

# Artikel Firmsnyah

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**RECONSTRUCTION OF THE CONCEPT OF ASSET RECOVERY IN  
HANDLING CRIMINAL ACTS OF VILLAGE FUND CORRUPTION IN  
INDONESIA**

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## ABSTRACT

*Corruption in Indonesia is increasingly rampant, one of which is the issue of village funds, so the problem is analyzed and identified problems to resolve the case. The research method used is an empirical juridical approach using data collection techniques, namely in-depth interviews using qualitative descriptive analysis. The research results found that several things that cause corruption in village funds include; low understanding, awareness, and supervision of the BPD (people's consultative body), lack of transparency and accountability, low community participation, political pressure and conflicts of interest, a culture of corruption, and the case studies raised show that corruption occurs due to misuse by third parties and the efforts taken are based on This is an improvement on these 5 (five) aspects. The important point is the offer from researchers regarding the reconstruction of the concept of asset recovery when it has been applied after going through the trial process. In this paper, we offer the idea of asset recovery outside of court based on an analysis of the cases raised.*

**Keywords:** village funds, corruption, asset recovery

## INTRODUCTION

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Corruption is rampant and harms not only state finances but also the social and economic rights of the community (the Government of Indonesia, 1999), so it has a systemic impact on various aspects. In this context, comprehensive efforts are needed, one of which is an approach 49 to the asset recovery approach. To restore state losses apart from focusing on the perpetrators. According to data released by Indonesia Corruption Watch (ICW), 2015-2017 increased, with 17 corruption cases in 2015, 41 in 2016, and doubling to 96 in 2017, so ICW, 2019 revealed 154 cases there were recorded cases of corruption from funds 46 cases have been prosecuted in villages. (Manihuruk, 2021) For LW's context, there are indications of corruption in village funds worth IDR 320,962,282 for the 2019-2020 budget year (Tribune News, 2021). From this data, much corruption originates from village funds.

Several studies and references state that the concept of asset recovery is important for returning state finances with 2 (two) concepts, namely criminal and civil if the suspect dies (Prakarsa & Yulia, 2017) ; regarding civil lawsuits in other studies, it is stated that returning state finances is different from Civil lawsuits in general, there are several different things including; civil lawsuits regarding corruption cases are carried out after the criminal case cannot be continued

and is carried out against the Law (Syam & Marlina, 2022). In general, this research discusses the return of state finances (asset recovery), which can be carried out after going through criminal and civil legal processes. However, This paper discusses asset recovery in a non-litigation manner, thereby changing the paradigm that states financial recovery can be carried out non-litigation.

This writing aims to look at the causes of criminal acts of corruption by focusing on village fund corruption and finding solutions to resolve it. The most important thing is to give birth to a new idea. Returning assets can also be carried out through non-litigation channels while still paying attention to the mens rea (inner attitude) or responsibility and motives of the suspect, which is also in line with the essence of criminal Law as the ultimum remedium or last resort (Rahmawati, 2013).

## RESEARCH METHODS

The research method for this article is empirical legal research, (Mukhti Fajar & Achmad, 2015) which is not only based on law from a normative perspective but is based on legal reality which is based on the interpretation and interpretation of law by correlating it with the social context that occurs. The data collection technique uses field research by identifying social facts, relating them to the law, and conducting interviews with several informants, including the prosecutor's office, village head, BPD, and related communities. The analysis technique is qualitative descriptive by describing the phenomenon. That happened.

## RESULT AND DISCUSSION

### CAUSES OF CORRUPTION

In this context, the case that will be described is a case study in MM village where the chronology of the village fund corruption case can be identified as the cause based on the Gone theory by Jack Bologne, which states that corruption occurs because of greed, opportunities, needs, and exposure (Setiawan & Jesaja, 2022) From this context it can be seen that greed and need are elements related to the perpetrator. For the context of corruption that occurred in village M, based on interviews with related parties or informants, it was found that the cause did not come from greed and need but rather an opportunity that an interested third person exploited. Historically, on December 28 or the end of 2020, funds still had not been realized, amounting to ± 3 hundred million. At the same time, MM's parents, who were village heads at that time, were seriously ill. Hence, they had to refer to M as a form of responsibility, so they entrusted it to the third to complete the activity program related to drainage, graveling, and sanitation with a budget of ± 3 hundred million. However, it turned out to be misused, this was the cause of the findings from the inspectorate. (interview, May 5, 2023)

From this view, the cause of corruption is due to opportunities exploited by third parties. According to data released by the LU prosecutor's office, it appears that the corruption cases handled are:

Table.1

|            | 2020-2023 |
|------------|-----------|
| corruption | 5 Cases   |

Source: Data from the LU Prosecutor's Office

53 From the table, it can be seen that the cases handled by the LW prosecutor were 5 cases from 2020-2023. One of the cases occurred in village M, where the LW prosecutor issued 16 investigation warrant dated March 24, 2021 (Tribun Timur, May 26, 2021). In this context, it can be seen that the alleged corruption case was handled by the Head of Intel, Kejari LW, and it was confirmed that: 20

"It is true that a case occurred in MM village and was handled by the prosecutor's office in the investigation stage, but the case was stopped because there were good intentions and no mistakes, especially evil intentions and mental attitudes (mens rea) (Interview, with YL, August 2 2023)

16 Mental attitudes in the context of criminal acts are related to the principle of culpability, "geen straf zonder Schuld," that there is no crime without fault (Satria, 2018). Apart from that, it refers to a person's mental state or mind when committing or being involved in a criminal act. This inner attitude involves factors such as the individual's intention, deliberateness, and moral considerations when committing a criminal act. In the legal system, courts often consider this inner attitude to determine the level of guilt and the punishment to be given to the perpetrator. For example, whether the action was carried out intentionally or unintentionally, whether there was an element of careful consideration or planning, and the extent of the individual's responsibility for the action, which Van Hammel mentioned are three indicators to determine responsibility, namely: 1). Understand the meaning and meaning of the consequences of his actions, 2). Aware that his actions are contrary to the values that exist in society, 3) the existence of free will. (Fadlian, 2020) This inner attitude is an important part of the judicial process to ensure fairness and consistency in handling criminal cases.

Inner attitudes can also describe the extent to which the individual feels regret or guilt for their criminal actions. Inner attitude or mens rea determines whether a person can be held responsible or not, whether they feel deep regret and are willing to take responsibility for their actions, or whether they show an indifferent attitude or even have no remorse. These factors can also influence how punishment is administered through punishment, rehabilitation, or special supervision. Understanding this inner attitude allows the legal system to take a more holistic approach in dealing with criminal acts, considering individuals' moral and psychological aspects and seeking recovery and improvement to maintain social justice. Thus, inner attitude becomes important in determining sanctions and coaching criminals. (Awaludin, 2019) Apart from that, there are several other causes, according to the table below:

| Reason   | Percentage |
|--|------------|
| Low understanding, awareness, and supervision of BPD | 35%        |
| Lack of transparency and accountability              | 20%        |
| Low community participation                          | 15%        |
| Political Pressure and Conflicts of Interest         | 15%        |
| Culture of Corruption                                | 15%        |

Data source: Field observation

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The explanation of the table is; firstly, that the most dominant causal factor is low understanding and awareness as well as supervision of the importance of preventing corruption among BPD members is also a significant factor. Limited knowledge about their duties and responsibilities in monitoring and managing village funds and a lack of adequate training hampers the BPD's ability to detect and prevent corrupt practices. (Sumarno, 2022) One of the obstacles often faced by BPD members is limited knowledge about their roles and responsibilities in supervising and managing village funds. Some BPD members need to understand their duties and responsibilities for preventing corruption. This could be caused by a need for more skills and knowledge as well as training received by BPD. **The above views are confirmed by interviews with both MM and YM parties.** (Interview with MM and YL, Wednesday, August 2, 2023) Apart from that, it was confirmed by a resident, namely Mr Yohanes, that it is true that up to now, the BPD has not been optimal in carrying out its duties, where, in general, the BPD has three duties <sup>18</sup> functions as regulated in Law No.6 2014 concerning Village Government, namely; a) discussing and agreeing on draft village regulations, b) accommodating and channeling community aspirations, c) monitoring the performance of the village head.

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Second, the lack of transparency and accountability in managing village funds is an important factor contributing to corruption. When the village fund management process is not carried out openly and transparently, there is the potential for misuse and manipulation of funds by irresponsible parties. One problem that often arises is the need for an adequate reporting system. When there is no clear mechanism to track and monitor the use of village funds, loopholes can be exploited by individuals who want to enrich themselves. More timely and detailed reporting is needed to monitor the use of funds effectively. (Prasetya & Fuad, 2017) This was also confirmed by an expert informant from the Muhammadiyah University of Parepare and a well-known IC advocate, the younger brother of Constitutional Court Judge SJ (Interview with IC, October 25, 2023).

