

BEST PRINCIPLES FOR CRIMINAL ASSETS MANAGEMENT: CONCEPTUAL FRAMEWORK

GO LISANAWATI
*Lecturer, Faculty of Law
University of Surabaya*

ABSTRACT

This paper follows a normative research methodology of law, and will make collaboration with economic approach to build a proper concept for good criminal assets management, and good management principle implementation in order to regain the revenue of state financial losses through a dialogue between law and economic approaches. As it understood, transnational crime is one of the most vital crimes involving any kind of money and property as proceeds of crime. It is adapting things to fit their illegal activities. Corruption and Money Laundering as transnational crime are like two faces of coin. Pursuing proceeds of crime is the effective method in order to cut the crimes. To cut corruption, it can use anti money laundering mechanism. The problem of asset forfeiture is not as simply as designed in the theory. The existence of criminal punishment and forfeiture regime could be very problematic. When criminal assets should be forfeited, the domestic law meets difficulties especially when forfeited assets are in foreign jurisdiction. Thus it needs any proper and right mechanism of asset recovery and asset management in order to recover state financials loss. Maintaining the asset require special institution, good management and cooperation principles to implement it.

Keywords: *Criminal Assets, Assets Management, Transnational Crime*

INTRODUCTION

Corruption and money laundering are economic crimes for countries nowadays. It endangers not only the economic, social, and political life of people but also the sustainability development of nation. Both corruption and money laundering are endangering financial institutions also. Many cases of corruption had shown the importance of laundering the proceeds of corruption. The process itself has put laundering asset of corruption as an important phase of crime, so called as money laundering.

Proceeds as defined in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, means that any economic advantage, derived from or obtained directly or indirectly, from criminal offences. It means proceeds of corruption can be obtained through direct and indirect from criminal activity, and it is economic advantage. Thus economic forfeiture shall be operated in order to punish offender.

Approaching the prevention and eradication of corruption and money laundering, should put criminal law not only as a law of punishment, but should be as recoverable law. The law enforcement and asset recovery are two faces of one coin in this context of crime.

This paper will offer conceptual framework of criminal assets management regarding the principle of management under transnational crime regime context. The suitable conceptual framework will make the process of asset recovery on reach its purpose. State financial losses will be recovered. In regard with crime, deterrence, and economic context, Cooter and Ulen (1988) explained "Deterrence of crime is closely related to the expected punishment". It means that in order to achieve expected punishment that is fit to crime deterrence itself, it needs to design an appropriate model of punishment. In this context is deterring corruption and money laundering under transnational crime regime. The criminal asset management principles should contain the idea of justice using micro economic analysis of law approach which is considering the usage of maximised, balanced, and efficient principles in the work of law itself. Atmasasmita (2014) further mention that those 3 (three) principles has placed the idea of justice restorative to shifting retributive justice. Under the regime of Asset Recovery, the proceeds of crime can be searched, freeze up or seized, confiscated or forfeited using asset forfeiture mechanism.

LITERATURE REVIEW

Stolen Asset Recovery (StAR) initiative (as launched by World Bank and UNODC in 2007) is concern about corruption as serious obstacles in the whole world. It urges State parties to ratify UNCAC due to the problem of corruption, and applies the establishment framework of UNCAC. StAR Initiative is focused on the problem of International asset recovery. It is also focused on the creation of tools in order to limiting obstacles of asset recovery's problems. Stars also try to develop the technical capacity asset recovery by victim country. Then in its books, World Bank through "The International Bank for Reconstruction and Development/ World Bank in their Stolen Asset Recovery (StAR)" book describe about

the greatest problem that have been faced by countries nowadays. The problem is coming from corruption. In theory, the concept of stolen funds because of corruption, whether it is public or private, funds will extremely difficult to recover once it transferred to another country. It becomes big obstacles faced by countries. They offer Non Conviction Based asset forfeiture concept to bridging the difficulties of forfeiture to regain the state financial losses, and become a critical tool for recovering the proceeds and instrumentalities of corruption. According this process, it is important to prepare the tools and mechanism for forfeiture and also in its management of assets derived from criminal. In its key concept Number 6, broaden categories of assets should be subject to forfeiture, both proceed and instrumentalist. As it understood, corruption and money laundering has a different approach of enforcement. Corruption and Money Laundering has become a perfect partner to make the funds of corruption disappear easily. From the literature review, it can be said that the difficulties implementation of forfeiture is tried to be clearly understood by countries since it is important. But the problem of good criminal assets management is not yet designed properly. While criminal assets should be forfeited, the domestic law meet difficulties when forfeited assets in foreign jurisdiction. It needs any proper and right mechanism of asset recovery and asset management in order to recover state financials loss. Maintaining and managing the asset require special institution to manage, good management principles to be implemented until the financial loss is recovered.

