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LAW ENFORCEMENT AGAINST PERFORMERS OF THE CRIME OF MONEY LAUNDERING RESULTING FROM CRIMINAL ACTS OF FRAUD OR EMBEZZER

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Abstract

The crime of money laundering is a crime that has a distinctive characteristic, namely, this crime is not a single crime but multiple crimes. This crime is characterized by the form of money laundering, which is a crime that is a *follow-up crime* or continuing crime, while the main crime or original crime is called a *predicate offense* or *core crime* or there are countries that formulate it as an *unlawful activity,* namely an original crime that produces money and then carries out the laundering process. The crime of money laundering can be seen in Article 1 of Law Number 8 of 2010 which explains that money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. The problem taken is regarding the proof of the crime of money laundering which is related to the predicate crime. As well as law enforcement against perpetrators of money laundering crimes resulting from criminal acts of fraud or embezzlement. The research method that the author uses is normative juridical research. The conclusion obtained is that the evidence in Law Number 8 of 2010 is one of the anti-money laundering crime efforts which is specifically at the stage of evidence at trial, with efforts to accommodate difficulties at the stage of proving the crime of money laundering and law enforcement against the crime of money laundering is still ongoing. there are obstacles both in terms of substantive law (material law) and in terms of procedural law (formal law) as regulated in Law Number 8 of 2010.

Keywords: Law Enforcement, Money Laundering, Fraud

INTRODUCTION

Advances in information technology and globalization have resulted in trade in goods and services as well as financial flows becoming increasingly global. On the one hand, technological progress has had a positive influence on business, on the other hand, developments in science and technology and globalization have had other impacts with the emergence of new dimensions of crime, namely new transnational *crime modus operandi*.

There are many forms of crime committed within a country, both by individuals and corporations (Rahayu, dkk, 2021). This form of crime produces quite large amounts of wealth, such as: corruption, smuggling of goods or labor, embezzlement, narcotics, gambling, tax crimes, and others. In order not to reveal the perpetrator, the origin of the assets obtained from the crimes above is hidden by inserting the assets into the financial system, especially in the banking system. This form is called money laundering (Waluyo, 2009).

The term Money Laundry comes from English. Money means money and Laundering means laundering. So, Money Laundry literally means money laundering, or bleaching money resulting from crime. The International Criminal Police Organization (ICPO) defines money laundering as an action that attempts to hide and disguise the characteristics of illegal income so that it appears to come from a legitimate or legal source (Nasution, 2005).

The definition of the crime of money laundering can be seen in Article 1 of Law Number 8 of 2010 which explains that money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. In Article 3 it is explained that the crime of money laundering is a form of crime committed either by a person and/or a corporation by deliberately placing, transferring, diverting, spending, paying, donating, entrusting, taking abroad, changing the form, exchanging it for currency. or securities or other actions regarding assets which he knows or reasonably suspects are the proceeds of a criminal act with the aim of concealing or disguising the origin of the assets, including those who receive and control them (Marlina, dkk, 2005).

Money laundering activities involve very complex money laundering. Basically, this activity consists of 3 (three) steps, each of which stands alone but is often carried out together, namely *placement, layering,* and *integration (*Husein, 2007).

The crime of money laundering is always related to assets originating from criminal acts, so there is no money laundering if no criminal act has been committed *(no crime, no money laundering) (*Husein, 2007). The crime of money laundering is the crime of predicate possession connection Which tightly. How Possible will a crime of money laundering occurred If not preceded by follow criminal origin moreover formerly, temporary object Money Laundering Crime is wealth resulting from a predicate crime. This means that the crime of money laundering will not occur if it is not preceded by a criminal act origin (Sjahdeini, 2004).

