

Role of Indonesian Prosecutor in combating corruption

Presented By: Jan S Maringka

Thank you Mr. Chairman,
Distinguished Participant, Ladies and Gentlemen;

First of all, I would like to extend my gratitude to the Dubai Public Prosecutor office for hosting this grateful conference, and for delivering the excellent arrangement to our delegates since we arrived. I also would like to thank to my colleagues from DPP, as well as the organisers, for inviting me to speak in this auspicious event.

I would like present a paper base on the role of Indonesian Prosecutor in combating corruption. As nowadays, we are witnessing countries strengthening their works and cooperation in corruption crimes. These include the fights against trans national crimes that occur across the border.

These presentation will be broken down into four parts: corruption crimes, the importance of international cooperation, methods of international cooperation and conclusion.

Distinguished participants,

As one of the largest democratic countries in the region, Indonesia is in the middle of a process, to enhance good governance in every sector. These include promulgations of laws and regulations in combating corruption. We develop legal frameworks to be able to cope with challenges of the modern types of corruption.

As corporation becomes more liable to criminal sanctions, we see the development of national laws of countries to provide a legal framework in dealing with criminal corporations. We understand that the number of corporate crimes has grown rapidly, following the global development of transportation, technology and people's movement.

Corruption crimes normally cannot be done by one person, therefore, usually committed in "organized" manner. Having that fact that they commit crimes by using organization has made them more difficult to deal with. They also consist of clever people who have expertise and knowledge in certain matters, including the legal one.

We also understand that laws and regulations on corporate crimes are not uniformed. Therefore, corporate criminal liability, including types of sanctions, is not identical from one country to another. In this context, we need to share our experience and knowledge, so that we can improve the legal frameworks. The improvement can be promulgations of laws and regulations, strengthening institutions and promoting good practices.

Distinguished ladies and gentlemen,

The fight against corporate crimes is not easy. Our country has done some strategies to cope with those. In dealing with big cases, the relevant agencies will work each other, share information and discuss the best way to handle it. This multi-agency approach is more effective, because corporate crime is not a simple one.

Second practical approach to the problem is to draft better provisions for corporation in criminal laws. This will include a clear mechanism to bring a criminal corporation to the proceedings. As we understand, there are

concepts to prosecute corporations: strict liability, vicarious liability and identification. There is also a model of criminal liability of corporations, that a country can have a look and consider before decide to adopt it.

Another approach we feel necessary is to design a special unit. Investigation and prosecution of corporate crimes need professional skills. By having this kind of unit, we can increase the capacity and do the things more focus.

Recently, we see the growing awareness of recovering the proceeds of crimes. Many efforts have been taken, to strengthen networks in taking back the stolen assets. For corporate crimes, assets are the most important. If they hold the assets, they can always fuel the crimes and continue the unlawful conducts.

The proceeds of corporate crimes must be also hard to detect. Even if we can detect those, it is harder to repatriate the stolen assets. Therefore, we need to understand to process of recovering the proceeds. We should start with tracing, in order to enable us to identify the assets. The next processes will be: freezing, seizing and confiscating or forfeiting.

Distinguished participants,

Why there has been a rapid development of international cooperation? As we know, the crimes occur tend to have transnational aspects. The cross-jurisdiction problems have increased. Among those problem is the differences in legal systems. Criminals are clever to abuse and manipulate it for their own benefits.

The other importance of international cooperation is preventing a crime to occur in other jurisdiction. Sharing of information can result in effective way

of detect and prevent crimes. Although we have differences in legal systems, we should have one perception of “justice”. Therefore, international cooperation is important to punish the perpetrators and uphold justice.

As we witness the growing efforts on handling cross-border criminal cases, we trust that assistance from other jurisdiction is central. The facts show, at least in our country experience, that many stolen funds were transferred across the jurisdiction. In this regards, we need to cooperate with other countries, using mutual legal assistance in criminal matters mechanism.

Ladies and gentlemen,

Talking about international cooperation in concrete, I would like to pick the UNCAC, as one example. Indonesia had ratified the Convention since April 2006. As encouraged by the Convention, state parties are provided with concrete mechanisms to handle cases, involving other jurisdiction. Mutual legal assistance, letter of rogatory, extradition , transfer of criminal proceeding and informal networks are among methods to prevent and tackle corruption cases.

In UNCAC, it is mentioned that asset recovery is a fundamental principle. In order to get better implications, we need to expand our capacity, not only to prevent corruption, but also to recover the proceeds. Indonesia puts asset recovery of the proceeds of corruption in the top priorities. The duties to trace and recover assets can be extremely difficult. Illegal assets can be hidden all over the world, in any safe heaven country.

In the context of corporate crimes, in order to return the stolen assets, we can use MLA, civil litigation as well as mediation or settlement. Which one is effective, it depends on a case to case basis. Basicaly, civil litigation

might be more effective but costly, while MLA might be cheaper but lengthy.