In this context, Arief (2014) explains that when offender commit crime of corruption, it's actually the offender wishes to gain never ending assets based on a calculation. Whether criminal penalty will be imposed to them for a long time, but he knows his proceeds of corruption is safe for his family. The explanation of Arief is as below:

“Sebagai kejahatan yang didasari kalkulasi atau perhitungan (*crime of calculation*), maka pengelolaan dan pengamanan hasil kejahatan merupakan kebutuhan mendasar bagi pelaku kejahatan kerah putih. Seseorang akan berani melakukan korupsi jika hasil yang didapat dari korupsi jika hasil yang didapat dari korupsi akan lebih tinggi dari resiko hukuman (*penalty*) yang dihadapi bahkan tidak sedikit pelaku korupsi yang siap untuk masuk penjara apabila ia memperkirakan bahwa selama menjalani masa hukuman, keluarganya masih akan dapat tetap hidup makmur dari hasil korupsi yang dilakukan”

(Free translation: as a crime of calculation, then management and safety aspect of proceeds of crime has become a basic need for white collar

crime offender. Someone will bravely commit corruption if he was sure he will get proceeds of crime is higher than the risk of penalty that he may face, and there are corruption offender who is ready to be punished in a jail if he expects that while he is in jail, his family still can live in prosperity from his criminal act of corruption).

The opinion above explains that law can be manipulated. Offender can gain benefit through his illegal activity not only for himself but also his family even when he is in the punishment phases. Corruptor should not be only punished in jail, but his asset should be forfeited also. Hence the proceeds of crime should be cut. Through forfeiting proceed of corruption; offender will be de-motivated to commit crime again since the destination to gain money will be unsafe. Further Atmasasmita (2014), quoted from Jeremy Bentham from his great work called Introduction to the Principles of Morals and Legislation, that "Nature has placed mankind under the government of two sovereign matters, pain and pleasure. It has for them to point out what we ought to do, as well as to determine what we shall do". It means law should remind all mankind to choose to do all the things they ought to do, and determine what they shall do without mixing criminal minded to gain pleasure by doing illegal action which may cause pain in life, society, and country. Greenberg et.al (2009) in Stolen Asset Recovery book explained that the urgency of stolen asset regime is because of the problem as mentioned below:

The theft of public assets in a development problem of the greatest magnitude:

- The cross border flow of the global proceeds from criminal activities, corruption, and tax evasion is estimated to be between \$1 trillion and \$1.6 trillion per year
- The amount of money stolen from developing and transition countries is about \$20 billion to \$40 billion per year – a figure equivalent to 20 – 40 percent of flows of official development assistance.
- The damage resulting from such thefts includes the degradation and distrust of public institutions, the weakening of the private investment climate, and the corruption of social service delivery mechanism for basic health and education problem.

The construction of asset forfeiture is not only to raise de-motivation of offender but also bring revenue to State and Society. This aspect of restorative is the important element in context of corruption eradication.

State Financial losses in corruption should be recovered. Tracing asset of crime is not as easy as mentioned in the theory. The problem of transnational – cross border crime is the barrier. Offender will usually flight the asset of crime as the proceeds of crime, while money laundering scheme can be very helpful to move the funds easily. Other problem that arises is about asset management. The appropriate mechanism and right institution will lead the process of asset revenue to a state. It can be very dependent on the regulation of one country.

METHODOLOGY

In order to give a framework of appropriate, fit, and ideal concept of criminal asset management, conceptual approach methodology is being used in this paper. It is a normative methodology of law as a qualitative research which will give a description of situation of transnational crime in collaboration with the problem of asset forfeiture, and show the quality of asset management mechanism through good management principle's implementation. The concept that have been built in Conventions and in theory. In collaboration with management aspect, this paper will give appropriate basic concept of criminal asset management under the regime of Transnational Crime, especially corruption and money laundering. The implementation of assets management which have been existing internationally will enrich the ideal conceptual framework of criminal assets management in future.