In 2023, there will be a case that will attract the attention of the Indonesian public, namely the alleged crime of money laundering related to funds from the Al-ZaYyun Indonesian Islamic Boarding School Foundation, which was allegedly committed by Panji Gumilang who has been named a suspect by investigators from the Special Economic Crimes Directorate of the National Police Criminal Investigation Unit regarding the flow of funds. Al-Zaytun Indonesian Islamic Boarding School Foundation which allegedly flowed into the personal account of suspect Panji Gumilang. From the results of investigations from 2008 to 2022, the Indonesian Islamic Boarding School Foundation led by Panji Gumilang made loans to a number of financial institutions, and there were 144 accounts in Panji Gumilang's name, and of the 144 blocked accounts, investigators found the total value of outgoing and incoming transactions was IDR . 1.1 Trillion (Liputan6, 2023).

Panji Gumilang was named a suspect under Article 372 of the Criminal Code relating to embezzlement with the threat of four years in prison, then Article 70 in conjunction with

Article 5 of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations and Article 3, Article 4, Article 5 in conjunction with Article 10 of Law Number 8 of 2010 concerning the Crime of Money Laundering with a penalty of 20 years in prison.

In terms of proving the elements of a money laundering crime from general criminal acts, it turns out that it creates problems in law enforcement, both at the level of investigation, prosecution or during evidence in court.

Based on the description above, the author is interested in conducting research by writing papers in scientific studies with the problem of how to prove the crime of money laundering related to predicate crimes? And how will the law be enforced against perpetrators of the crime of money laundering resulting from criminal acts of fraud or embezzlement?

RESEARCH METHODS

This research is included in normative juridical research. Normative juridical research methods (library law research) are methods or methods used in legal research which are carried out by examining existing library materials. This research refers to legal norms contained in statutory regulations (Hartono, 1994).

In accordance with the method used, the type of research used is analytical descriptive research, namely the data obtained will be described in this research by providing an overview of legal problems, the legal system and reviewing or analyzing them according to the needs of the research, then analyzed based on existing theories. (*integrated criminal justice system)* to solve the problems in this writing (Waluyo). In this research, we discuss law enforcement against perpetrators of money laundering crimes proceeds from criminal acts of fraud or embezzlement.

RESEARCH RESULT

Proving Money Laundering Crimes Related to Predicate Crimes

The crime of money laundering has its own characteristics compared to other crimes, namely the principle of multiple crimes, or also called subsequent crimes, meaning that this crime requires an initial criminal act that produces money and then the proceeds are laundered (hukum.com, 2024). As for predicate crimes according to Article 2 paragraph (1) of the Money Laundering Crime Law which regulates the types of predicate crimes that can be charged with money laundering, one of them is corruption.

Corruption is an act of enriching oneself or a corporation in an unreasonable and illegal way , by abusing public power entrusted to them through embezzlement, bribery, gratification and even extortion. Then, the proceeds of corruption are not directly used or spent but are hidden or disguised by being deposited into the financial system so that when they are released they appear to be legitimate. Actions involving the proceeds of crime are referred to as money laundering crimes . Therefore, the crime of corruption is one of the predicate crimes in the crime of money laundering.

The connection between the crime of money laundering and the crime of corruption is used by corruptors as an effort to secure assets obtained from the crime of corruption committed. This can be seen in several cases in Indonesia where corruptors involve the proceeds of their corruption in various forms of assets, investments and business activities (Natasya, 2004).

One of the obstacles in eradicating criminal acts of corruption is proof because corruption is *an invincible crime* which is carried out in a systematic and collaborative manner so that perpetrators tend to cover each other up (Ruknini, 2009). It is true that not all criminal acts of corruption are difficult to prove, but for criminal acts of corruption with large

state losses and involving perpetrators who have power, it tends to be difficult to prove and reveal who the parties should be responsible for.

