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Transnational Corruption and It's Impact on Indonesian Jurisdiction

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Abstract*--As a state of law, all law enforcement processes in Indonesia are limited by sovereignty for trans-border crimes that one of them is corruption. Corruption case is as part of transnational crimes that cannot be underestimated. The legal vacuum that occurs in Indonesia has an impact on the difficulty of prosecuting the perpetrators of corruption crimes as part of Indonesia's criminal jurisdiction. The formulations of the problems used in this legal research are: (1). Legal accountability for perpetrators of cross-border corruption; (2). International legal mechanisms and national law in the eradication of transnational corruption crimes. The results of this research are: (1) There is a need for joint cooperative action to crack down on corruption crimes across borders in accordance with UNCAC and UNTOC, considering that corruption crimes are a common problem with all countries in the world. (2). Indonesia needs to adopt and recognize various types of corruption crimes at UNCAC in the revision of the new Corruption Act. As well, the emergence of an agreement of all countries in the world to create universal jurisdiction over cross-border corruption crimes in the International Criminal Court (ICC), as a crime under the jurisdiction of the ICC. In particular, amendments to the 1998 Rome Statute.

***Keywords*- anti-corruption; jurisdiction; transnational crime.**

I. INTRODUCTION

As a state of law, all law enforcement processes in Indonesia are limited by sovereignty for trans-border crimes that one of them is trans-border corruption. This crime type has recently become the discourse and jurisdiction of other countries, including limitations in law enforcement which are quite interesting to discuss, considering that various types of corruption crimes are difficult to process legally due to limitations of jurisdiction and sovereignty.

Several corruption cases that occurred in Indonesia involved the jurisdiction that more than one country, for example the corruption case in the procurement of E-KTP which caused losses to the state amounting to 2.3 Trillion Rupiahs was arrested by the Corruption Eradication Commission of the Republic of Indonesia (hereinafter referred to as KPK-RI), in addition to involving jurisdiction The United States, the Corruption Eradication Commission of the Republic of Indonesia (KPK-RI), also collected evidence of transactions from banks in Singapore that recorded money transfers from Johannes Marliem (Biomorf Lone LCC Director) and Anang Sugiana Sugiharto (President Director of Quadra Solution) amounting to US $ 4,855 million to an account belonging to Made Oka Masagung. Oka allegedly collected the flow of e-KTP funds which would be distributed to a number of parties. [1]

Including the case that drew attention related to the corruption of Garuda Indonesia and Rolls-Royce in the procurement of aircraft engines, where Emirsyah Satar was the former President Director of PT. Garuda Indonesia, which proved receive the proceeds of corruption and money laundry amounted to € 1.2 million and US $ 180,000 with a total loss of about Rp.20 Billion Indonesia, and some assets worth 2 million US $ spread in Singapore and Indonesia. The Rolls-Royce corruption case involved not only the Indonesian government, but also several public officials and corruption in the private sector in other countries, such as Thailand, India, Nigeria, Malaysia, China, and Russia between 1989 and 2013. [2]

Corruption cases as part of transnational crimes cannot be underestimated, the legal vacuum that occurs in Indonesia has an impact on the difficulty of prosecuting the perpetrators of corruption crimes as part of Indonesia's criminal jurisdiction. To realize the rule of law for Indonesia, it is necessary to further discuss this transnational corruption crime, both from the point of view of international law where Indonesia is a participant in international conventions related to corruption and transnational crimes, as well as in Indonesian legislation that regulates acts of crime. corruption and various other types of crimes that are accommodated in various laws in Indonesia.

II. PROBLEMS

Looking at the legal issues raised above, the problem formulations that can be raised are: (1). Legal accountability for perpetrators of cross-border corruption; (2). International legal mechanisms and national law in the eradication of transnational corruption crimes.

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III. RESEARCH METHOD

Legal research method analysed corruption crimes as international crimes using a socio-legal approach. The socio-legal approach was a method of legal research that did not only rule the law, but also deepens the context, which included all processes, for example related to the formation of law to the 'implementation of law'. The label of socio-legal studies had gradually become a general term that included a group of disciplines that applied a social scientific perspective to legal studies, including legal sociology, legal anthropology, including international law, and political law. [3]

The socio-legal approach was a combination of approaches within the social sciences, included political science, economics, culture, history, anthropology, communication and a number of other sciences, "which were combined with approaches known in legal science, such as learning about principles, doctrine and hierarchy of legislation". The socio-legal approach thus became a single concept for the combination. Thus, the legal analysis carried out has a broad and interdisciplinary point of view in describing the issues raised in this study. [4]

The field of law analysed the topic of corruption crimes as transnational crimes that was the research of public international law, especially with regard to transnational international crime law, the analysis point used by the author, "based on international conventions will be dominant in this paper. However, the research of international law did not stand alone, because in the discussion of the theme it also used a criminal law approach, especially corruption as a rules-based system, and can understand the function and authority of the KPK-RI in prosecuting the perpetrators of these crimes. This meant that multi-dimensional discourse can be built in this legal research so that it was expected to produce comprehensive legal research". [5]

Legal materials that had been obtained from "international legal conventions, national legislation, literature reviews based on related themes, as well as from several existing cases". In writing this law, it can be analysed qualitatively by using deductive logic, namely a general to specific conclusion.

