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Analysis of Article 69 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering in the Perspective of Legal Certainty

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Abstract

The problem that has been an obstacle for the prosecutor's office to enforce money laundering offenses is the evidence which constitutes "multiple and related offenses", which means that the offense will not exist if there are no other offenses as the origin of the offense. Article 2 of Law Number 8 of 2010 has stated the types of predicated crimes in money laundering. The crime of money laundering is included in the qualification of a special crime, not a general crime. A general crime is a crime regulated in the Criminal Code (hereinafter abbreviated to the Criminal Code) and is an act of a general nature, Type ResearchThis research uses normative legal research. Researchers found The analysis of Article 69 of Law No. 8 of 2010 concerning the prevention and eradication of the crime of money laundering in the perspective of legal certainty is debatable because Article 69 does not need to have a proven main crime to prosecute and criminalize the perpetrators. Ideally, evidence in handling cases of money laundering in conducting investigations, prosecutions, and examinations in court is not required to prove the original crime.

INTRODUCTION

The crime of money laundering (hereinafter abbreviated as TPPU) is very concerning and is proven by the amendment of the 2002 ML Law into the 2003 ML Law, and later replaced by the 2010 ML Law. ML is a crime with special characteristics and is also a starting point for eradicating against economic crimes not only by eradicating the original crime but also by providing the proceeds of the crime.[1]

From perspective In law, the term “money laundering” was originally introduced in a case in the United States, and later developed through the passage of laws, such as the Bank

[1] Yenti Garnasih, *Anti-Money Laundering Law Enforcement and Its Problems in Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2015), 1.

Secrecy Act of 1970 and the Money Laundering Control Act of 1986. 1988 United Nations Vienna Convention.[2]

Initially, money laundering offenses began to take effect in Indonesia, namely in 2002, the only investigators for money laundering offenses were the Indonesian National Police.[3]ML can be grouped into 3 (three) activity patterns, namely: placement, layering and integration. Placement is an effort to place funds generated from a criminal activity into the financial system. Layering is defined as separating the proceeds of crime from the source, namely related criminal activities through several stages of financial transactions.

In this case, there is a process of transferring funds from certain accounts or locations as a result of placement to other places through a series of complex transactions designed to disguise/deceive as many sources of opening as possible to accounts of fictitious companies by utilizing bank secrecy provisions, especially in countries -countries that are not cooperative in their efforts to combat money laundering activities. Integration, which is an effort to establish a basis as a legitimate explanation for the proceeds of crime.[4]

The problem that has been an obstacle for the prosecutor's office to enforce money laundering offenses is the evidence which constitutes "multiple and related offenses", which means that the offense will not exist if there are no other offenses as the origin of the offense.[5]Article 2 of Law Number 8 of 2010 has stated the types of predicated crimes in money laundering. The crime of money laundering is included in the qualification of a special crime, not a general crime. A general crime is a crime that is regulated in the Criminal Code (hereinafter abbreviated to the Criminal Code) and is acts of a general nature, where the legal source boils down to the Criminal Code as a source of material criminal law and the Criminal Procedure Code. (hereinafter abbreviated as KUHAP) as a source of formal criminal law.[6]

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[2] Hanafi Amrani, *Criminal Law of Money Laundering, Development of the Anti-Money Laundering Regime and Its Implications for the Basic Principles of State Sovereignty, Criminal Jurisdiction and Law Enforcement*, (Yogyakarta: UUI Press, 2015), 16

[3] Investigations in Indonesia consist of the Indonesian National Police, the Attorney General's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), as well as the Directorate of Taxes and the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia.

[4]Yadi Kristiana, *Eradication of the Crime of Money Laundering from a Progressive Legal Perspective*, (Yogyakarta: Thafa Media, 2015), 17.

[5] Ramelan, Reda Mantovani, dan Paulie David, 2013. *Panduan Untuk Jaksa Penuntut Umum Indonesia dalam Penanganan Harta Perolehan Hasil Kejahatan* (Jakarta: Indonesia-Australia Legal Developmen Facility, 2008), hlm. 114.

[6] Ibid

In addition, the judicial system in its enforcement is conventional, meaning that the police are investigators and investigators, the prosecutor is the public prosecutor, and the judge is a judge in the general court environment and applies to all crimes committed by all citizens in general, while special crimes are criminal acts. regulated in a certain/special law. ML is included in the qualification of a special crime because it is regulated in a special/certain law, namely Law Number 8 of 2010.[7]

In addition to the provisions of the material criminal law, there are also the provisions of the formal criminal law, in which there are deviations from the fundamental principles of both the Criminal Code and the Criminal Procedure Code Material criminal law in Law Number 8 of 2010, which is contained in Articles 3-5, 7, 11, 12, 14-16, and so on. Meanwhile, the formal criminal law in Law Number 8 of 2010 is contained in Articles 68-82, and so on.