Evidence is a stage in the trial process that is important in the examination of a case at the court stage which is used to determine whether the defendant is right or wrong in a criminal case (Harahap, 2003). Negative proof *wettelijk bewijstheorie* which is often called negative proof based on the law is proof that, apart from using the evidence listed in the law, also uses the judge's belief. The judge's confidence is limited to the evidence that has been determined by law. This proof system combines the positive proof system according to the law and the proof system according to the judge's belief, so this proof system is called multiple proof. stelsel or *negative wettelijk theory* is known as a negative theory of evidence based on the law (Muhammad, 2007).

The existence of criminal acts of corruption in Indonesian positive law has actually been around for a long time, namely since the enactment of the Criminal Code (Atmoko, 2022). In cases of criminal acts of corruption related to property or assets resulting from corruption, it is known as the Crime of Money Laundering. The crime of money laundering not only threatens the stability and integrity of the country's economy and financial system, but also endangers the life of the Indonesian people, nation and state. In its development, matters Money laundering crimes are increasingly widespread and complex in various sectors.

In Law Number 8 of 2010, assets suspected of originating from a criminal act do not need to be proven before the crime of origin is carried out in order to begin an investigation into the crime of money laundering, so that it can be concluded that if there are indications of suspected money laundering, an investigation can be carried out immediately. the perpetrator increases in understanding of investigation and investigation. This is almost the same as proving the criminal act of detention. The detention contained in Article 480 of the Criminal Code contains the element "which is known or should be reasonably suspected to have been obtained from a crime", which in several jurisprudence states that the examination of criminal acts of detention does not need to wait for a decision regarding the criminal act that produces the goods or proceeds of the crime.

Regarding the charges relating to the predicate crime of money laundering, Yenti Garnasih is of the opinion that the crime of money laundering should be viewed as an independent crime, even though it is dependent on the predicate crime. Therefore, money laundering must be included in the cumulative indictment with the consideration that if it is used one by one, it is feared that efforts to trace money resulting from criminal acts will become more difficult, even though applying the Crime of Money Laundering in predicate crime cases is so that the application of confiscation or replacement money can be more effective. Optimal (Garnasih, 2017).

In practice, alternative charges often occur, so it is also necessary to pay attention to why it is not appropriate for money laundering charges to be prepared alternatively. According to Van Bemmelen alternative charges are (Hamzah, 1993):

1. If the public prosecutor does not know which act, whether one or the other, will be proven later at trial, whether the act is theft or holding
2. If the public prosecutor is in doubt, which criminal law regulations the judge will apply to the action which he considers to be real.

Apart from the theory regarding the necessity to indict simultaneously, there is also a provision in Article 75 of Law Number 8 of 2010 as follows, "In the event that investigators find sufficient preliminary evidence of the occurrence of a crime of money laundering and a predicate crime, the investigator will combine the investigation of the crime originating from the investigation of the crime of Money Laundering and notifying it to the Financial Transaction Reports and Analysis Center."

The provisions of this article explain that between the two crimes *a concursus realis (meerdade samenlop) occurred* and this is the aim of implementing Law Number 8 of 2010, namely so that the perpetrators of crimes are not only subject to the provisions regarding predicate crimes, but also apply Law Number 8 of 2010 because the perpetrator has channeled or enjoyed the proceeds of his crime. Apart from that, the aim is also to confiscate the proceeds of crime by tracking where the proceeds of crime go and who enjoys them, by not separating the charges, the aim of tracking and confiscation will be faster and hopefully not become more difficult.

In the investigation process for a money laundering crime, the defendant can be declared not guilty if during the investigation it is true that the defendant committed an act of disguising very large amounts of assets but the assets were not the proceeds of a crime. So the proceeds of crime or predicate crime as the source of money laundering crimes play a dominant role in the evidence.

Theoretically, there are 4 (four) types of proof theories, namely:

1. The theory of evidence is based on the judge's belief (*conviction in time*);
2. The theory of evidence is based on the judge's belief within certain limits for logical reasons (*conviction raisonee*);
3. The theory of proof according to law is positive; And
4. The theory of evidence is based on the judge's beliefs arising from negative evidence in law (*negatief wetteliik stelsel*).