Critical Analysis

The first analysis will explain about the nature of transnational crime itself. United Nation Convention Against Transnational Organized Crime (UNTOC) give concern to the problem of negative impact and social implications related to organized crime activities. UNTOC then mentioned that in order to deny safe havens to perpetrator who commits transnational crime; nation should prosecute and make cooperation between nation more strongly. The terms of Transnational organized crime itself refers to transnational activity which is committed by organization or organized crime such as corruption, money laundering, arms smuggling, human trafficking, etc.

Transnational crimes are crimes that have actual or potential effect across national borders and crimes which are intra-State but which offend fundamental values of the International community (www.wikipedia.com). In its nature, transnational crimes involve cross border

crime between countries, but not yet an International crime. It means all domestic laws will be facing challenge by other domestic laws when the transnational crime appear in domestic country.

Big effect of transnational and transorganized crime is problem of proceeds of crime. Thus it is important to pursuit proceeds of crime, and should cut the blood of crime itself. It is believed that proceeds of crime should be stopped because it will bring other specific crime such as financing of terrorism. Hence transnational crime in nature can be very dangerous since it is deriving assets from crimes that can be used to financing other crime.

Fickenauer (2000) explains there are three “factors that make transnational crime possible: a. Globalization of the economy; b. Increased numbers and heterogeneity of immigrants; c. Improved communications technology”. Further, Fickenauer (2000) explains:

The challenges in preventing and controlling transnational crime stem for several sources. For example, some crimes arise out of particular cultural and societal conditions and experiences that differ from one country to another. Behaviour that is acceptable in one country may be illegal in another. Crimes that arise out of electronic communications, such as money laundering, are not bound by national borders...

The challenges in dealing with transnational crime arise from the national orientations of laws and law enforcement. Every country has its own laws and law enforcement system deal with crime. But what about crime and criminals that cross national borders?

Regarding with the opinion given by Fickenauer (2000) above, there will always be problems arising out in the context of transnational crime, which is important to be noticed. It is about the compatibility of domestic law (including its mechanism) and law enforcement system to deal with the crime since it is crossing borders of nations. Hence in the context of transnational crime, criminal law should meet the requirement of dual criminality first, and for sure it still needs international legal cooperation in criminal matters to be implemented in domestic law well.

One of the major transnational crimes are Corruption and Money Laundering. In the consideration of United Nation Convention Against Corruption (UNCAC), it has been mentioned that all State Parties to be aware of the potential dangerous impact of Corruption and Money Laundering. Then Article 62 of UNCAC mentioned: “State Parties

shall take measures conducive to the optimal implementation of this Convention to the extent possible, through International cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development". State Party should consider the negative impact of corruption in the context of social development and continuity of development. Corruption in its nature has become enemy of national and International society since it causes obstruction in economic, social, and political development.

Baldwin (2000) then explained about the relationship between Money Laundering and Organized crime as:

Organized crime must have an efficient system to cleanse its ill-gotten gain. The illicit funds must be laundered into usable legitimate assets. The process of "laundering" usually occurs in a three step paradigm: Placement, Layering, and Integration. First, Placement is getting rid of illicit bulk currency through various ways, including, the commingling of illicit funds with a legitimate business enterprise, smuggling, and converting the illicit cash into deposits or assets at bank. Second, Layering is aggregating these funds into bank accounts and moving the assets through a series of transactions to mask the sources, ownership, and location of the funds. Third, and finally, Integration is injecting the laundered funds back into legitimate sources, such as, real estate deals, loans from front companies, and fraudulent import and export invoicing.

Thus, Money laundering will effectively assist organized crime to hide the proceeds of ill-gotten gain from such criminal activity. Money laundering then will not only about dealing with the problem of sentencing perpetrator, but also how to create mechanism of asset forfeiture regime. Under the regime of UNCAC, asset recovery is important to be implemented and considered. It can be understood from the purpose of UNCAC as mentioned in Article 1 as:

1. *To promote and strengthen measure to prevent and combat corruption more efficiently and effectively;*
2. *To promote, facilitate and support International cooperation, including in asset recovery;*
3. *To promote integrity, accountability and proper management of public affairs and public property.*

Asset recovery and its management will be important to regain the state financial losses. As mention in the convention, it is important also to strengthening International cooperation in Preventing and Combating the Transfer of funds of illicit origin, including money or funds

laundering. Other important to considering is how to forfeit the funds of crime and funds derived from crime. Article 31 paragraph 8 then mention: "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other country liable to confiscation, to the extent that such requirement is consistent with fundamental principles of their domestic law and with the nature of judicial and other proceedings". Then domestic law should fit all the principle of confiscation process and mechanism.