In practice, law enforcement institutions have complained a lot about money laundering offenses, because what has been regulated in norms or legislation is not in line with reality. In relation to the principle that it is impossible for a money laundering crime to occur without an initial crime, there is a very important problem, namely that the provisions of Article 69 can actually mean that there is no need for a proven main crime to prosecute and punish the perpetrators.

Article 69: "In order to be able to carry out investigations, prosecutions and examinations in court proceedings against the crime of money laundering, it is not necessary to first prove the original crime". This provision can be interpreted that money laundering offenses constitute an independent crime, the validity of which does not depend on the provisions of other criminal acts. The idea of this article is to make it easier to prove the crime of money laundering, but of course it is not as simple as this because the real facts are often required to prove the original crime.[8]

Article 69 confirms that a predicate offense with a strong suspicion of ML, does not need to be proven (by the prosecution). This provision is to emphasize that the target of the 2010 Money Laundering Law is not on the actions (mistakes) of the defendant, but on assets

[7] Ibid
[8] R. Wiyono SH, *Discussion on the Law on the Prevention and Eradication of the Crime of Money Laundering*, (Jakarta: Sinar Graphic, 2013), 194.

that are suspected of originating from or related to the (original) crime. In the 2010 ML Law, assets (allegedly derived from criminal acts) are the subject of money laundering offences.[9]

Judging from the history of the formation of Article 69 and the discussion of related discussions about the article, it appears that Article 69 was born because of the enthusiasm of the makers of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering as well as from law enforcers in Indonesia to enforce criminal acts. money laundering through Article 69, the spirit is very visible from the phrase "it is not necessary to prove the original crime first", which of course in the development of practice has led to a debate as described above by the author.

The history of the formation of this article is to deal with cases of money laundering in a good, fast, and firm manner. Judging from the minutes of the session on the formation of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, by the Indonesian House of Representatives (DPR), in the Public Hearing Meeting On Wednesday, 19 May 2010, 2 experts were presented in this meeting to when his opinion was heard on the establishment of a law on the prevention and eradication of the crime of money laundering, the two experts were Sutan Remy Sjahdeidi, and Marjono Reksodiputro.

In the meeting Remy only presented his opinion slightly, because he had already presented his opinion in written form, so that the presentation continued with the discussion of Article 69 put forward by Marjono Reksodiputro whose contents were as follows:

"In this article it is stipulated that for investigation, prosecution and examination in court it is not obligatory to first prove the original crime. The explanation of this article should refer to Article 480 of the Criminal Code and so on, namely regarding detention. Heilinh shelter, heconsheiling. The point is to prevent someone from taking advantage of other people's criminal acts. Therefore, the criminal act of detention can be prosecuted by a criminal court without having to prove that the goods seized are stolen goods. As long as he knows, it is reasonable to suspect that the wealth originates from crime."[10]

[9] Romli, Atmasista. "Legal Analysis of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering", *Journal of Legal Studies* 3, no. 1 (2016): 18.
[10] Minutes of the Trial of the Draft Law on Prevention and Eradication of the Crime of Money Laundering with Experts, 12.

It did not stop there, Marjono Reksodiputro also emphasized that:

"Actually, what is called money laundering is an article that says it is separate between money laundering and predicate offenses. In fact, the concept is known in detention, as a trafficker can be punished without having to prove that his bicycle is a stolen bicycle. So, the concept is like that, the money lender is as a catcher for the concept. We can't prove where it came from, but we can also prove that it's called a collector because he bought it cheaply, he bought it from people who stole bicycles or car thieves. So the concept of money laundering is not the same as hoarding, but similar. That's the legal concept."[11]

If it is seen that there are several cases that do not prove a predicate crime beforehand, such as the case of Irawan Salim who is the President Director of Bank Global who embezzled Bank Global money amounting to Rp. 60 billion, he ordered Le Mien to exchange the embezzled money of Rp. 20 billion into foreign currency. At the Central Jakarta District Court, Le Mien was sentenced to 7 years in prison, but the Jakarta High Court reduced his sentence to 5 years on the grounds that Le Mien did not enjoy the proceeds of the crime. The decision has permanent legal force. In this case, Le Mien has been convicted while the perpetrator of the non-predicate crime (embezzlement) Irawan Salim has not yet been caught.[12]

The case against the Auditor of the Directorate General of Taxes in the District Court (hereinafter abbreviated as PN) Karawang. The panel of judges at the Karawang District Court sentenced Yudi Hermawan, Agi Sugiono, and Raden Handaru Ismoyojati to being proven guilty of violating the Money Laundering Law, without first proving the original crime. Yudi was sentenced to 8 years, Agi was sentenced to 6 years in prison, and Handaru was sentenced to 5 years in prison. This case stems from PPATK's suspicions over the jumbo account of Yudi, an employee of the Directorate General of Taxes class II D. The billions of rupiah are suspected to have come from gratuities from a company.[13]

[11] Minutes of the Trial of the Draft Law on Prevention and Eradication of the Crime of Money Laundering with Experts, 13.