The consequence of this burden of proof is that the defendant is obliged to actively prove that he is not the perpetrator of the crime. The defendant is before the court which prepares all the burden of proof and if he cannot prove it, the defendant is declared guilty of committing a crime. In principle, this type of burden of proof theory is called reverse proof or reversal of the burden of proof *(omkering van bewislast)* which is absolute or pure.

The burden of proof is required on the defendant or his attorney, so this type of reverse proof is absolute (pure) where the defendant and/or his legal advisor are obliged to prove the defendant's innocence. If the burden of proof is imposed on the defendant, then this clearly shifts the principle of presumption of innocence to presumption of guilt. Because the defendant has the right to remain silent, he cannot be forced to speak during the trial process (Mulyadi, 2007).

Reverse evidence is regulated in Article 77 and Article 78 of Law Number 8 of 2010. Article 77 of Law Number 8 of 2010 explains that for the purposes of examination at court the defendant is obliged to prove that his assets are not the proceeds of a criminal act. Meanwhile, Article 78 paragraph (1) of Law Number 8 of 2010 explains that the judge orders the defendant to prove that the assets related to the case do not originate from or are related to the criminal act as intended in Article 2 paragraph (1) of Law Number 8 2010. In Article 78 paragraph (2) of Law Number 8 of 2010, it is stated that the defendant proves that the assets related to the case do not originate from criminal acts as intended in Article 2 paragraph (1) by presenting sufficient evidence.

In reverse proof, the burden of proof is on the defendant. In the crime of money laundering, what must be proven is the origin of the assets which does not come from a criminal act, for example it does not come from corruption, narcotics crimes or other illicit acts. Article 77 and Article 78 of Law Number 8 of 2010 contain provisions that the defendant is given the opportunity to prove that his assets do not originate from a criminal act. This provision is known as the principle of reverse evidence. Its nature is very limited, namely it only applies to court hearings, not at the investigation stage. Apart from that, not all criminal acts, only serious crimes such as corruption, smuggling, narcotics, psychotropic substances or banking crimes (Sjahdeini, 2024).

In essence, reverse proof, this model, which is called reverse proof, is absolute and this

model is a deviation from the law of evidence in general (conventional) and is also an extraordinary action within the framework of evidence. Conventional evidence or negative evidence puts the suspect's human rights at the highest level, while reverse evidence, especially absolute (pure) evidence, forces the defendant to speak by proving his guilt.

Reverse evidence applies the principle of presumption of guilt against the defendant. This provision is not regulated in the Criminal Procedure Code (KUHAP). According to Lilik Mulyadi, the principle of relative presumption of guilt tends to be seen as a denial of universal principles, especially the principle of presumption of innocence. Basically, the principle of presumption of innocence is a fundamental principle in the rule of law. As a consequence, every person accused of committing a criminal offense has the right not to be considered guilty until proven guilty while still relying on evidence from the public prosecutor, adequate evidentiary norms and proof methods must follow fair methods.

The reverse burden of proof is on the defendant, not the Public Prosecutor (JPU). The reverse proof is divided by 2 (two):

1. Derived balanced reverse proof;
2. Sharpened or increased (absolute/pure) balanced reverse proof.

Limited/balanced reverse proof or also called balance of probability reverse proof. It is said that the reverse evidence is balanced because even though the defendant is charged with proving, the Public Prosecutor is also still obliged to prove the evidence he has. It is said that ordinary (conventional) evidence is in accordance with the provisions of Article 66 of the Criminal Procedure Code, if the public prosecutor must prove the defendant's guilt by preparing evidence as specified in the law and the defendant can deny the validity of the evidence and the burden of proof on the public prosecutor in accordance with the provisions of Article 66 Criminal Procedure Code. It is said that proof is reversed if the burden of proof is on the defendant, which can be seen in various laws, for example in Article 77 of Law Number 8 of 2010.