Further, the discussion will continue with problem of Criminal Assets Forfeiture. In the theory, asset can be drawn as subject of law which can be liable for criminal confiscation, and/or as tool of criminal activity and/or proceeding asset of crime that can be object of forfeiture. These broaden meaning of assets will bring an important implications to the regulation which will put assets as the subject and/or object. It is impacting the system and forfeiture regime which will be implemented. There are two systems of criminal asset forfeiture, Conviction Based Forfeiture (in personam) and Non Conviction Based Forfeiture (in rem). The regime of asset forfeiture should be more complex since the importance of asset recovery. As mentioned above, asset forfeiture can be understood as a part of asset recovery. In pro's and con's, some legal scholars mentioned that asset forfeiture does not relate at all with state financial losses recovery. Asset forfeiture is dealing with the way to cut the activity of crime through forfeiting the assets of crime and proceeds of crime. While other believes that criminal asset forfeiture will give impact to the returning of state's assets which has been losses due to the criminal activity of offender in some economic or financial crime. Based on the convention, it can be states that asset recovery is dealing with the effort of a state to get their financial losses due to the crime of corruption and money laundering.

Atmasasmita (2014), as quoted from Bob Ainsworth, states:

On civil recovery, where there are substantial assets that are being used and enjoyed and where criminal conviction is not possible – the individual who committed a particular crime may be abroad, untraceable, or even dead – why should we not, on behalf of citizens of this country, have the power and ability to sue for the forfeiture of that property? Why is that principle so wrong? There will be, as a necessity, a hierarchical of use for the measures and the way in which they are used in conjunction with criminal prosecution. We intend to set that out in guidance which will available for the courts. Confiscation will be the normal route when a criminal prosecution is pursued, so civil recovery and cash forfeiture will not be an issue. When a case is pursued through criminal courts, the confiscation route will be the first option for the forfeiture of the proceeds

of crime.. Only when prosecution is ruled out will other routes be pursued; the reasons for ruling it out will be part of the normal decisions taken by the prosecution agencies... Civil proceedings will not run parallel to confiscation proceedings or criminal proceedings. If there criminal proceedings, confiscation proceedings could well be part of that. Civil proceedings will only be instituted when criminal proceedings are not felt to be available or appropriate...

According to the opinion above, it can be understood that there is a separation between civil proceedings and criminal proceedings. Civil forfeiture would not impact the prosecution of criminal proceedings of offender.

Conviction based forfeiture as also called as Criminal forfeiture is an action directed to the person. It is called as in ‘personam forfeiture’. In criminal forfeiture, it needs a criminal trial and conviction, and put assets in value-based confiscation and/or object-based confiscation. Forfeiture regime through conviction based is imposed as a part of sentence in criminal proceeding. Stessens (2000) then explain:

Confiscation of the instrumentalities of crime rests on the assumption that the convicted person has shown himself unworthy to use property by using it for criminal purposes. Confiscation of instrumentalities of crime, or forfeiture as it is often called, is sometimes physically associated with the offence in which the instruments were used, even to the extent that the property itself is considered to be ‘contaminated’ or ‘guilty’....

Non Conviction Based as also called as Civil Forfeiture is an action directed to the assets or things. It called as in ‘rem forfeiture’ since forfeiture process is against assets or property, not offender. Non conviction based does not relate with the issue of human rights violation, since in rem forfeiture is not to proof the guilty of offender, but on the property or assets.

