



International Fund Assistance and It's Eradication of Corruption in Indonesia: International Law Perspectives

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Abstract. The crime of corruption has a systemic impact on the development of the Countries. The impact of corruption not only affects the state's finances, but also the country's image in allocation of international fund assistances. Cases of corruption in international aid funds in Indonesia occur due hasn't being transparent and accountable in the allocation of international funds. On the other hand, international funding assistance as outlined in the international agreement actually has an impact on the problems of the enforcement of legal system, whether it uses international legal mechanisms, or is subject to criminal acts of corruption in Indonesia. This research aims to answer: (1). corruption of international financial aid from the perspective of international law and national law; (2). Mechanisms for law enforcement in international law and national law in accordance to eradication of international financial aid corruption in Indonesia. This study uses a socio-legal method, to identify the problem of corruption in international aid funds from not only from legal perspective, but also from a political-economic point of view and it's flow. The results of this study are: (1). Corruption of international loans and aid funds with locus actus and mens rea aimed at harming state finances needs special attention, including the importance of adopting UNCAC provisions in amending the Corruption Law in Indonesia so that corrupt practices of international funds assistance do didn't corrupt in Indonesia; (2). It is necessary to look at the loan agreements and international funding assistance to find out the jurisdictional and law enforcement mechanisms for the misuse of these criminal acts of corruption, in line with UNCAC and UNTOC, so that they can clearly show the jurisdiction of the applicable criminal law.

Keywords: Anti-corruption · Jurisdiction · International Fund Assistance

1 Introduction

The crime of corruption has a systemic impact on the development of the Countries. The impact of corruption not only affects the state's finances, but also the country's image in allocation of international fund assistances [1]. Cases of corruption in international aid funds in Indonesia occur due hasn't being transparent and accountable in the allocation of international funds [2]. International funding assistance as outlined in the international

agreement actually has an impact on the problems of the enforcement of legal system [3], whether it uses international legal mechanisms, or is subject to criminal acts of corruption in Indonesia [4].

Several case of corruption, regarding of international fund assistance in Indonesia the World Bank revealed that the implementation of grants worth US\$ 203,000 (Rp 1.9 billion) was corrupted. The World Bank disburses the funds through the National Development Planning Agency (Bappenas) for the social safety program. Indonesia received grant approval at the Asia-EU meeting in 2001. As a result of being corrupted, the World Bank immediately blacklisted the names of five people and two companies.

During the 2000–2006 investigation, it was reported that around 100 cases of corruption occurred in the World Bank project for Indonesia. Of these 100 reports 55 cases were closed, 13 were investigated by the World Bank INT Department, 4 were investigated by BPK and BPKP, 28 cases were investigated by the Project Management Unit [5].

The Jombang District Attorney's Office has prosecuted a suspect in the 2008 village fund corruption case, which was funded by the World Bank. Peoples of Jombang who take care of their land certificates should be freed from all fees. However, residents are still charged two hundred thousand to fourteen thousand/certificate. The reason for the purchase of stakes and stamps [6].

These cases prove that there is a need for further discussion related to international financial assistance and efforts to eradicate corruption, both within the scope of international law and in the Indonesian legal system.

This research aims to answer: (1). corruption of international financial aid from the perspective of international law and national law; (2). Mechanisms for law enforcement in international law and national law in accordance to eradication of international financial aid corruption in Indonesia.

2 Research Method

This study uses a socio-legal method, to identify the problem of corruption in international aid funds from not only from legal perspective [7], but also from a political-economic point of view and it's flow.

3 Analysis and Discussion

3.1 Definition of International Fund or State Loans

International fund assistance is monetary cooperation and provides policy advice and capacity development supports to preserve global macroeconomic and financial stability and help countries build and maintain strong economies.

State Loan: a credit relation in which the state (or its local institutions) appears as a borrower or lender. As a rule, state loans are issued in monetary form, although sometimes (in case of devaluation of the currency) they are issued in kind and repaid in product.

Purposes of State Loan: (1). End poverty in developing countries; (2). Education; (3). Health; (4). SME's and Economy Building; (5). Humanitarian project; (6). State capacity & good government. Also any other purposes for development of the countries.