IV. DISCUSSION

A. Jurisdiction and International Law in Facing Trans-Border Crime

Sovereignty is an absolute requirement for a state of law in exercising the rule of law that is owned, and making the effectiveness of law enforcers able to enforce its legal rules, and indicating that the country continues to exist and be independent. [6] This showed a country is able to implement its legal rules against various types of crimes in which a country had an interest in these crimes.

Jurisdiction in the sense of actively providing privilege for a country to enforce the rule of law, giving authority to law enforcers, which affected people, objects, and related matters as a basic principle in upholding the sovereignty of a country. [7] This was evidence that the effectiveness of law enforcement in a sovereign country like Indonesia was able to reach parties who committed transnational crimes, one of which was corruption.

The challenge for a country in exercising legal jurisdiction for perpetrators of transnational corruption was how the principle of nationality allowed a country to prosecute individuals and corporations who committed crimes across borders, the state, including corruption crimes. Including state losses resulting from transnational crimes, as well as the involvement of criminal networks and the principle of protection of the honour and rule of state law that were very much needed as an instrument in eradicating transnational corruption, this in the context of international law was known as extra-territorial jurisdiction, and it must be accommodated in the laws of the country concerned. [8]

In the context of international crimes under the UN mechanism, in the case of international crimes based on the Rome Statute 1998 [1], the need for a binding international agreement was in the framework of harmonizing the criminal law system of the state party which introduced the obligation and option to prosecute several crimes which had been the crime domain that fall within the jurisdiction of the state. Roberto Bellelli said, confession of a crime, one of which is a corruption crime as a serious crime, to be prosecuted, tried, and convicted not only in the context of territorial cooperation, but also an international crime. [9]

B. Corruption as a Transnational Crime

As a country that was active in various international treaties, Indonesia has ratified two important international treaties, namely the United Nations Transnational Organized Crime (UNTOC) (Indonesia ratified Law Number 5 of 2009) and the United Nations Convention Against Corruption (UNCAC) (Indonesia ratified in Law Number 7 of 2006) [10], as an international legal instrument that can become a weapon for the KPK-RI as an ex officio against corruption in Indonesia as well as other law enforcers in accommodating transnational corruption crimes. -state and multi-jurisdictional boundaries.

The motive of cross-border corruption that was in addition to gaining profits from the corruption

crimes committed. It was also the benefits in investment and illicit business which made public officials in the host countries accepted bribes and manipulative. [11] Corruption efforts that are also carried out by corporations involving many countries were expected to be able to obscure and weaken the law enforcement process for corruption crimes committed and their derivative crimes, one of which was money laundry.

Transnational organized crime was a type of crime that included cross-border organized networks that then involved various criminal law systems that apply between countries, as well as their methods, practices and activities that obstructed more than one legal system from a country. As well as the flow of funds carried out illegally [12], Therefore, it needed to be cooperation between countries in overcoming these crimes.

When linked between transnational crimes and corruption, the international community agreed that corruption crimes involving politicians, economic actors and their criminal networks had committed corrupt practices and their derivatives (bribery, money laundering, gratification, etc.) across national borders and caused an economic situation. Losers. [13] Not only that, its impacts were on global poverty and as the root of other crimes. The importance of global awareness in cracking down on corruption as part of transnational crimes. [14]

UNTOC signed in Palermo, based on UN General Assembly Resolutions. 55/25, is a reference in eradicating international organized trans-border crime. [2] Article 8 (1) UNTOC explained that every country was obliged to take measures to prevent, detect and punish corruption crimes that were transnational in nature. The impact of cross-border corruption also involved multi-jurisdictional impact on legal mechanisms and what steps were appropriate to take joint action in eradicating transnational organized crime, as well as how law enforcement starts from investigation, investigation, prosecution, and choice of court which was authorized to adjudicate. Where, it aimed to overcome the limitations of sovereignty, citizenship status, and the criminal law system of a country. [15]

The Secretary General of the United Nations, Kofi Annan (2004), in his introduction to the adoption of the United Nations Convention Against Corruption (UNCAC) "stated that corruption is an insidious plague that has a wide corrosive impact on society. Corruption weakens democracy and the rule of law, caused human rights violations, destroys markets, erodes the quality of life and facilitates organized crime, terrorism and other threats to human security". [16]