[12] Rahmi Triani Uzier & Bimo Prasetio, 2017. Can Criminalization Happen Using the Money Laundering Law Because There is No Need for Proof of Predicate Crime?, accessed through the website https://bplawyers.co.id/2017/03/13/perhaps-terjadi-criminalisasi-using-uu-penwashing-uang-karena-no-perlu-ada-pemunjukan-tindak-pidana-asal/, on November 17, 2020.

[13] https://www. Hukumonline.com/berita/baca/hol22301/tindak-pidana-pencepatan-uang-bisa-berdiri-diri?page=2

As for the other cases in Decision Number: 282/PID.SUS/2015/PN.Jmb. The Public Prosecutor stated that the defendant was Buhari. S.Sos Bin Bairunas is guilty of committing the crime of "hiding or disguising the origin, source, location, designation, transfer of rights, or actual ownership of Assets which he knows or reasonably suspects are the proceeds of criminal acts as referred to in Article 2 paragraph (1) continuously", as regulated and subject to criminal sanctions in Article 4 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering in conjunction with Article 64 paragraph (1) of the Criminal Code, in the second indictment. In his verdict the defendant was released because the predicate offense could not be proven, the judge also said that case Number: 282/PID.SUS/2015/PN.Jmb was a Ne Bis In Idem case.

And the case of Decision Number: 83/Pid.Sus-TPK/2018/PN.Jkt.Pst. The Public Prosecutor declared the Defendant Hasan S. Hanapi legally and convincingly guilty of committing a criminal act of corruption as stipulated and threatened with a criminal offense in the First Primary indictment Article 2 paragraph (1) in conjunction with Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) of the 1st Criminal Code and secondly Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

Legal Advisor to the defendant Hasan S. Hanapi defended that the first primary and subsidiary charges had been declared unproven. The predicate offense is a criminal act of corruption as referred to in Article 2 paragraph (1) of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering was not proven, so as a consequence the elements of Article 3 of the Law Number 8 of 2010 concerning the Crime of Money Laundering as charged in the second indictment were not legally and convincingly proven; therefore the defendant must be acquitted of the second charge.

The judge tried the defendant Hasan S. Hanapi's case, acquitted the defendant Hasan S. Hanapi of all charges because it was not legally and convincingly proven guilty of committing the Corruption Crime and Money Laundering Crimes as stated in the First Primary, First Subsidiary and Second Indictments.

Various decisions on money laundering offenses cases that are proven guilty and are also free cause polemics and make comparisons in interpreting the law in solving problems. If viewed normatively, the proof of the predicate crime (against the actions and mistakes of the maker), while the proof of assets in ML is on the acquisition of assets suspected of originating from criminal acts. With the adoption of differences regarding evidence regarding the object of the act or in other words a different context of the objective act, it leads to the consequence of not having to wait for the proof of the original crime.

According to Nyoman United Putra Jaya, a Law Expert at Diponegoro University, the rule of not requiring proof of predicate offenses serves to obtain maximum results in the prevention and eradication of money laundering offenses. This is because investigations, prosecutions, and examinations in court against money laundering offenses do not have to be proven beforehand.[14]

With regard to these unique characteristics, ML is a double crime and notthere may be ML without the predicate crime, then the role of the judge is very decisive for the purpose of eradicating this crime. Judges must have a visionary nature based on the understanding that proving this crime is very difficult, because it must prove two crimes at once. The professionalism of judges is very much needed to follow all judicial procedural systems that use a pragmatic approach, for example the existence of witness protection, the practice of reversing the burden of proof (the shifting of the burden of proof).

Meanwhile, the Money Laundering Law does not regulate the mechanism for reversing the burden of proof, but in the future this must be done. In addition to the prescribed procedure, the judge must also understand very well that considering that the application of reversing the burden of proof basically violates the principle of non-self-incrimination, it must be emphasized that this application is very limited to the trial stage and only for one element that the defendant must prove that the assets are not derived from crime.

With various issues regarding money laundering offenses, especially regarding the formulation of article 69 which according to Judge Suhartoyo said it has the potential to cause

[14] Experts presented by the Constitutional Court, Law Experts at Diponegoro University, Nyoman United Putra Jaya and experts presented by the Related Party, Komariah, will present their expertise in the judicial review of the Money Laundering Law (TPPU), Monday (19/10) in the Plenary Session Room of the Constitutional Court Building.

legal uncertainty if the predicate crime is not proven first, because in Article 75 which reads "in the event that the investigator finds sufficient preliminary evidence of the occurrence of the crime of money laundering and predicate crime, the investigator combines the investigation of the predicate crime with the investigation of the crime of money laundering and informs the PPATK". This means that it has arranged to combine the investigation of predicate crimes with money laundering offences after the investigators have found sufficient preliminary evidence.[15]

In connection with the principle that it is impossible for a money laundering crime to occur without an initial crime, there is a very important problem, namely that the provisions of Article 69 can actually mean that there is no need for a proven main crime to prosecute and prosecute the perpetrators. Komariah is of the view that if the Money Laundering Law uses the follow the person method, it will have a negative impact if the defendant dies. Komariah said that this view is based on the Constitutional Court's decision no. 77/PUU-XII/2014 which states that if the perpetrator of the original crime dies, it means that the case is void and the recipient of the money laundering cannot be prosecuted, because the original crime must first be proven. This, he continued, becomes an injustice if a person who has actually received benefits from the crime of money laundering,[16]