The burden of proof in reverse evidence on the balance of probabilities is borne by the defendant or his legal advisor and the public prosecutor is obliged to equally prove the validity of the evidence. The defendant is obliged to prove the evidence he submits at trial. Likewise, the public prosecutor is also obliged to prove the validity of the evidence he submits at court.

Limited or balanced reverse evidence requires the defendant or his legal advisor and the public prosecutor to prove each other's guilt or truth. The regulations for reverse evidence in several laws vary, some are imposed on the defendant (absolute), some are limited and balanced, some are even specifically for proving assets and some are specifically for proving the defendant's guilt.

These provisions are found in several laws in Indonesia which adhere to the principle of reverse evidence in Law Number 8 of 2010, Law Number 31 of 1999 jo . Law Number 20 of 2001 concerning Eradication of Corruption Crimes, and Law Number 8 of 1999 concerning Consumer Protection, Law Number 32 of 2009 concerning Environmental Protection and Management, and Law Number 5 of 1999 concerning Prohibition of Practices Monopoly and Unfair Business Competition.

Based on the explanation above, the adoption of the principle of reverse evidence with the burden of proof on the defendant in the crime of money laundering as in Article 77 of Law Number 8 of 2010 will make it easier for legal officers to pursue assets by proving the origin of the assets controlled by the defendant. Meanwhile, by adhering to the principle of reverse proof of the balance of possibilities in Article 37 of Law Number 31 of 1999 jo . Law Number 20 of 2001 concerning the Eradication of Corruption Crimes will be difficult to prove, especially regarding the origin of the defendant's assets.

The predicate crime must be proven, but it is proven by the prosecutor as an

investigator, not through a court decision because the crime of money laundering is seen as a crime that does not stand alone or is a dependent crime and is a *follow-up crime* . So, the proof of each crime, both the predicate crime and the follow-up crime, must be proven by referring to the cumulative indictment, that is, it must be combined in a realist concursus approach. The necessity of combining the indictment appears in substance in the provisions of Article 74 and Article 75 of Law Number 8 of the Year. 2010.

Normatively, what is meant by proof of a predicate crime is that it is carried out by the prosecutor as an investigator and perhaps this proof is in the court process, but in theory it could be that the prosecutor is the one who proves the assets obtained by the defendant or perpetrator. In the court process, criminal acts of corruption, bribery and other predicate crimes continue and then become money laundering, as in the case of Djoko Susilo, who corrupted his driving license simulator and then laundered the money originating from this corruption.

In the development of the crime of money laundering, which continues to grow to date, if we look at the emergence of money laundering, the crime of money laundering arose because there was a continuation of the predicate crime that preceded it or was committed earlier. Apart from ensnaring the main perpetrators or what are usually called active perpetrators who carry out money laundering, they can also ensnare passive perpetrators in the money laundering process.

Regarding the regulation of criminal sanctions against passive perpetrators (passive recipients), this does not necessarily mean that all passive perpetrators can be subject to criminal sanctions. To determine whether a passive actor can be subject to criminal sanctions or not, there must be criteria that determine whether a passive actor can be subject to criminal sanctions. These criteria are contained in Article 5 of Law Number 8 of 2010 that:

(1) Any person who receives or controls the placement, transfer, payment, grant, donation, custody, exchange or use of Assets which he knows or reasonably suspects are the result of a criminal act as intended in Article 2 paragraph (1) shall be punished with a maximum imprisonment of 5 (5) five) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

(2) The provisions as intended in paragraph (1) do not apply to Reporting Parties who carry out reporting obligations as regulated in this Law.

Based on the formulation of this article, a passive actor who receives or controls the placement, transfer, payment, grant, donation, custody, exchange or use of assets which he knows or reasonably suspects are the proceeds of a criminal act and if he does not report his obligations as regulated in the Law Law Number 8 of 2010, passive perpetrators can be subject to criminal sanctions.