3.2 World Bank and IMF and International Fund

The International Monetary Fund and the World Bank were both created at an international conference convened in Bretton Woods, New Hampshire, United States in July 1944 [8].

The goal of the conference was to establish a framework for economic cooperation and development that would lead to a more stable and prosperous global economy. While this goal remains central to both institutions, their work is constantly evolving in response to new economic developments and challenges [9].

3.3 World Bank Strategy for Reduction of Corruption Practices in State Loan

The World Bank and IMF as an international organizations under United Nations (UN), have worked together to reduce the external debt burdens of the most heavily indebted developing countries or poor countries. The World Bank and IMF are also working together to make financial sectors in member countries resilient and well regulated.

The International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). Appointed by the World Bank to minimize the potential corruption for the assistance provided. IFC fosters growth in developing countries by financing private sector investment, raising capital in the international financial markets, and providing advisory services to businesses and governments.

MIGA helps investors and lenders deal with risks by insuring projects against losses relating to currency transfer restrictions, expropriation, war and civil disturbance, breach of contract and certain defaults by sovereigns on financial transactions.

3.3.1 Due Diligence

To unlock IFC's funding, sponsors must ensure that the proposed project has safeguards in place that address anti-corruption concerns, as well as social and environmental issues.

A project team—which may consist of investment officers, engineers, lawyers, and special consultants—will conduct broad due diligence on proposed projects.

On the anti-corruption front, the WBG's due diligence generally includes reviewing the structure of the project and the contractual relationships of the parties to the transaction.

3.4 World Bank Sanction for Corruption Practices

Presently, certain allegations of misconduct on IFC financed projects may be referred to the WBG's anti-corruption unit, INT. INT investigates five categories of misconduct: fraudulent practices, corrupt practices, collusive practices, coercive practices, and obstructive practices.

Any IFC counterparty, for example, which generally includes the IFC borrower, companies in which IFC makes an investment, companies who borrow or issue debt securities with the support of IFC guarantees, or sponsors are subject to INT investigations [10].

At the conclusion of the investigation, INT may submit its findings in a report and a notice of sanctions to initiate the WBG's administrative process for sanctions and debarment.

3.5 International Law Mechanism to Reduce of International Fund Corruption

UNCAC which is the source of binding international law based on UN General Assembly Resolution Number 58/4 of 31 October 2003, is a comprehensive framework. UNCAC has several keywords as a reflection of global awareness in the agenda of the fight against corruption. First, the approach to legal politics during the negotiation process, the strategies and positions of several countries, and the impact and outcomes obtained by countries after implementing UNCAC in their country's criminal law system. Second, the corruption-prone areas that were studied could benefit the state being accommodated by UNCAC, such as: asset recovery, private-sector corruption, political corruption, and monitoring mechanisms. Third, the opportunities and challenges with an international legal approach related to global commitments against corruption [11].

The motive of corruption in international aid funds, apart from being aimed at bribing public officials and being manipulative, can also be categorized as a violation of international agreements that have been made between the borrowing country and the donor institution [12]. Cases of corruption in international aid funds can also involve cross-jurisdictionalism with the motive for developing it, namely through money laundering crimes.

Corruption in international funds, apart from being aimed at reducing concessions agreed in international agreements, is also a type of corruption crime that involves one or more state jurisdictions [13], so there needs to be international cooperation in overcoming these crimes.

When it comes to cross-border crimes and corruption, the international community agrees that corruption involving politicians, economic actors, and their criminal networks have conducted corrupt practices and their derivatives (bribes, money laundering, gratuities, etc.) across national borders and caused an economic situation. Loser countries [14]. In fact, the impact is very significant on the development and integrity of the country considering that the international financial assistance is intended for various development and humanitarian projects that have a direct impact on the fulfillment of the basic rights of citizens [15].

For the World Bank, Fighting corruption has become a policy priority for the development community and extensive reform efforts. These reforms build on the idea that corruption is a dysfunction of public administration that emerges in the presence of monopoly and discretion, which in turn can be curbed by promoting accountability and transparency.

3.6 Termination and Withdrawal of International Loan Agreement

The concept of a debt agreement provided by international financial aid institutions such as the World Bank or IMF as an international organization [16].