Dated December 15, 2014, pages 204-205, the Court's Decision is of the opinion that the Crime of Money Laundering does not have to be proven beforehand, including the following:[17] "Considering that regarding the crime of money laundering, which according to Article 69 of Law No. 8 of 2010 it is not obligatory to prove the predicate crime first, which the Petitioner requested that the predicate crime must be proven first, according to the Court if the perpetrator said the predicate crime death means that the case is void, then the money laundering recipient cannot be prosecuted because the original crime must first be proven.

[15] Agus Sahbani, 2015. Former Kapuspenkum AGO sues the Money Laundering Law, accessed through the website https://www. Hukumonline.com/berita/baca/lt55d2d2ea46ae9/mantan-kapuspenkum-/, on November 15, 2020

[16]Experts presented by the Constitutional Court, Law Experts at Diponegoro University, Nyoman United Putra Jaya and experts presented by the Related Party, Komariah, will present their expertise in the judicial review of the Money Laundering Law (TPPU), Monday (19/10) in the Plenary Session Room of the Constitutional Court Building, accessed via https://www.mkri.id/index.php?page=web. News&id=12295, on December 30, 2020

[17]Ajie Ramlan, "Effect of Constitutional Court Decision No. 77 / Puu-Xii/ 2014 Against Money Laundering Eradication Comparison of Indonesia With Three Other Countries", *Dejure Legal Research Journal* 17, no.4 (2017): 339.

It is an injustice that someone who has actually received benefits from the crime of money laundering is not criminally processed just because the original crime has not been proven beforehand. The people and the people of Indonesia will condemn that someone who has clearly received benefits from the crime of money laundering and then escapes from the law just because the original crime has not been proven beforehand, however, the crime of money laundering does not stand alone, but must be related. with the original crime.

How can there be a crime of money laundering if there is no predicate crime. If the original crime cannot be proven beforehand, then it will not become an obstacle to prosecute the crime of money laundering. Although it is not exactly the same as the crime of money laundering in the Criminal Code, there are known criminal acts of detention (vide Article 480 of the Criminal Code) which in practice from the beginning did not need to be proven first. Based on the above considerations, according to the Court, the Petitioner's argument aquo is not legally grounded."[18]

With legal uncertainty can lead to injustice, for that good law hukum besidesmust be appropriate (formally) so that it is certain and fair (in terms of sides), firm and neutral so that it can realize the value of a sense of justice, harmony, and the general good in society which is the goal of the law itself. Good law is law that is true, firm, neutral and fair so that it has binding validity, obliges and can be enforced. Law enforcement or what we commonly know as law enforcement in society tends to be easier and more acceptable if the legal rules to be applied can be considered as good law. So the value of justice in eradicating the crime of money laundering needs to be realized clearly and clearly.[19]

ANALYSIS OF ARTICLE 69 OF LAW NUMBER 8 OF 2010 CONCERNING PREVENTION AND ERADICATION OF THE CRIME OF MONEY LAUNDERING IN THE PERSPECTIVE OF LEGAL CERTAINTY

The provisions of Article 69 of the PPTPPU Law are that in order to be able to carry out investigations, prosecutions, and examinations in court against ML, there are two possibilities, namely:

[18]Ibid, 339-340
[19]Davit Rahmadan, Law Enforcement Against Perpetrators in the Regime of Money Laundering in Indonesia. Dissertation, Andalas University (2018), 11.

1. In the event that money laundering offenses are tried in a single case without the predicate offense being included, then the predicate offense does not need to be proven first.
2. In the event that the handling of ML is also found to have the predicate crime, both of them are combined into one case file and then transferred to one indictment which will then be proven in the trial both will be granted.[20]

In the practice of law enforcement, money laundering crimes, especially at the prosecution stage, have a role in prosecuting money laundering crimes such as the Prosecutor's Office. The public prosecutor at the Prosecutor's Office is of the opinion that the crime of money laundering is a stand-alone crime so that in its proof there is no need to wait for the proof of the predicate crime, which in other words justifies Article 69 of the PPTPPU Law.[21]

Based on the Circular Letter of the Junior Prosecutor for General Crimes Number B-689/E/EJP/12/2004, money laundering is an act that stands alone, and is not the same as the main crime, so there is no need to wait for the proof of the predicate crime, as well as a letter of proof. the indictment is made in a cumulative form with the consequence that each indictment must be proven while those that are not expressly proven must be acquitted or released from lawsuits. And if all charges are deemed proven, then the criminal charges are in line with the provisions of Article 65 and 66 of the Criminal Code.[22]

Article 69 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, whose formulation is as follows: "In order to be able to carry out investigations, prosecutions and examinations in court against the crime of money laundering, it is not necessary to first prove the crime of origin".