Law Enforcement Against Perpetrators of Money Laundering Crimes Proceeding from Crimes of Fraud or Embezzlement

Law enforcement is a process, which is essentially the implementation of discretion involving decision making which is not strictly regulated by applicable legal rules, but has an element of personal judgment. On the basis of this description, it has been said that interference with law enforcement may occur if there is a misalignment between the values of the rules and patterns of behavior. These various disturbances occur when there is disharmony and harmony of paired values, which then manifests in conflicting rules and directionless behavior patterns that disturb the peace in social life (Soekanto, 1993).

Law enforcement is an effort to make the ideas of justice, legal certainty and social benefits a reality. So law enforcement is a process of realizing ideas. According to Sudarto, law enforcement is often divided into three, namely:

1. Law Enforcement is Preventive

2. Law Enforcement is Repressive
3. Law Enforcement is Curative (Sudarto, 1983).

Each crime must be considered and must be proven, that the deception used is so similar to the truth, that it is understandable that the person who was deceived believed it. A lie alone is not enough to establish fraud. The lie must be accompanied by deception or a convoluted arrangement of lies, so that people believe the false story. The deception used by a deceiver must be such that people with a general (reasonable) level of knowledge can be deceived. So apart from the cunning of the fraudster, you must also pay attention to the condition of the person who is being deceived. Each crime must be considered and must be proven, that the deception used is so similar to the truth, that it is understandable that the person who was deceived believed it. A lie alone is not enough to establish fraud. A lie must be accompanied by deception or a convoluted arrangement of lies, so that people believe the false story.

Usually someone who commits fraud explains something that seems to be true and happened, but in fact what they say is not in accordance with the reality, because their aim is only to convince the person who is the target to follow their wishes, while using a fake name so that the identity of the person concerned is not known. Likewise, using a false position so that people believe what they say.

Fraud among the public is a very despicable act, but it is rare that the perpetrators of this crime are not reported to the police. Small-scale fraud where the victim does not report it makes the fraudster continue to develop their actions, which ultimately leads to the perpetrator of the fraud becoming a perpetrator of large-scale fraud.

Money laundering is a process carried out by criminals with the proceeds of crime. The aim is to disguise and hide the original source (Bahresy, 2018). Criminals disguise these sources by changing the form of funds by moving funds to places where it is less likely to attract the attention of law enforcement officials. By laundering the proceeds of the crime, the perpetrators of the crime are trying to make the proceeds of the crime appear to be legal funds. The crime of money laundering will not occur if it is not preceded by a predicate crime because the object of the crime of money laundering is assets resulting from a predicate crime (KPK, 2018).

The crime of money laundering as an *extraordinary crime* is very reasonable The crime of money laundering is a very extraordinary crime, because all serious crimes rely on money laundering to disguise the proceeds of their crime. Not only that, the crime of money laundering is also used as an effort to withdraw the proceeds of the perpetrator's crimes as if they were obtaining halal money. This is carried out using various modes, such as scientific and technological methods, with various financial networks, companies across countries.

The crime of money laundering has a distinctive characteristic, namely that this crime is a multiple crime, not a single one, meaning that the initial crime originates from a crime of fraud which then leads to a crime of money laundering. This form of money laundering activity is characterized by the form of money laundering as a *follow-up crime,* while the original crime is referred to as a predicate *offense/core crime* or as unlawful activity, namely an original crime that produces money which is then carried out in the laundering process (Geno, 2019).

The law governing the crime of money laundering in Indonesia has undergone several changes in less than ten years and has undergone two changes. This shows how complex the problem of money laundering is. The first law was Law Number 15 of 2002 amended by Law Number 25 of 2003, and the last was amended by Law Number 8 of 2010. In consideration it was emphasized that the crime of money laundering does not only threaten economic stability and the integrity of the financial system, but it can also endanger the foundations of social, national and state life, needs to be harmonized with the development of law enforcement needs, international practices and standards.