In this context, corruption and acts of fraud and corruption cause the cancellation and termination of an international agreement/or can become objects and disputes in international law. This can be seen in Article 49 and Article 50 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986 (Vienna Convention, 1986) [17].

Article 49 of the 1986 Vienna Convention explains if the state can prove that in an international agreement there has been fraud, then for that reason the PI can be canceled. Including if it is found that corruption of state representatives occurs, it causes the international loan agreement to become the object of international legal disputes [18].

If the case is submitted to an international judicial mechanism, either through the International Court of Justice (ICJ), or an international arbitration tribunal, it is clear that this will set a bad precedent in defending Indonesia's sovereignty as a recipient country of international financial assistance, because it is considered unable and unwilling to fulfill its responsibilities in the context of international law [19].

3.7 Indonesian Legal Mechanism for Eradication of International Fund Assistance Corruption

As a country that is active in various international agreements, Indonesia has ratified two important international agreements, namely the United Nations Transnational Organized Crime (UNTOC) (Indonesia ratified in Law Number 5 of 2009) and the United Nations Convention Against Corruption (UNCAC) (Indonesia ratified in Law Number 7 of 2006) [11]. As an international legal instrument that can be the legal basis for taking action against corruption in international financial aid.

Indonesia has Law Number 31 of 1999 (UU 31/1999) which is very limited in cracking down on corruption across national borders. Article 16 of Law 31/1999 regulates the action of cross-border corruption which is related to the provision of assistance, opportunities, facilities and information which fall into the categories of Article 2, Article 3, Article 5 - Article 14 of Law 31/1999, which can be prosecuted by the Indonesian legal system (passive nationality principle). In addition to Law 31/1999, there is the Law on Money Laundering (UU 8/2010), Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing the Beneficial Owner of a corporation in eradicating money laundering and terrorism financing crimes, as well as other legislation in Indonesia.

Discuss about the limitations of jurisdiction as a law enforcement power in cases of corruption is necessary to conduct a Cooperative measure to do so for organized cross-border corruption crimes. Various actions that can be taken between member countries, one of which is mutually beneficial cooperation (Mutual Legal Assistance/MLA). The MLA is a framework for overcoming jurisdictional limitations. Including cooperation in terms of prosecution [20].

Including other cooperative actions such as extradition as a mechanism that can be taken by Indonesia to request cooperation with other countries that have links with cross-border corruption crimes. With a bilateral technical agreement mechanism, a comprehensive eradication of corruption can be conducted, particularly in eradicating cross-border corruption [21].

Indeed, international cooperation is a diplomatic process between two or more countries, which have the same basic interests [22]. In connection with the common interest in fostering the rule of law and justice, countries conduct the international cooperation to hand over the perpetrators of crimes to the country where the crime occurred [19], this has been reflected in state practices to return someone who is accused or has been

convicted for committing the crime to which he belongs [23]. International cooperation must be conducted with due observance of the principle of equality based on mutual respect and sovereignty of the countries involved in the cooperation. International cooperation contained in an agreement will be valid and binding politically and legally to the countries that make it [24].

Law enforcement cooperation in international relations has proven to be very decisive for the success of national law enforcement against the potential for corruption of international aid funds as part of international crimes [25]. The success of these law enforcers in general will not be a reality if there are no bilateral or multilateral agreements in the surrender of criminals or cooperation in investigations, prosecutions and trials [19]. The terms of the agreement are not absolute because without the agreement, law enforcement cooperation can be conducted based on the principle of reciprocity.

4 Conclusion

- (1) Corruption of international loans and aid funds with locus actus and mens rea aimed at harming state finances needs special attention, including the importance of adopting UNCAC provisions in amending the Corruption Law in Indonesia so that corrupt practices of international funds assistance do not corrupt in Indonesia;
- (2) It is necessary to look at the loan agreements and international funding assistance to find out the jurisdictional and law enforcement mechanisms for the misuse of these criminal acts of corruption, in line with UNCAC and UNTOC, so that they can clearly show the jurisdiction of the applicable criminal law.

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Authors Contribution. This research is worth as a discourse both related to international law and national law to crack down on corruption in international financial aid. Also, it is worth as a reference for making policies on the management of international aid funds, both those provided through the World Bank and IMF loan schemes, as well as from other foreign loans.

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