Predicate offenses are predicate offences, namely offenses that result in criminal proceeds or proceeds of crime which are then laundered. Article 2 of the Law on the Prevention and Eradication of the Crime of Money Laundering states that:

"(1) The proceeds of a criminal act are Assets obtained from a criminal act:

a. corruption;
b. bribery;

[20]Yudi Kristiana, Op. Cit., p. 158.
[21] See decision 584/Pid.B/2013/PN.DPK
[22] Fitriadi Muslim and Edi Nasution, "Snacking Corruptors with Money Laundering", *Legal Journal* (2018): 18.

c. narcotics;
d. psychotropic;
e. labor smuggling;
f. migrant smuggling;
g. in the banking sector;
h. in the capital market sector;
i. in the field of insurance;
j. customs;
k. excise duty;
l. trafficking in persons;
m. illicit arms trade;
n. terrorism;
o. kidnapping;
p. theft;
q. embezzlement;
r. fraud;
s. counterfeiting money;
t. gambling;
u. prostitution;
v. in the field of taxation;
w. in the forestry sector;
x. in the environmental field;
y. in the marine and fishery sector; or
z. other criminal acts punishable by imprisonment of 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 such criminal acts are also criminal acts under Indonesian law.

Based on Article 2 paragraph (1), the crime referred to as a predicate crime is the laundering of the proceeds of a crime whose crime is not included in Article 2 paragraph (1), is not a money laundering crime.[23]

Judging from the formulation of Article 69 of the PPTPPU Law, this means that the crime of money laundering is a crime that can be investigated, prosecuted and brought to court, without having to first prove the crime of origin, for example for the crime of money laundering whose predicate offense is in the form of a crime. corruption, then in order to carry out an investigation, prosecution or trial on the money laundering offense case, it is not necessary to wait for the proof of the original crime.[24]

The crime of money laundering can stand alone based on the provisions of applicable laws and facts in judicial practice, as in the explanation of Article 3 paragraph (1) of Law Number 25 of 2003, which reads that assets suspected of being the proceeds of criminal acts are not First, it is necessary to prove the predicate crime, in order to be able to start the examination of the crime of money laundering".[25]

Article 75 also states that in the event that investigators find sufficient preliminary evidence of the occurrence of the Crime of Money Laundering and predicate offenses, the investigator combines the investigation of the predicate crime with the investigation of the crime of money laundering and notifies it to the Financial Transaction Reports and Analysis Center (PPATK). Thus, from the provisions of the article, the investigation of the Crime of Money Laundering and predicate offenses can be carried out concurrently.

Combining the investigation of money laundering and predicate crimes requires more energy, time, facilities and infrastructure. In this case, sophistication of infrastructure facilities is needed along with modern technology. The crime of money laundering is known as white-collar crime. White collar crime is different from conventional crime that involves street actors (street crime, blue collar crime, blue type crime). The parties involved in white collar crime (WCC) are those who are respected people in society and are usually highly educated. This

[23] R. Wiyono, *Discussion on the Law on the Prevention and Eradication of the Crime of Money Laundering, printing 1*, (East Jakarta: Sinar Graphic, 2014), 194 .
[24]Yudi Kristiana, Eradication of Acts of... Op. Cit., 157.
[25] https://www.kejaksaan.go.id/pidato.php?idu=1&id=14

modus operandi in the WCC often uses sophisticated methods, and even mixes with theories in science, such as accounting and statistics.[26]

Lack of certain facilities or facilities, it is impossible for law enforcement to take place smoothly. These facilities or facilities include, among others, educated and skilled human resources, good organization, adequate equipment, and so on. If these things are not fulfilled, it is impossible for law enforcement to achieve its objectives.[27]In addition to the factors of facilities and infrastructure, there are other factors that can cause obstacles indirectly, namely the understanding of the community itself. The legal culture of society is now leading to public distrust of law enforcement.[28]

With various issues regarding ML, especially regarding the formulation of Article 69 which according to Judge Suhartoyo said it has the potential to cause legal uncertainty if the predicate crime is not proven beforehand. This means that it has arranged to combine the investigation of predicate crimes with money laundering offences after the investigators have found sufficient preliminary evidence.[29]

With legal uncertainty, a breakthrough is needed to reform criminal law. Criminal law reform is not just changing or updating the Criminal Code, but systematically updating criminal law based on formal and material provisions. In other words, criminal law reform does not only talk about the Draft Criminal Code and the Draft Criminal Procedure Code, but also in terms of the legal system and the provisions of the norms and principles contained therein.

In a comprehensive manner, the scope of the definition of criminal law reform actually includes reforms to the field of criminal law, both regarding its substance (material criminal law), procedural law (formal criminal law), as well as on provisions relating to the implementation of the crime (straf-voolstreckungs-gesets). .[30]

Legal reform cannot be separated from the concept of legal reform which has a very broad scope, because legal reform does not only mean the renewal of laws and regulations.