UNCAC, which was the source of binding international law based on UN General Assembly Resolution 58/4 on 31 October 2003 that was a comprehensive framework. At UNCAC there were several key words as a reflection of global awareness in the war against corruption agenda. First, the political-law approach during the negotiation process, the strategies and positions of several countries, and the impacted and outcomes obtained by countries after implementing UNCAC in their country's criminal law system. Second, the areas that were prone to corruption researches can benefit the country accommodated by UNCAC, such as: asset recovery, private sector corruption, political corruption, and monitoring mechanisms. Third, opportunities and challenges with an international legal approach related to global commitments against corruption. [17]

Various types of cross-border corruption had been accommodated in the convention, such as bribery of foreign affairs, bribery in private sectors, trading of influence, beneficial ownership, etc., including legal liability for individuals and the private sector included in the corruption crime network. itself. Under Article 4, UNCAC was still mandating parties to respect the sovereignty and criminal system of each type of crime. [18]

In Article 42 UNCAC provided the obligation of the necessary steps in the context of prosecuting cases of cross-border corruption when: (1). corruption crimes were committed in a planned manner in the territories of other participating countries; (2). Also, matters stipulated in Article 4 of UNCAC can be set aside when a corruption suspect commits a corruption crime where another country was harmed, or the corruptor resides in another convention participating country, and the corruption crime violates another party's state; (3). The investigation process (investigation / investigation), prosecution, and the next law enforcement process must work together to enforce jurisdiction between member states. [19]

The main mechanism in building an international mechanism was between investigators and prosecutors, in carrying out investigations and prosecutions requires international mechanisms, such as: Mutual Legal Assistance (MLA), extradition, transfer of prosecution processes, freezing of assets, etc. require international cooperation, both bilateral and multilateral. It can be easier to do with technological developments and cooperation between countries that must be done quickly and accountably, so that this cooperative step will make the international situation better in the future. [20]

The process of prosecuting corruption crime was as international crimes that until now it had not been included in the jurisdiction of international crimes under the 1998 Rome Statute, and perpetrators of corruption crimes cannot be prosecuted as perpetrators of international crimes. According to

Otto Triffterer and Kai Ambos [21], several countries are open to amendments and admit crimes that threaten state security, one of which corruption can be a crime under the jurisdiction of the ICC and the 1998 Rome Statute. [3]

Table 1: Comparisons of International and Transnational Crime Against Corruption as regulated under the 1998 Rome Statute, UNCAC, and UNTOC

No	Material & Formal Aspects of International Crime	Rome Statute 1998	UNCAC	UNTOC
1	Types of Crime	(a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression (Art.5 (1))	"Bribery of national public officials (Art.15); Article 16. Bribery of foreign public officials and officials of public international organizations (Art.16); Embezzlement, misappropriation or other diversion of property by a public official (Art.17); Trading in Influence (Art. 18); Illicit enrichment (Article 20); Bribery in the private sector (Art. 21); Laundering of proceeds of crime (Art. 23)"	"Criminalization of participation in an organized criminal group (Art. 5); Criminalization of the laundering of proceeds of crime (Art. 6); Criminalization of corruption (Art. 8)"

2.	State Criminal Jurisdiction Status	"1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5. 2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; (b) The State of which the person accused of the crime is a national. 3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question" (Art.12)	"Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when: *(a)* The offence is committed in the territory of that State Party; or *(b)* The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed. 2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when: *(a)* The offence is committed against a national of that State Party; or *(b)* The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or" "*(c)* The offence is one of those established in accordance with article 23, paragraph 1 *(b)* (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 *(a)* (i) or (ii) or *(b)* (i), of this Convention within its territory; or *(d)* The offence is committed against the State Party." (Art.42)	"A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities; Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities" (Art.13 (1) and (2))

3.	Investigation process	"in order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of Whether there is criminal responsibility under this Statute, and, in doing so, Investigate incriminating and exonerating circumstances equally The Prosecutor may: (a) Collect and examine evidence; (b) Request the presence of and question persons being investigated, victims and witnesses; (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and / or mandate; (d) Enter into such arrangements or agreements, not inconsistent with this statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person; (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and	"Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds". (Art. 37)	*"Joint investigations* States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected" (Art. 19)

		(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence". (Art. 54)		
4.	Prosecution Process	"Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber". (Art. 56)	"Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offenses" (Art. 38)	"States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution". (Art. 21)

5.	Judicial Process	"(a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty. (b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this statute". (Art. 64)	"In the case of offenses established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings". (Art. 30)	"In the case of offenses established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions placed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings" (Art. 11)

In the comparison of international treaties related to international and transnational crimes, it provided a sign that jurisdiction and sovereignty over international crimes were accommodated in the 1998 Rome Statute, which stated that if there was no binding international agreement, then the jurisdiction of crimes outside those regulated in the 1998 Rome Statute, while related to UNCAC and UNTOC were part of transnational crimes, which were limited to the sovereignty and jurisdiction of each country and required international cooperation for law enforcement [22]. Therefore, the need for international commitment in eradicating trans-border corruption and recognizing corruption crimes were as international crimes, and corruptors can be tried in the 1998 Rome Statute as a strong commitment to international politics and law.