In a diagram, Greenberg (2009) explained:

Differences Between Criminal and NCB Asset Forfeiture		
Criminal forfeiture Against the person (in personam): part of the criminal charge against a person	Action	Non Conviction based forfeiture Against the thing (in rem): judicial action filed by a government against the thing

(continue)

Differences Between Criminal and NCB Asset Forfeiture		
Imposed as part of sentence in criminal case	When does it take place?	Filed before, during, or after criminal conviction, or even if there is no criminal charge against a person
Criminal conviction required. Must establish criminal activity “beyond a reasonable doubt” or “intimate conviction”	Proving unlawful conduct	Criminal conviction not required. Must establish the unlawful conduct on a “balance of probabilities” standard of proof (standard may vary)
Object-based or value-based	Link between proceeds and unlawful conduct	Object-based
Forfeit defendant’s interest in the property	Forfeiture	Forfeit the thing itself, subject to innocent owners
Varies (criminal or civil)	Jurisdiction	Varies (criminal or civil)

Diagram 1: Differences between Criminal and NCB Asset Forfeiture

Implementing NCB Asset Forfeiture is not easy. Usually the problem is dealing with abuse of power’s possibility of law enforcement agent, since assets belong to a person. Even though it does not require a criminal conviction of offender, but through proving unlawful conduct can be pointed out the guilty of a person. The difficulties using criminal forfeiture is criminal proceeding mechanism itself. It need more time until court decide whether a person is guilty or not, imposed or not, and make any possibility to that person move the assets and/or property. Integrating and collaborating both asset forfeiture will bring benefits to the law enforcement process itself.

Further, Asset Recovery Regime under the law of Anti Corruption and Anti Money Laundering will assists the analysis of asset confiscation process. UNTOC as instrument to counter against transnational organised crime give framework of asset recovery through confiscation/ forfeiture through the request of State to another State. It requires States to establish spesific offences as crimes. Article 12 UNTOC obligates State Party to adopt any kind of measurement that enabling identification process, tracing, seizing, freezing, and seizing of assets to be confiscated. Article 12 (1) UNTOC regulate:

States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

- (a). Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;*
- (b). Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.*

UNTOC define Freezing in one phrase of Seizure, as temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority. While confiscation includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority. All the process that have been mentioned in the Convention is in order to recognize Asset Recovery. Asset recovery can be identified as a process to obtaining criminal asset and recovering the proceeds and tools of crimes until its way to returning asset to the requesting States. In this paper will be including corruption and money laundering crime. It will depend on the process of criminal asset forfeiture process while it will choose conviction based or non conviction based asset mechanism.

Article 13 UNTOC set forth procedures of confiscation through an International cooperation. It is required to take particular measures to identify, trace and freeze or seize proceeds of crime for purposes of eventual confiscation. Article 13 notes that special procedures aimed at obtaining the proceeds of crime should be created in opposite to procedures in obtaining evidence of crime itself, such as warrants and in rem procedures. Further Article 14 addresses the final stage of the confiscation process as called as confiscated assets. In this mechanism, the Convention mentioned two conditions which may be applied by States parties. States Parties should give priority to requests from other States Parties for the return of such assets for use as compensation to crime victims or restoration to legitimate owners. Other is States Parties should consider an agreement or arrangement whereby proceeds may be contributed to the United Nation to fund technical assistance activities under UNTOC or shared with other States parties that have assisted in their confiscation. Under UNTOC, the mechanism of confiscation needs some requirements from States Parties and other procedures.

Article V of UNCAC gives basic framework of asset recovery through the mechanism of trace, seize, freeze, and confiscate. The framework of asset recovery can be achieved through the cross border and International

cooperation. It is requiring States Parties to take any measurement to restrain, seize, confiscate, and return the proceeds of corruption, as mention in such articles, through Burn's explanation, et.al (2011), as:

- Article 54 (1) a and (2) a that mention about Direct enforcement of freezing or confiscation orders made by the court of another state party;
- Article 54 (1) c that mention non conviction based confiscation, particularly in cases of death, flight, or absence of the offender or in other cases;
- Article 53 that mention civil actions initiated by another state party, allowing that party to recover the proceeds as plaintiff;
- Article 54 (1) b and 54 (2) b that mention confiscation of property of a foreign origin by adjudication of an offense of money laundering or other offenses;
- Article 53 (b) and c that mention court orders of compensation or damages to another state party and recognition by court of another state party's claim as a legitimate owner of assets acquired through corruption;
- Article 56 that mention spontaneous disclosure of information to another state party without prior request;
- Article 55 and 57 that mention international cooperation and asset return.

Under UNCAC, it should develop any support to requested state party to fulfill the order to freeze or confiscate proceeds of crime which has been issued by other foreign court. It is important to always be developing proper and appropriate mechanism in the context of assets recovery. To develop innovations of techniques which may be used to trace and assets recovery of proceeds of crime will always challenge States parties.