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[26]Understanding, Factors, and Characters of White Collar Crime. http://material Hukum.com/2018/ 05/30/pengertian-factor-dan-character-white-collar-crime/. Uploaded 30 May 2018. Retrieved 21 May 2021.
[27]Soerjono Sukanto, *Factors Affecting Law Enforcement*. (Jakarta: PT. Raja Grafindo Persada, 2005), 37.
[28]Junaidi Muhammad, et al. 2018. Op-cit. 151.
[29] Agus Sahbani, 2015. Former Kapuspenkum AGO sues the Money Laundering Law, accessed through the website https://www. Hukumonline.com/berita/baca/lt55d2d2ea46ae9/mantan-kapuspenkum-/, on November 15, 2020
[30] Soedarto, *Criminal Law Reform in Indonesia*, (Jakarta: Binacipta, 1986), 27.

Reform covers the legal system as a whole, namely reform of legal substance, legal structure, and legal culture. Criminal law reform is essentially an effort to review and reform (Reorientation and Reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society. Therefore, extracting values that grow in society in the effort to reform Indonesian criminal law must be carried out so that the future Indonesian criminal law is in accordance with the current conditions of the socio-political and socio-cultural of Indonesian society.[31]

Legal reform in a legal system includes four main aspects of the legal system, namely, philosophical aspects, namely the existence of values that underlie the legal system; two aspects of legal principles; three normative aspects, namely the existence of norms or laws to support the legal system. These four basic aspects are arranged in a series of units that form a substantive (national) legal system.[32]

IDEALLY PROOF IN HANDLING MONEY LAUNDERING CRIME CASES

The preparation of an indictment in a money laundering case is not easy. Because the crime of money laundering has different characteristics from other criminal acts, this crime consists of two criminal acts, first, predicate offenses are limitedly stated in Article 2 of Law Number 8 of 2010, from this predicate crime the assets that are invalid generated. Second, the crime of money laundering, which is a crime that hides or disguises the assets produced by the predicate crime so that it appears as if they are legal assets.[33]

In the explanation of Article 3 paragraph (1) of Law no. 25 of 2003 concerning ML, this is explained, but the most important thing is that predicate crimes are not sought for evidence first only when determining the suspect of ML. In this case, it will be submitted to the Prosecutor's Office, so the suspicion is that there have been two crimes, namely predicate crimes and money laundering. This is where it lies that the Money Laundering Law is a strategy

[31] Holrev Journal, volume 3 issue 2, Vivi Ariyati, Criminal Law Reform in Indonesia with Gender Justice in the Formulation, Application, and Execution Policy Area. September 2009, accessed on July 10, 2020, at 22:05.
[32] Mudzakir, Legal Position of Victims of Crime in the Criminal Justice System, Dissertation, Jakarta, University of Indonesia (2001), 284.
[33] Halif, Proof of the Crime of Money Laundering without Indictment of Predicate Crimes, Review of Decision Number 57/PID.SUS/2014/PN.SLR, University of Jember (2017), 179.

for disclosing economic crimes that can solve cases by first being suspected of only from the flow of funds (TPPU) and in the end it will be found or revealed the origin of the crime.

The above description is in the case that if the economic crime arises from an alleged suspicious transaction or from an alleged money laundering offense, on the other hand, if the case that appears first is a predicate crime, the investigator must continue his examination of the flow of proceeds from the crime. In this case, of course, it must be well understood about any predicate offense or predicate offense which if the proceeds are used or channeled it will lead to the occurrence of money laundering offences.

In relation to the provisions related to the investigation of the Money Laundering Law, there are several articles that must be considered, Article 70:

(1) Investigators, public prosecutors, or judges are authorized to order the Reporting Party to suspend Transactions on Assets that are known or reasonably suspected to be the proceeds of criminal acts.

(2) The order of the investigator, public prosecutor or judge as referred to in paragraph (1) must be made in writing by clearly stating:

   a. name and position requesting the postponement of the Transaction;

   b. identity of Everyone whose Transaction will be suspended;

   c. the reason for the delay of the Transaction; and

   d. where the assets are located.

(3) Transaction postponement as referred to in paragraph (1) is carried out no later than 5 (five) working days.

(4) The Reporting Party is obligated to suspend the Transaction immediately after the order/request for the postponement of the Transaction is received from the investigator, public prosecutor, or judge.

(5) The Reporting Party is required to submit an official report on the implementation of the postponement of the Transaction to the investigator, public prosecutor, or judge requesting the postponement of the Transaction no later than 1 (one) working day from the date of implementation of the postponement of the Transaction.

In Article 71:

(1) Investigators, public prosecutors, or judges are authorized to order the Reporting Party to block Assets that are known or reasonably suspected to be the proceeds of criminal acts from:

   a. Every person who has been reported by PPATK to investigators;

   b. suspect; or

   c. defendant.

(2) The order of the investigator, public prosecutor or judge as referred to in paragraph (1) must be made in writing by clearly stating:

   a. the name and position of the investigator, public prosecutor, or judge;

   b. identity of Everyone who has been reported by PPATK to investigators, suspects, or defendants;

   c. reason for blocking;

   d. a criminal act that is suspected or charged; and

   e. where the assets are located.