C. The Challenge of Recognizing Corruption as an International Crime for Indonesia

Indonesia had a very limited Law Number 31 of 1999 (Law 31/1999) in dealing with transnational corruption. Article 16 of Law 31/1999 regulates the prosecution of cross-border corruption that was related to the provision of assistance, opportunities, facilities and information that fall into the categories "in Article 2, Article 3, Article 5 - Article 14 of Law 31/1999, subject to action. by the Indonesian legal system (passive nationality principle). In addition to Law 31/1999, there was the Money Laundering Criminal Act (Law 8/2010), Presidential Decree Number 13 of 2018 concerning the Application of the Principles of Recognizing Beneficial Owners of corporations in eradicating money laundry and Terrorism Funding Crimes, as well as other laws in Indonesia".

Discussing the limitations of jurisdiction was as a law enforcement force in corruption cases. Therefore, you need to do a cooperative measure to do it for transnational organized corruption crimes. Various actions can be taken between member countries that one of them was mutually beneficial cooperation (Mutual Legal Assistance /MLA). MLA was a framework to overcome the limitations of

limited jurisdiction between the host country and home country, even cooperative with third countries. Including cooperation in terms of prosecution. [23]

Including, other cooperative actions such as extradition as a mechanism that can be taken by Indonesia to request cooperation with other countries that had links to transnational corruption crimes. With the bilateral technical agreement mechanism, corruption eradication can be carried out comprehensively, especially in the eradication of cross-border corruption. [24]

In fact, international cooperation was a diplomatic process between two or more countries, which had the same basic interests. [25] In connection with the common interest in fostering law and justice that countries carried out international cooperation to hand over the perpetrator of the crime to the country where the crime occurred [26], this had been reflected in state practices to return someone who was accused or who has been convicted. for committing a crime where he came from [27]. International cooperation must be carried out by observing the principle of equality based on mutual respect and sovereignty of the countries involved in the cooperation. International cooperation contained in an agreement can be valid and binding politically and legally to the countries that make it [28].

In Indonesia, the legal basis for the appointment of a Ministry to act as the Central Authority in both the extradition mechanism and the MLA was [29]:

1. Extradition, contained in Article 22 paragraph (2) in conjunction with Article 44 of Law Number 1 Year 1979 concerning Extradition, namely:
2. Article 22 paragraph 2: This letter of request for extradition must be submitted in writing through diplomatic channels to the Minister of Justice of the Republic of Indonesia to be forwarded to the President.
3. Article 44: If a person is suspected of having committed a crime or has to undergo bailout for committing a crime that can be extradited within the jurisdiction of the Republic of Indonesia and is suspected of being in a foreign country, then at the request of the Attorney General of the Republic of Indonesia or the Chief of Police, the Minister of Justice of the Republic of Indonesia the name of the President can request the extradition of the person he has submitted through diplomatic channels.
4. MLA (Mutual Legal Assistance in Criminal Matters), contained in Article 1 number 10 of Law Number 1 of 2006 concerning, namely "what was meant by the Minister in this law that was the minister was responsible in the legal field. and human rights. "

Law enforcement cooperation in international relations had proven to be critical to the success of national law enforcement against transnational crimes [30]. The success of these law enforcers generally cannot be a reality if there is no bilateral or multilateral agreement on the handover of criminals or cooperation in investigation, prosecution and trial [31]. The terms of the agreement were not absolute because without the agreement, law enforcement cooperation can be carried out based on the principle of reciprocity (reciprocity).

Limitations related to cross-border corruption need to find a solution in order to recognize (recognition) of this crime as a common problem with the international community. Therefore, in the future the eradication of cross-border corruption can progressively be carried out by all countries in the world.

V. CONCLUSION

It was needed the joint cooperative action by the international community to crack down on transnational corruption crimes, in accordance with UNCAC and UNTOC. Considering the corruption crimes were a "common problem with all countries in the world and hinder investment, and threaten international peace and security, and worsen the protection of human rights". Indonesia needed to adopt and recognize various types of corruption crimes at UNCAC in the revision of the new Corruption Act

Ensuring the agreement of all countries in the world created the universal jurisdiction for crimes of transnational "corruption in the International Criminal Court (ICC), as crimes under the jurisdiction of the ICC". In particular, amendments to the Rome Statute in 1998. Therefore, the international community's strong commitment to eradicating the corruption that was not limited by jurisdiction and state sovereignty was limited.

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