The mechanism of Freezing, seizure, and confiscation under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005, as mentioned in Article 5, should encompass three kinds of properties: a. The property into which the proceeds have been transformed or converted; b. Property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; and c. Income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent

as proceeds. About management of frozen or seized property as mention in the Article 6, is only mention that state party shall adopted such legislative or other measure to ensure proper management. No other explanation was given by the Convention.

Concerning confiscation, the Council of Europe convention mention in Article 23 and Article 24, which may be categorized as:

- Article 23 (4) explains that if a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.
- Article 23 (3) explains that confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds. If property on which the confiscation can be enforced is located in the requested Party.

There is some regulation which may be noticed by State Parties in their domestic law and administrative procedures, as mentioned in Article 25. The procedures are:

- When acting on the request made by another Party to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated property to the requesting Party. It can give compensation to the victims of the crime or return such property to their legitimate owner (subparagraph 2).
- When acting on the request made by another Party, then a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case by case basis, such property in accordance with its domestic law or administrative procedures (subparagraph 3).

Inter alia with Article 23 subparagraph 3, then Article 28 subparagraph 4 b, then reminded that “without prejudice, it will contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and i. an economic advantage that might be qualified as its proceeds; or ii. property that might be qualified as its instrumentalities”. There is a need to make a good cooperation and coordination between requested and requesting state parties in order to arrange good mechanism of proceeds of crime’s confiscation.

Under Money Laundering Regime, there are Vienna Convention and Money Laundering Convention. Vienna Convention mentioned that

there is a possibility to confiscate property with which proceeds have been intermingled. Article 2 of Money Laundering Convention enables confiscation of the proceeds in respect of any offence, although its second paragraph allows for declarations to be made in order to limit the application field of confiscation of proceeds from crime, to certain offences or categories of offences. Article 1 (d) of Money Laundering Convention gives courts special and exclusive competence to order confiscation, while Article 1 (f) of Vienna Convention mention a competence to order confiscation but in a less restrictive authority.

Brun, et.all (2011) then explains process for recovery of Stolen Assets as:

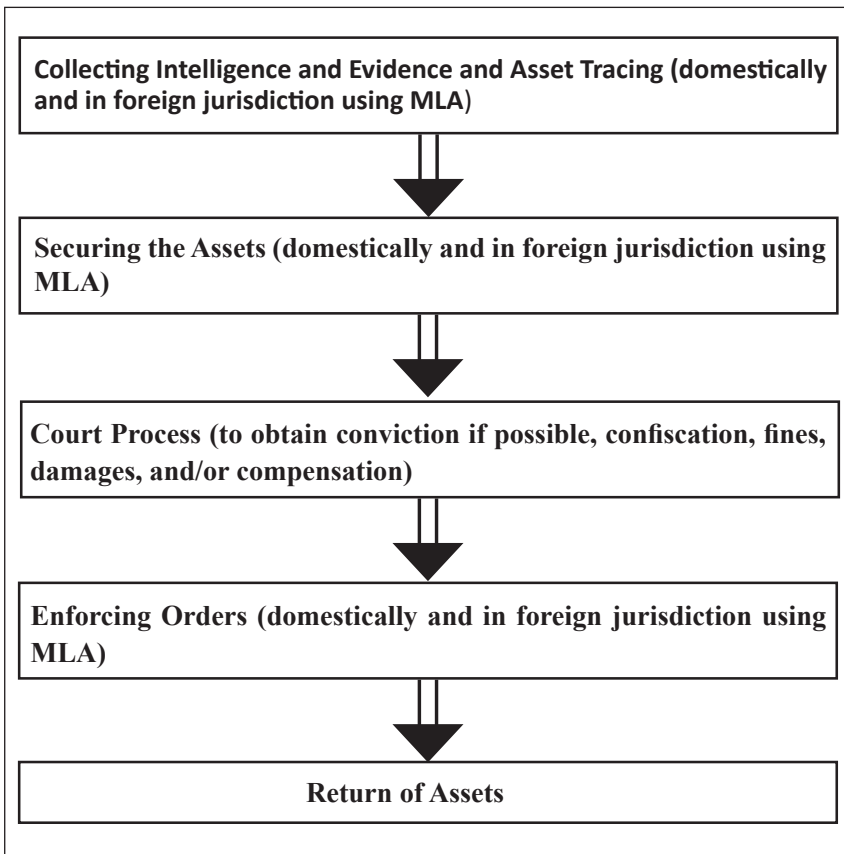


Diagram 2: Process for Recovery of Stolen Assets

The other crucial points that should be discussed are the problem of asset management. As discuss above, it can be analyze that the problem