Distinguished ladies and gentlemen,

MLA can be done through treaty or based on reciprocity principle. It has long procedures and requested lengthy documents. There are also some requirements to be met, including a final judgment.

Indonesian Attorney General's Office had received many MLA request from many jurisdiction through the International Legal Cooperation Division. It is our obligation to make a quick response for such a request since the delay in processing legal measure will help criminals to flee to another place or hide their illicit assets more safely.

At the moment Indonesia also has MLA Agreement with Australia, People's Republic of China, South Korea, Hong Kong SAR and multilateral agreement within ASEAN MLA Treaty which consist of ten ASEAN countries. As abovementioned, though we do not have MLA Agreement, the cooperation through MLA mechanism can be done by using reciprocal principal that is also depend on political will between governments. If authorities of government have a good willingness and an accord to fight crimes and upholding justice, there will be no obstacle for every law enforcement measure.

Coordination and cooperation among law enforcements are keys to promote international efforts in the fight against corporate crimes. In domestic context, we have police, FIU, immigration, company registration office and other agency. They can share their information and data on certain companies who are allegedly do unlawful business.

In the scope of international cooperation, a database of corporations which established under a country's national law might help other jurisdiction in combating crimes. Further, as money laundering become obvious, sharing information of the beneficial owners of a criminal corporation would support the effort to uphold justice.

In conclusion, legal frameworks is significant to fight against corporate crimes. As legal frameworks is important, it would be efficient to propose amendments to the existing legislation and make necessary changes. In connection with the global development of law model, we can adapt the relevant provisions. However, we must be aware that legal frameworks of one country is different from another country. Therefore, changes in laws and regulation should be done through precise assessments.

One as aspect of corporate crimes is the proceeds. We should be aware that assets are "the blood" of corporations. Therefore, if criminal corporations still manage to hold the tainted assets, they will continue to do the crimes. It is important to send messages to criminals that a crime does not pay.

As recovering the proceeds of crimes is complicated, we need to understand the concept of tracing, freezing, seizing and confiscating or in some jurisdiction: forfeiting, as well as repatriating. These will help to develop action in requesting international cooperation in dealing with corporate crimes.

Distinguished ladies and gentlemen,

We have seen some developments in global association, group or networks, such as International Criminal Police Organization (Interpol), Egmont Group for money laundering and also our association, International

Association of Prosecutors. The emerging of IAACA (International Association of Anti-Corruption Authorities), the Conference of the State Parties is also productive in strengthening the networks.

Finally, I hope this Conference can be productive. I am confident that all participants wishes to bring knowledge, information and others' experience to their workplace. With some initiatives taken by our Association, I am optimistic that we can learn how to resolve our common problems to combat corporate crimes. And last this I wish to say is to continue a good relation with our friends and colleagues, prosecutors from around the world.

Thank you for the attention.

JAN S MARINGKA

Head of International Legal Cooperation Division

Attorney General's Office of the Republic of Indonesia

BIOGRAPHIC INFORMATION

Indonesia

Name: **Mr. Jan Samuel MARINGKA**

Present Position: Head of International Legal Cooperation. The Attorney General Office
Republic of Indonesia

Previous Positions: Legal Consul, Consulate General of Indonesia, Hong Kong, 2005- 2008
Head, District Prosecutor's Office, Tarakan, East Kalimantan, 2003-2005
Head, Section for Special Crimes, 2002-2003
Head, Foreigner Supervision, Deputy Attorney General for Intelligence, 2000-2002
Head, Subdivision, Deputy Attorney General for Special Crimes, 1996-2000
Supervisor, General Crimes, Deputy Attorney General for Supervision, 1994-1996
Prosecutor, Central Jakarta District, 1991-1994

Education/Training: M.A., Comparative Law, Krisnadwipayana University, Jakarta, 1988
Course, International Cooperation in Anti-Corruption Cases, 2002
Course, Combating Transnational Crime, 2001
Course, Intellectual Property Rights, 1996

Memberships: International Prosecutor Association, The Hague
International Anti Corruption Authority, China
ASEAN Law Association (ALA), Singapore
World Jurist Association, Austria
International Crimes Prevention Foundation, Japan

Address: Attorney General Office
Jl. Sultan Hasanuddin No. 1
Kebayoran Baru
Jakarta Selatan, DKI Jakarta
Indonesia
Telephone: 62 811102000

Languages: Indonesian, English

Professional Background: Mr. Maringka is the Head of International Legal Cooperation in the Attorney General's office and is currently posted to Hong Kong. He is in charge of repatriating Indonesian legal offenders back to Indonesia and facilitating mutual legal assistance in criminal matters with foreign countries. His goal is to be point of contact in both Indonesia and the U.S. in combating transnational crime issues. Mr. Maringka has been a key figure in the repatriation of corruption assets and extradition of transnational criminals to Indonesia.