Another thing is that low levels of accountability are also a serious problem. When there is no clear mechanism to ensure accountability for using village funds, fund managers have little incentive to take responsibility for their actions. A lack of independent oversight and strong audit mechanisms can also provide room for undetected corrupt practices. In order to prevent corruption in village funds, it is important to increase transparency and accountability in fund management. (Tuti Dharmawati et al., 2021) This can be done through implementing a clear and structured reporting system, effective independent supervision, and actively involving the community in decision-making <sup>19</sup> regarding village funds. By overcoming the lack of transparency and accountability, it is hoped that misuse of village funds can be minimized and resources can be used effectively for the progress and welfare of village communities. Village fund management is an important factor that allows corruption to occur. Around 70% of cases revealed are related to budget misuse (Umar, 2011), so an inadequate reporting system, lack of independent monitoring, and low community participation in the decision-making process create opportunities for individuals to use village funds illegally.

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Third, low community participation is also a factor causing corruption in village funds. When the community is not actively involved in the decision-making process regarding village fund management, the risk of corruption <sup>20</sup> becomes higher. Low participation allows personal interests or certain groups to dominate the use of village funds, thereby increasing the risk of misuse for personal interests. Several factors can cause low community participation. (Zakariya,

2019) 1) need more information and community understanding about their rights, roles, and responsibilities in monitoring and managing village funds. If the community does not have adequate knowledge about village funds, they tend not to realize the importance of active participation in monitoring the use of these funds. 2) need for more participation space provided by the village government. Participation can be in 54 (three) aspects: aspirations, access, and control, or supervision (Tyas et al., 2022). If these are related to the management of village funds, the community tends to feel uninvolved and has no influence in decision-making. This can reduce public trust in village government and increase the risk of corruption. Apart from that, differences in power and access to information between the village government and the community can also influence community participation. (Majid et al., 2022) Suppose there are gaps in power and access to information. In that case, communities that are less empowered or do not have strong networks may find it difficult to participate effectively in managing village funds.

Fourth, political pressure and conflicts of interest are also causes of corruption (Adelina, 2019) related to village fund issues. Political pressure from parties with personal interests or certain groups in the use of village funds can threaten the integrity of village fund management, which arises between village officials, political groups, and private parties and can also trigger corrupt practices in managing village funds. Conflicts of interest usually originate from the power held, multiple positions, and relationships with certain parties (Illahi, 2019). Political pressure from certain political groups or individuals can have a detrimental influence on the decision-making process regarding managing village funds. This especially happens when village fund managers must fulfill political interests or make decisions that benefit parties with strong political relationships. In this situation, public interests and optimal use of village funds can be neglected, and village funds are used for personal or political interests. Apart from that, conflicts of interest between village officials, political groups, and the private sector can also be a factor causing corruption in village funds. When personal or certain group interests overlap with managing village funds, the risk of corruption increases.

Fifth, the culture of corruption that still exists in several regions of Indonesia is also a factor causing corruption (Chasanah, 2014), especially in the context of village fund corruption. When corruption is considered something normal, it is difficult to implement effective efforts to prevent and eradicate corruption. Serious efforts are needed to change the culture of corruption through ongoing anti-corruption campaigns and strict law enforcement against corrupt practices.

The importance of changing a culture of corruption into an anti-corruption culture cannot be ignored. Efforts to change the culture of corruption must be carried out through a sustainable and comprehensive anti-corruption campaign. (Argiya, 2013) This campaign can involve various parties, including the government, non-governmental organizations, the private sector, and the general public. The aim is to educate and increase public awareness about the negative impacts of corruption and the importance of integrity, transparency, and accountability in managing village funds. Apart from anti-corruption campaigns, strict law enforcement against corrupt practices is also important. Consistent, fair, and non-discriminatory law enforcement can provide deterrence for perpetrators of corruption. This sends a signal that acts of corruption will not be tolerated and will have serious consequences. (Pitriyah & Apriani, 2022) Thus, strong law enforcement will provide a deterrent effect for those involved in corrupt practices of village funds. Apart from campaign efforts and law enforcement, strengthening the supervision system and internal control mechanisms is also important in changing the culture of corruption. It is necessary to build a

transparent, accountable, and technology-based system to reduce opportunities for corruption. Information and communication technology, such as financial information systems, electronic monitoring, and online reporting, can help increase transparency and reduce the space for corrupt practices.