of financial losses because of corruption and money laundering which is the funds' flew abroad is arising the urges and importance of asset return to state victim. However, assets as heart of corruption, and money laundering as a tool to make the proceeds more complicated to forfeited, are need special mechanism of forfeiture. Mutual Legal Assistance can be an important tool to do it as first aid. Then asset forfeiture possibly can do between countries that have been in conflict criminally because of assets of corruption and assets of proceed of crime money laundering. But the problem may appear when the assets has been forfeited, and should be returned to victim country. Conventions in generally mention that asset management of frozen, or forfeiture or confiscation is should be arranged in domestic legislative framework. There is no guide how to make an International uniform of how is asset management. What agency should be responsible for the assets arrangement? Since in some countries regulates single and/or dual agencies that will be responsible of its arrangement. How is the principle to realize the function of criminal assets forfeiture in returning asset? How is the proportionality of assets dividing to both countries while each country has its own regulation about the proportion percentage?, and etc. In order to get a proper description of how is asset management should be, it can be considering and referring the regulation of some countries that have been implementing asset management, and how is the principle of its management.

The analysis is not to offer the idea of uniformity of law on criminal assets management that will be implemented to all countries. It is rather discuss the idea of International conformity on how criminal assets managements can be returning back to the State Victim, and how the percentage portion is should be given and taken by both countries, since it should consider the urge of Victim States to gain their asset recovery. Domestic law and regulation is challenged by the ability to identify various types of proceeds property's problems, domestic asset management. This paper is trying to offering a conceptual framework on criminal asset management problems through economic principle's approach.

As the last discussion, it will analyze how the ideal and effective asset management tools and mechanism are. FINMA (2014) explained about asset management as:

In asset management a client signs an agreement with an asset manage to invest, on a discretionary basis, the client's assets to meet specified investment goals for the benefit of the client. Following from the asset management agreement a power of attorney is issued to the asset manager

enabling it to select, purchase and sell securities and other instruments in the client's name and for the client's account. The client is not directly involved in the actual investment decisions of their execution. Prior to the asset management agreement being finalised stock is taken the client's situation and needs.

In asset management, there is a relation between client's agreements with the asset which will be invested. It needs compliance to the due diligence as regulated under Anti Money Laundering regulation. It should comply to the regulation of Risk Based approach, and due diligence responsibility.

To integrates law and economic should put approaches of law perspective and micro economy perspectives. Criminal Assets which have been forfeited should be managed well. It should be implementing good principles of management, in order to understand varying problem from a risk management point of view. As mentioned above, asset forfeiture regime plays very strategic role in order to prevent crime (such as Corruption and Money Laundering) and returning assets to state for the losses through asset recovery. The basic principle of management should identify what is needed to manage the assets to become ideal and effective, what is the plan to deal with any problems that arise regarding with asset management, what institution should be responsible to manage the assets, and repatriation of assets' principles.

As understood from Convention above, there is only a mechanism how to search, seize, confiscate and/or forfeit. Conventions did not mention specifically on how to manage criminal assets which have been forfeited. It is mentioned that States parties shall have special mechanism in asset management. The problem appear is what is ideal and effective criminal asset management for a State?.

Greenberg et.al (2009) through a book Stolen Asset Recovery give guidance on organizational consideration and Asset Management in the key concept 27 until key concept 30. Those key concepts are:

- key concept 27 mention about specify which agencies have jurisdiction to investigate and prosecute forfeiture matters;
- key concept 28 mention about consider the assignment of judges and prosecutors with special expertise or training in forfeiture to handle NCB asset forfeiture;
- key concept 29 mention about there should be a system for pre-seizure planning, maintaining, and disposing of assets in a prompt and efficient manner;

- key concept 30 that mention about establish mechanisms to ensure predictable, continued, and adequate financing for the operation of an effective forfeiture program and limit political interference in asset forfeiture activities.

Criminal assets in varied forms should be considered well by states to be handle. Criminal assets as immoveable should be managed differently than moveable criminal assets, or assets in the forms of animals or plants should be treated specifically. In other word, Countries should be very careful in preparing all type of assests which may be seized, forfeited or confiscated.