The Law on the Prevention and Eradication of the Crime of Money Laundering itself provides a complete understanding of money laundering. Article 1 number 1 of the Law on the Prevention and Eradication of Money Laundering only states that money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. Meanwhile, in the Law on the Prevention and Eradication of the Crime of Money Laundering, what is meant by the crime of money laundering can be seen in Articles 3, 4 and 5. Article 3 of the Law on the Prevention and Eradication of the Crime of Money Laundering determines: "every person who places, transfers, diverts, spends, pays, gives away, entrusts, takes abroad, changes form, exchanges for currency or securities or other actions on assets which he knows or reasonably suspects are the proceeds of criminal acts as intended in article 2 paragraph (1) with the aim of concealing or disguising the origin of assets, he is convicted of money laundering."

The crime of money laundering is not only an Indonesian national problem, but also concerns regional and international problems, so international cooperation is needed to overcome and eradicate it.

In Law Number 30 of 2002 concerning the Corruption Eradication Commission, as well as Law Number 8 of 2010 concerning the Crime of Money Laundering, there are no provisions that give the Corruption Eradication Commission the authority to prosecute perpetrators of the Crime of Money Laundering. This creates legal uncertainty.

Article 74 of Law Number 8 of 2010 states (UU, 2010):

> "Investigations of criminal acts of money laundering are carried out by predicate criminal investigators in accordance with the provisions of the procedural law and provisions of statutory regulations, unless otherwise provided by this Law"

Furthermore, Article 75 states:

> "In the event that the investigator finds sufficient initial evidence of a money laundering crime and a predicate crime, the investigator combines the predicate crime investigation with the money laundering crime investigation and notifies the matter to the Financial Transaction Reports and Analysis Center. "

Based on the provisions above, investigations into money laundering and predicate crimes can be carried out by the Corruption Eradication Commission simultaneously, but the prosecution is carried out separately. Prosecutors at the Corruption Eradication Commission have no authority to prosecute money laundering crimes. This means that the Corruption Eradication Commission must hand over to the Public Prosecutor to the Prosecutor's Office to prosecute the perpetrators of the crime of money laundering.

Furthermore, with regard to the form of error in the crime of money laundering as formulated in Article 3, Article 4 and Article 5 of Law Number 8 of 2010, especially the words assets which he knows or reasonably suspects are the proceeds of a criminal act, it can be ascertained some by intention, some by mistake. The logical consequence is that this article does not only require intentionality but also negligence which is alternatively intentional. In the context of the term culpa, it is a real culpa and an unreal culpa. Culpa actually means that the prohibited consequences arise due to negligence, while culpa does not actually mean carrying out an act on purpose but one of which is culpable.

From the description above, it can be said that the provisions of Article 3, Article 4 and Article 5 are included in the culpa which is not true. The problem is that this provision is contradictory to the explanation of Article 5 paragraph (1), which states that what is meant by reasonable suspicion is a condition that fulfills at least the knowledge, desires or objectives at the time of the known transaction which indicates a violation of the law. This explanation of Article 5 paragraph (1) changes the consequences of the form of error from negligence to deliberate.

Through the money laundering process, criminals can use the proceeds of their crime as if the money was obtained from legitimate proceeds. This is one of the triggers for the growth of criminal acts of corruption in Indonesia, because corruptors can easily put money from criminal acts of corruption into the financial system and then use it again as if it was obtained from legitimate proceeds (Sapidin, dkk, 2023).

Even in the judiciary, namely in giving decisions regarding disputes about a body that has no interest in the dispute between the parties, but stands above the dispute, a tendency towards justice clearly manifests itself, a tendency that is inherent in the law. And in this case, great progress can be seen, when compared to the past when defending the law was usually carried out in the form of revenge and when fighting in front of the court as a means of proving one's rights, it was common practice.