Thus, the factors that contribute to corruption in managing village funds are important. Lack of transparency and accountability, lack of an adequate reporting system, low level of accountability, low understanding and awareness of Village Consultative Body (BPD) members, lack of effective communication and coordination between BPD members and local government and related institutions, as well as low community participation, political pressure, and conflicts of interest are important factors that need to be addressed to prevent corruption in village funds.

### Resolving Corruption Cases

The relevant party in carrying out criminal acts of corruption is the prosecutor's office, regulated in article 30 of Law No. 16 of 2004 Office, which states that in the criminal sector, the prosecutor's office can carry out investigations for certain criminal acts (Law No. 16 of 2004). In this context, the prosecutor's office can carry out investigations for corruption cases. As with the indications of corruption that occurred in MM village, this was confirmed by the Kejari Article Error Sp. Article Error (ETS)

"There was indeed a case that occurred in MM village, but the case was stopped because, at that time, the inspectorate carried out an investigation, and it was found that state losses were found, and the prosecutor's office facilitated the return of state losses and on the other hand it was seen that there were good intentions and no mistakes, especially evil intentions and inner attitudes (men's 14a), where all this time he has shown a good inner attitude from MM and is also based on the circular letter of the Attorney General for Special Crimes Number B-111/f/Fd.1/05/2010 and during this time the perpetrator in his daily life in office has made many achievements and accepted by all levels of society" (Interview, with YL, August 2, 2023)

Based on this, it appears that the district attorney's office facilitated the resolution of the case as stated, apart from referring to the Attorney General's Circular Letter for Special Crimes Number B-111/f/Fd.1/05/2010, also because it looks at the inner attitude or in the criminal context it is referred to as responsibility. or talking about inner attitude, about this circular, the resolution of corruption cases with small losses of under 100 million and the public in good faith returning state losses then the case can be stopped with considerations of efficiency because the average cost of handling cases at the Prosecutor's Office reaches 200 million per case (Arrasid, 2020). This was confirmed by the expert informant, Mr. IC, the younger brother of the Supreme Court judge, that in the circular letter, the resolution of cases that were indicated as corruption only resulted in state losses of around 100 million, and this was also unusual (Interview with IC, October 25, 2023).

In this context, it can be seen that the efforts made and pursued by the Prosecutor's Office are similar to the concept of asset recovery, where the model adopted in recovering assets can be through criminal means by imposing an additional penalty of payment of replacement money which is legally regulated in Article 18 of Law No. 31 of 1999 as amended. In Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (RI Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, 1999)

- 1) Apart from additional penalties as intended in the Criminal Code, in addition are:

- a) Confiscation of tangible or intangible movable goods or immovable goods used for or obtained as a result of criminal acts of corruption is carried out, as well as the price of the goods that replace these goods;
  - b) Payment of compensation money in an amount equal as much as possible to the assets obtained from the criminal act of corruption;
  - c) Closure of all or part of the company for a maximum period of 1 (one) year;
  - d) Revocation of all or part of certain rights or elimination of all or part of certain benefits that the government has or can provide to convicts
- 2) If the convict does not pay the replacement money as intended in paragraph (1) letter b no later than 1 (one) month after the court decision, which has obtained permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the replacement money
- 3) If the convict has insufficient assets to pay replacement money as intended in paragraph (1) letter b, he is sentenced to imprisonment whose length does not exceed the maximum threat of the main sentence by the provisions of this Law and the length of the sentence. This has been determined in the court decision.

In this context, it can be seen that the concept of asset recovery is resolved through criminal means after a sentence is imposed as stipulated in the article, namely that the amount of compensation money is equal to the losses incurred by the defendant. Apart from criminal means, the state attorney or the injured party can also use civil means; after going through the criminal process at the investigation stage, sufficient evidence is not found, but in fact, there is a factual loss to the state, which is not yet operational so it is not implemented optimally (Sujono, 2020).

These 2 (two) things are ways to recover assets resulting from corruption after going through the litigation process. However, in this context, the author sees that it is time to change the asset recovery paradigm, as illustrated in the case analyzed, not only in the litigation process but also in non-recovery aspects. Litigation, as pursued by the LU prosecutors with several considerations above as well as for reasons of public interest and MM's good intentions became the consideration for the prosecutor to stop the case and not proceed to the investigation stage, apart from that to accommodate the nature of the crime as an ultimum remedium and in line with the principle of opportunity, which describes criminal suggestions as the last step (Eddy O.S. Hiariej, 2016) in this context, is in line with the steps taken by the Prosecutor's Office that crime is the last means of strengthening in Article 218 of the Criminal Code (Law Number 1 of 2023 concerning the Code of Laws). The latest Criminal Law Act, 2023) states that insulting the President can be excluded when there is public interest and self-defense. This has been confirmed, according to the prosecutor's office, that the case occurred after there was a transition between old and new officials and, in general, the village head who was indicated had so far had achievements and been accepted in the community (Interview with YL, August 2, 2023).

