



MINUTES OF MEETING THE FIRST UNODC ROUND TABLE DISCUSSION ON ASSET RECOVERY

Day/ Date : Thursday/ April 28th, 2011
Place : Prada Meeting Room, Four Seasons Hotel, South Jakarta
Time : 09.30 am to 12.00 pm
Moderator : Febrian Ruddyard (**Kementrian Luar Negeri**)
Participants :

1. Febrian Ruddyard (Kementrian Luar Negeri)
2. Khasan Ashari (Kementrian Luar Negeri)
3. Oktorian S. Hakim (Kementrian Luar Negeri)
4. Dumas Radityo (Kementrian Luar Negeri)
5. Chandra Hamzah (KPK)
6. Arinta Luthri Handini (KPK)
7. Muhammad Yusuf (PPATK)
8. Fithriadi Muslim (PPATK)
9. Chairijah (Kementrian Hukum dan HAM)
10. Pangihutan Siagian (Kementrian Keuangan)
11. Christian (Kementrian Keuangan)
12. Firstda Ayu Fian Nur Agusta (Kementrian Keuangan)
13. Shanti (Kementrian Keuangan)
14. Oktavia Maya Soraya (Kementrian Keuangan)
15. Ahmad Wiyagus (Bareskrim)
16. Trimulyono (Biro Hukum Kejaksaan Agung RI)
17. Ludfie Jatmiko (Biro Hukum Kejaksaan Agung RI)
18. Sudarmadji (Biro Hukum Bank Indonesia)
19. Hendra Jaya Sukmana (Biro Hukum Bank Indonesia)
20. Metta Dharmasaputra (Tempo)
21. Budi Setyarso (Tempo)
22. Desita Sari (Tim Pembaharuan MA)
23. Harry Ponto (Kailimang & Ponto)
24. Ahmad Fawaiq (Masyarakat Transparansi Indonesia)
25. Riani Atika Nanda Lubis (Fakultas Hukum Universitas Indonesia)
26. Ibrahim Tjondronegoro (Fakultas Ilmu Sosial Universitas Negeri Jakarta)
27. Ajit Joy (UNODC)
28. Novriady Erman (UNODC)
29. Rizki Indrawansyah (UNODC)
30. Marsha Suryawinata (UNODC)
31. Lisma Marpaung (UNODC)
32. Seri Tarigan (UNODC)



I. PURPOSE OF MEETING

a. General Purpose

To discuss the problem on asset recovery faced by Indonesia.

b. Specific Purpose

1. To raise common understanding amongst law enforcement and related institutions on asset recovery;
2. To find out the obstacles faced by institutions on asset recovery; and,
3. To find out how UNODC could further contribute on asset recovery matters in Indonesia

II. POINTS DISCUSSED

1. Asset recovery is difficult and complicated matter whereas the current initiatives on asset recovery are still preliminary in nature which further actions are required.
2. Under Indonesian legal context, it is even difficult to establish the crime in which asset recovery is required, i.e. corruption and money laundering, whereas, on the other hand, there is also a problem with definition on asset recovery matters.
3. The difference of legal system amongst countries is not a decisive matter on asset recovery as long as there are commitments and cooperation amongst law enforcement.
4. Some institutions still find a problem on asset recovery, i.e. in BNP Paribas and Bank Century case, since there is still no single exact requirement on documentations and Standard Operational Procedure (SOP) in seizing the stolen asset overseas, hence, UNODC could provide guidance or best practice from other countries.
5. Previous experiences on asset recovery have shown on how Indonesian officials are too dependent on foreign investigators. Regardless of the great result on tracing the asset, for example in BPPN case, there is a need to rely more on local resources.
6. We still have a problem in conducting a detailed and comprehensive investigation due to classical financial problem.
7. In order to promote asset tracing and asset recovery, there is a need to promote a reward for whistleblower.



8. From legal perspective, there is also still unclear cut between Article 10 of Indonesian Criminal Law and Article 39 of Indonesian Procedural Criminal Law on confiscation of asset.
9. There is differentiation between domestic asset recovery and foreign asset recovery. Nonetheless, both require court decision which states that there is a direct link between the asset and the predicate crime.
10. It is also important to note that in order an asset can be frozen and recovered, there should be a specific name of the asset to be confiscated in the court verdict.
11. Investigator cannot be further burdened by being assigned to conduct additional task on asset recovery since they have already been preoccupied by investigation as crucial matters related to the substance of the case.
12. On the other hand, it seems to be that we are lacking in political will. Not to mention, there is also a problem on cooperation. There is also a possibility to use bankruptcy law in Indonesia to recover asset both located in domestic and overseas.
13. In many cases, it is imperative as well for journalist to understand the law and legal system, and also to cooperate with law enforcement by not publishing the ongoing investigation in order to prevent any possibility that the suspect from escape or from concealing their assets.
14. Whereas the current mechanism in handling corruption case focuses on capturing the suspect, there should be a change to establish mindset to prioritize asset recovery.
15. The discussion also suggests several approaches on asset recovery namely, Non-Conviction Based Asset Recovery and Bankruptcy. It is also important to note the draft law on whistleblowing needs to be supported.
16. However, it should be taken into account that Indonesia does not have a mechanism on trans-boundary insolvency.
17. Considering the fact that third party also enjoy the proceed of corruption, there is also a need to adopt a law which criminalize and confiscate assets of third party.
18. One of the problems in asset recovery relies on the eagerness of public official to cope with vast-capital owner.



III. FOLLOW UP AND RECOMMENDATION

1. There is a need to establish a task force within, in particular, Indonesian National Police and Attorney General Office which mainly deal with asset-tracing and asset recovery matters and can work with the investigators.
2. There is a need as well to improve capacity of the current investigator and proposed task force on asset recovery.
3. It would be better if this Round Table Discussion does not establish a formal group on asset recovery since it will create a bureaucratic problem. However an informal group of stakeholders can be established.