G-8 countries and the Organization of American States (OAS) have been considered how to implementing effective management and disposition of seized and forfeited assets. As explained by Greenberg, et.al (2009):

Many of the principles are directed at operating a forfeiture program with integrity, accountability, and transparency. In addition, the principles focus on good management practices, such as pre-seizure planning, preservation, and pre-forfeiture sales of perishable and depreciating property. As the G-8 notes, “[while the main objective of forfeiture is to strip criminals of their ill-gotten gains and the instrumentalities that make crime possible, good fiscal decisions are also an important factor: assets, rather than liabilities, should be seized for forfeiture].

In addition, the G-8 guidance encourages countries to make use of information technology systems to manage assets. The managing agency needs to have accountability, and must maintain an accurate inventory of all assets, recording their whereabouts, value, condition, and status in the litigation process, for the benefit of not only the administrator of the assets, but also for the benefit of the court, prosecutor, and claimants.

The principles of integrity, accountability, and transparency should be basic management principles to manage assets of crimes. In special purpose, through those basic management principles, it can be used to prevent other financial losses that may be faced by countries. In the context of those principles, then recommendation of G-8 reminded that there should be a clear duties’ separation between agencies. There is no one who has complete control over all aspects of assets management. No one could receive a personal benefit from property which have been seized or forfeited for personal purposes. All the benefit should be given

through transparent mechanism. The principle of accountability which will relate with administration should be examined by independent auditors annually. Integrity will put a consequence that there is no personal financial reward given to person who is officially responsible for the asset management, and connected responsibility with the value of assets seizure.

Special institution that was designed with special responsibilities to take care of the assets forfeiture should know their responsibilities. Considering possibilities of any other institution which have been existing in countries to take care criminal assets which is related with other crimes, then countries should make a consolidated agencies that have consolidated responsibilities. It can reduce the costs of administrative to pay more officers from more agencies. It is also to make coordination when there is an interrelation asset which may be the assets of criminal and/or assets derived from crime itself. It can be very dependent to the system of criminal asset forfeiture regime which is chosen by countries itself. If the country separates the assets from regime of Criminal Forfeiture and Civil Forfeiture, then it should be a consolidation how to arrange its mechanism, but without in doubt both regimes can be in collaboration. Through one roof agency, it can achieve effective and efficient management of criminal assets.

Through good management principles implementation, it should be aware about any obstacles that may arise regarding with criminal assets managements. Problem of stolen or damaged property can be very easily rising regarding with the movable property and/or immovable property itself. Then countries should arrange who will responsible for the losses or damages properties. Other problem is about the depreciation of values of assets itself. It is not easy to manages assets or property and retain in good condition always. If the value of assets is decrease, how cans country could gain benefit to get revenue from criminal assets which have been forfeited.

RECOMMENDATION

Law enforcement agents should implement asset recovery for countries through considering the work of criminal law for offenders; it needs not only operating criminal law to punish offender by physical deprivations, but how to forfeit their assets. Asset recovery regime should be applied in their indictment. In principle, the problem of asset recovery can be very effectively realized in returning the State Financial Losses caused of

Corruption and Money Laundering through a good management of the assets itself. The law here can operate the principles of good management through Integrity, Accountability, and Transparency principles to implemented criminal assets management. Integrity principle will answer the problem of assets forfeiture and asset management from the perspective of its agencies that responsible to manage it, and both countries' responses on asset forfeiture request. Then accountability principle will assist in make all the assets can be effective to be managed and used as appropriate mechanism to return the assets back to state victim. Principle of transparency will bridge the condition and value of assets itself.

CONCLUSION

Under transnational crime regime, criminal law has been fully challenged by the nature of transnational crime itself. Criminal law should be operated properly and in its purpose. Transnational crime is not dealing with the problem to condemn perpetrator, but also economic aspects. Thus criminal law should be directed to punish perpetrator to cover both side. Corruption and money laundering, as a predicate and proceeds of crime in the regime of transnational crime, can be very dangerous if criminal law is only operated as a retributive law. Hence it needs a shifting paradigm from retributive to restorative perspectives. Criminal Asset Forfeiture has been taking important place in the prevention and eradication of crimes. Asset forfeiture in its goal is not only to punish offenders of crime, but also to stop the crimes and recover financial losses of countries caused by those crimes. In the context of restorative justice, criminal asset forfeiture will give hopes to countries in gaining asset recovery.

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