken by the Corruption Eradication Commission (KPK), which began handling the case by analyzing Rafael Alun Trisambodo's wealth report, as a State Administrator, which he reported to the LHKPN Directorate. The surge in wealth reported in the LHKPN, coupled with the wealth data from on-the-spot checks, served as the basis for the investigation.

The KPK's steps in handling the case involving Rafael Alun Trisambodo align with Nonet and Szelnic's responsive legal theory, which states that the KPK can respond to the legal vacuum associated with the lack of implementation of the norm of illicit enrichment in positive law in Indonesia, which is still only a discourse, with the proposed creation of an asset confiscation law. Meanwhile, from the perspective of utility, as in the utilitarianism school of law pioneered by Jeremy Bentham, what the Corruption Eradication Commission did by following up on public encouragement to handle the case involving Rafael Alun Trisambodo who was suspected of enriching himself illegally and was discovered through the flexing of his family members on social media, is in accordance with the objectives of the law (Lestari, 2022; p. 37), specifically, the greatest happiness for the largest number of individuals, or the greatest happiness of the greatest number.

CONCLUSION

The handling of corruption cases using Article 12B (gratification), combined with articles in the Money Laundering Law, can be used to reach one of the corruption crimes that are difficult to handle because there is no norm in Indonesian Law. Namely, illicit enrichment (litigating oneself illegally). With the application of the articles in question, it has a positive impact on increasing asset recovery. For example, if referring to the verdict of the corruption case with the defendant Rafael Alun Trisambodo, the panel of judges sentenced a fine of Rp. 500,000,000.00 (five hundred million rupiah) and replacement money of Rp.

10,079,095,519.00 (ten billion seventy-nine million ninety-five thousand five hundred and nineteen Rupiah). The money is state finances that should have entered the State Treasury. However, due to the unlawful actions carried out by Rafael Alun Trisambodo, the money was controlled by the person concerned illegally.

The handling of the corruption case related to the illegal addition of wealth with the defendant, Rafael Alun Trisambodo, by the Corruption Eradication Commission is a legal breakthrough in handling corruption crimes. It is because the handling can fill the gap in legal norms that should already exist and apply in Indonesia, namely the legal norm of illicit enrichment, which, until now, has not been implemented in Indonesia because it has not been enacted. From the flow of the case handling, it can be seen and analyzed that the increase in Rafael Alun Trisambodo's wealth, which is suspected to have been done through unlawful means or illegal means can be proven and Rafael Alun Trisambodo was found guilty by the panel of judges and was required to pay a fine and return a sum of money to the state treasury.

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