Issues related to the formulation of criminal acts and evidentiary procedures in Law Number 8 of 2010 Article 2 state:

(1) Proceeds of criminal acts are assets obtained from criminal acts: a. Corruption; b. Bribery; c. Narcotics; d. Psychotropics; e. Labor smuggling; f. Migrant smuggling; g. In banking; h. In the capital markets sector; i. In the insurance sector j. Customs; k. Excise; l. Human trafficking; m. Illegal arms trade; n. Terrorism; o. Kidnapping; p. Theft; q. Embezzlement; r. Fraud; s. Counterfeiting of money; t. Gambling; u. Prostitution; v. In the field of taxation; w. In the forestry sector; x. In the environmental field; y. In the field of maritime affairs and fisheries, or z. Other criminal acts which are punishable by imprisonment for 4 (four) years or more, which are committed in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and these criminal acts are also criminal acts according to Indonesian law.

(2) Assets that are known or reasonably suspected to be used and/or used directly or indirectly for terrorist activities, terrorist organizations or individual terrorists are equated with the proceeds of criminal acts as intended in paragraph (1) letter n.

The provisions above determine in a limited manner the crimes which constitute the predicate offense *of* the Money Laundering Crime which is a follow-up crime. This shows that for TPPU to occur, there must first be another criminal act/crime that has been committed by the perpetrator of the crime of money laundering as determined limitatively in Article 2.

Furthermore, Article 3 states:

"Everyone who places, transfers, diverts, spends, pays, grants, entrusts, takes out of the country. Changing the form, exchanging it for currency or securities or other actions regarding assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) with the aim of concealing or disguising the origin of the assets shall be punished for the crime of money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah)."

Article 4 states:

"Any person who conceals or disguises the true origin, source, location, allocation, transfer of rights or ownership of assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) shall be punished for the crime of laundering money with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)."

Article 5 states:

(1) Any person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets which he knows or reasonably suspects are the

proceeds of a criminal act as intended in Article 2 paragraph (1) shall be punished with a maximum imprisonment of 5 (5) five) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)

(2) The provisions as intended in paragraph (1) do not apply to reporting parties who carry out reporting obligations as regulated in this Law.

The provisions in Articles 3, 4 and 5 are in line with the provisions of Article 2 which explains the existence of predicate crimes in the Crime of Money Laundering. In other words , to determine that a crime of money laundering has occurred and the perpetrator is involved, it is first proven that there is a predicate crime. However, this provision becomes unclear or contradictory with the provisions of Article 69 which states:

> In order to carry out investigations, prosecutions and examinations in court regarding money laundering crimes, it is not necessary to first prove the original crime.

The provisions of Article 69 result in a lack of legal certainty and can be misused by law enforcement officials because Articles 2, 3, 4 and 5 clearly state that for the crime of money laundering there must be a predicate crime and this must be proven first or at least proven collectively.

CONCLUSION

Proving the crime of money laundering as regulated in Law Number 8 of 2010 is one of the anti-money laundering crime efforts specifically at the evidentiary stage at trial, with an effort to accommodate difficulties at the stage of proving the criminal act of money laundering. The urgency of regulating the reverse evidence system in Law Number 8 of 2010, apart from regarding the high level of complexity of evidence, is also based on the impact of money laundering crimes which are very detrimental to society at large. The reverse evidence system indeed deviates from the principle of the presumption of innocence and the human right to equality. position in law. However, this deviation is not a violation of human rights because it is based on restrictions on human rights based on Article 28 J paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which is a manifestation of a paradigm form. Human rights that fall into the category of cultural relativism are those that are based on Pancasila as the philosophy of the Indonesian state. The burden of proof imposed on the defendant is limited to the trial stage and is limited to proving the origin of assets, so that this proof system does not violate human rights.

Law enforcement against the crime of money laundering still faces obstacles both in terms of substantive law (material law) and in terms of procedural law (formal law) as regulated in Law Number 8 of 2010.

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