(3) The blocking as referred to in paragraph (1) is carried out no later than 30 (thirty) working days.

(4) In the event that the blocking period as referred to in paragraph (3) ends, the Reporting Party is obliged to end the blocking by law.

(5) The Reporting Party is obliged to carry out the blocking immediately after the blocking order is received from the investigator, public prosecutor, or judge.

(6) The Reporting Party is required to submit an official report on the implementation of the blocking to the investigator, public prosecutor, or judge who orders the blocking no later than 1 (one) working day from the date of implementation of the blocking.

(7) Blocked Assets must remain with the Reporting Party concerned.

In Article 72:

(1) For the purposes of examination in a Money Laundering crime case, investigators, public prosecutors, or judges are authorized to request the Reporting Party to provide written information regarding the Assets of:

a. people who have been reported by PPATK to investigators;

b. suspect; or

c. defendant.

(2) In requesting information as referred to in paragraph (1), investigators, public prosecutors, or judges do not apply the provisions of laws and regulations governing bank secrecy and the secrecy of other Financial Transactions.

(3) The request for information as referred to in paragraph (1) must be submitted clearly stating:

a. the name and position of the investigator, public prosecutor, or judge;

b. the identity of the person indicated from the results of the PPATK analysis or examination, the suspect, or the defendant;

c. a brief description of the criminal act suspected or indicted; and

d. where the assets are located.

(4) The request as referred to in paragraph (3) must be accompanied by:

a. police reports and investigation warrants;

b. letter of appointment as public prosecutor; or

c. judge's decision letter.

(5) The request letter to obtain the information as referred to in paragraph (1) and paragraph (3) must be signed by:

a. The Head of the State Police of the Republic of Indonesia or the head of the regional police in the event that the request is submitted by an investigator from the State Police of the Republic of Indonesia;

b. the head of the agency or institution or commission in the event that the request is submitted by an investigator other than an investigator from the Indonesian National Police;

c. the Attorney General or the head of the high prosecutor's office in the event that the request is submitted by the investigating prosecutor and/or public prosecutor; or

d. the presiding judge of the panel who examines the case

(6) The request letter as referred to in paragraph (5) is copied to the PPATK.

Furthermore, it must also be considered as a provision outside the Criminal Code, so there are also special provisions related to the Criminal Procedure Code that deviate from the Criminal Procedure Code. In the case of money laundering offenses there is an expansion of evidence from the Criminal Procedure Code, namely Article 184 which is added with evidence as referred to in Article 73 paragraph (b), namely other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or similar optical devices. and Documents.

However, the most important thing is that the predicate crime is not sought for evidence first only when determining the money laundering suspect. In this case, it will be submitted to the Prosecutor's Office, so the suspicion is that there have been two crimes, namely predicate crimes and money laundering. This is where it lies that the Money Laundering Law is a strategy for disclosing economic crimes that can solve cases by first being suspected of only from the flow of funds (TPPU) and in the end it will be found or revealed the origin of the crime.

The above description is in the case that if the economic crime arises from an alleged suspicious transaction or from an alleged money laundering offense, on the other hand, if the case that appears first is a predicate crime, the investigator must continue his examination of the flow of proceeds from the crime. In this case, of course, it must be well understood about any predicate offense or predicate offense which if the proceeds are used or channeled it will lead to the occurrence of money laundering offences.

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In law enforcement of the crime of money laundering, especially the prosecution stage carried out by the Public Prosecutor at the Prosecutor's Office, he argues that the crime of money laundering is an independent crime so that in its proof there is no need to wait for the proof of the predicate crime, which in other words justifies Article 69 of the PPTPPU Law.

In law enforcement of the crime of money laundering, especially the prosecution stage carried out by the Public Prosecutor at the Prosecutor's Office, he argues that the crime of money laundering is an independent crime so that in its proof there is no need to wait for the proof of the predicate crime, which in other words justifies Article 69 of the PPTPPU Law. this can be seen in the decision 584/Pid.B/2013/PN.DPK, the public prosecutor presented an expert who explained as follows: "That in ML, predicate crimes do not have to be proven first"[34]

There is a provision that money laundering is a stand-alone crime, but in practice it cannot be applied purely. Proof of money laundering offenses in this case still requires the existence of a criminal act that results in all or part of the assets to be confiscated. In addition, the application of reverse evidence by the defendant is very likely to harm the prosecution process, considering that the perpetrator is very likely to show that the source of his unnatural wealth is from a business, even though it is the result of engineering with the help of gatekeepers.[35]

In the ML case, it is known that there is reverse evidence, namely the defendant must prove that the assets related to the case do not originate from a criminal act. The element that must be proven by the defendant, namely the object of the case in the form of assets related to

[34] See Decision 584/Pid.B/2013/PN.DPK p 41.
[35] Strengthening Evidence for the Crime of Money Laundering in Corruption Cases in Indonesia. https://acch.kpk.go.id/id/component/content/article?id=493:penguatan-alat-unjuk-tindak-pidana-pencepatan-uang-dalam-perkara-tindak-pidana-korupsi-di- Indonesia. Written by admin.acch. Posted in Public Research. Retrieved 20 May 2021.

the case, does not originate from a crime. The other elements still have to be proven by the public prosecutor.