Another effort that can be taken in resolving this case is maximizing the role of BPD in the supervision and management of village funds. On the other hand, BPD has significant potential to play an important role in managing village funds (Sumarno, 2022), especially in the context of MM village LW District. BPD should be an institution that can supervise the use of village funds, ensure accountability, and involve the community in decision making regarding managing village funds. The role of the Village Cooperative Body (BPD) in supervising and managing village funds is regulated based on applicable laws and regulations. Village Law No. 6 of 2014, the main basis for implementing village autonomy, mandates the BPD to supervise the use of village funds.

Based on Article 66, paragraph (1) of the Village Law, BPD has the duty and authority to supervise the use of village funds. They can monitor, supervise, and evaluate activities that use village funds. Apart from that, BPD also plays a role in conducting social audits of the use of village funds, which includes inspection, checking, and assessment of program implementation and use of village fund budgets. (UU No. 6 of 2014 concerning Villages, 2014) Further in the Regulation of the Minister of Home Affairs No. 113 2014 concerning Village Financial Management regulates that BPD has a role in supervising and managing village finances, including village funds. BPD has the authority to examine village finances, including financial reports and the use of village funds. They report findings or potential irregularities to the village government and related agencies. (Permendagri Number 113 of 2014 concerning Village Financial Management, 2014) In monitoring and managing village funds, BPD can also collaborate with village governments, financial audit institutions, and other related institutions, such as BPKP or Regency/City Inspectorates. This is by the principles of transparency, accountability and community participation regulated in laws and regulations related to village fund management.

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BPD has significant potential to play an important role in the supervision and management of village funds. As a local institution representing village communities, BPD should be a strong guardian and supervisor of using village funds. In its role as supervisor, the BPD can actively monitor projects that use village funds, audit financial activities, and examine reports on the use of funds. With effective supervision, the BPD can ensure that village funds are used appropriately and by established regulations. Apart from supervision, BPD also plays a role in increasing accountability in managing village funds. They are responsible for ensuring that reports on the use of village funds are prepared properly and transparently. (Hernawan, 2016) BPD can involve itself in the report preparation process, ask for explanations if there are discrepancies or deviations, and oversee the audit process involving village funds. By encouraging high accountability, BPD builds community trust in the honest and responsible management of village funds.

BPDs must have adequate knowledge, skills, and capacity to supervise and manage village funds to carry out their role well. Regional governments can provide training and education to BPD members so they can carry out their duties effectively. Apart from that, BPD can also collaborate with other institutions, such as the Village Community Empowerment Institute (LPMD) or the Financial and Development Supervisory Agency (BPKP), to increase their capacity to monitor and manage village funds. Some of the obstacles faced by BPD in carrying out their duties include lack of support from local government, limited resources available, and unclear roles and responsibilities of BPD in existing regulations. This is in line with MM's interview: "So far, the role of BPD has not been visible in its performance. One of the reasons is human resources" (Interview with MM and JN, Wednesday, August 8, 2023). Therefore, efforts are needed to increase the role of BPD in monitoring and managing village funds. This can be done through providing better training and education for BPD members, increasing transparency and accountability in the management of village funds, as well as strengthening cooperation between the BPD, regional government and the community in making decisions regarding village funds.

Another important thing is building a strong culture of transparency and accountability in managing village funds and encouraging active community participation in monitoring and managing village funds and involving them in the decision-making process, increasing access to information and community understanding of village funds and their role in monitoring and managing them. (Wulandari et al., 2022) Village governments must provide information openly,

transparently, and easy to understand for the community. It is also important to create inclusive participation mechanisms, such as discussion forums, regular meetings, or community oversight institutions, enabling the community to participate in decision-making regarding village funds actively. Furthermore, it is also necessary to build community capacity to oversee village funds effectively. Quality training and mentoring can provide knowledge and skills to the community in carrying out supervisory duties well. Apart from that, to prevent corruption in village funds related to political pressure and conflicts of interest, a strong commitment is needed from all related parties, including local government, village officials, communities, and other stakeholder groups. Only with synergistic collaboration and firm action can village funds be managed with high integrity, transparency, and accountability, thereby providing maximum benefits for the welfare of village communities.

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