The theory of proof or the system of evidence adopted by the Criminal Procedure Code is a system of evidence according to the law in a negative way. The negative evidence system is reinforced by the principle of freedom of judicial power.[36] Indonesia adheres to a proof system called the negative proof system (negative wettelijk) as regulated in Article 183 of the Criminal Procedure Code.

According to this article, to be able to convict someone, the judge is based on two pieces of evidence that are valid according to the law, and there is a judge's belief that a criminal act actually occurred and the defendant is guilty of committing it. In the development of the criminal proof system, something new is also known, namely the system of reversing the burden of proof (Omkering van het bewijslast). The system of reversing the burden of proof or better known to the public as reverse proof is a system that places the burden of proof on the suspect.[37]

This means, usually when referring to the Criminal Procedure Code, the public prosecutor has the right to prove the guilt of the defendant, but the defendant's reverse proof system (legal advisor) will prove otherwise the defendant has not been legally and convincingly proven guilty of committing the crime charged.[38]

Articles 77 and 78 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Money (ML) regulates the reversal of the burden of proof or reversed proof. Article 77 of Law Number 8 of 2010 stipulates that for the purposes of examination in court, the defendant is obliged to prove that his assets are not the result of a criminal act. Furthermore, based on Article 78 of Law Number 8 of 2010, the judge ordered the defendant to prove that the assets related to the case did not originate or are related to the predicate crime referred to in Article 2 paragraph (1). Thus, it is the obligation of the defendant to prove that the assets related to the money laundering offenses case do not originate from the predicate crime.

[36] Romli Atmasasmita. *Capita Selecta of Criminal Law and Criminology*. (Bandung: Mandar Maju, 1995), 106.
[37] Ikwan Fahrojih, *Corruption Criminal Procedure Law*. (Malang: Setaara Press, 2016), 80.
[38] Eddy Hiariej OS. Theory and Law of Evidence. (Jakarta: Erlangga, 2012) 23.

Regarding the evidence of money laundering offenses, the Constitutional Court (MK) emphasized that money laundering investigations could be carried out without the need to first prove the existence of the original crime. But after ML is proven, then the original crime must be proven later.[39]

In theory, the system of proof according to the law is negative (negative wettelijk bewijs theory). In principle, in this system the judge may only impose a sentence on the defendant if the evidence is limitedly determined by law and is also supported by the judge's belief in the existence of the evidence. Historically, this negative statutory proof system is essentially a "mixture" between the positive statutory proof system and the judge's belief system of proof. With this formulation, the substance of the proof system according to the law is negative, of course, procedural elements and procedures for proof are in accordance with the evidence, the judge both materially and procedurally.[40]

Judging from the meaning of the lexicon, "proof" is a process, method, act of proving, an attempt to show the right or wrong of the defendant in court. In the context of criminal law, evidence is the core of criminal case trials because what is sought in criminal law is material truth. In relation to the evidence system mentioned above, if it is associated with the Criminal Procedure Code, the focus of the discussion is Article 183 of the Criminal Procedure Code, which reads:

"A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains the conviction that a criminal act has actually occurred and that the defendant is guilty of committing it."

Based on the provisions of the article, there are two things that must be considered by the judge in imposing a sentence on the defendant, namely the guilt of the defendant must be proven by at least two valid pieces of evidence, and on the two pieces of evidence the judge must obtain the conviction that the crime is indeed true. really happened and the defendant was the culprit. Thus, the Criminal Procedure Code actually adheres to a system of evidence according to the law in a negative way, because in addition to requiring a minimum of two pieces of evidence, it must also be accompanied by the judge's belief in the evidence. Although

[39] Medistiara, Yudhisthira. MK: Money Laundering Can Be Investigated Without Proof of Predicate Crime . Uploaded 14 July 2016. Retrieved 21 May 2021.
[40] Ibid, p. 74

there are two valid pieces of evidence, but the judge does not have confidence in the two pieces of evidence, the judge is prohibited from imposing a sentence on the defendant.

With various views on problems in proving money laundering offenses, the author analyzes that in line with the sound of Article 69 which states that it is not mandatory to prove it first, with this purpose it does not mean that in conducting investigations, prosecutions, and examinations in court, it is not obligatory to prove the original crime. However, it should be fully understood that the phrase "first" is more about the time to prove the original crime.

What is stated in Article 69 of the PPTPPU Law is that all Law Enforcement Apparatuses are in line with the provisions of the contents of the article, as for the debate regarding predicate crimes, it can be proven after the money laundering case is proven. This is very much in line with the instructions in Article 77 of Law Number 8 of 2010 which stipulates that for the purposes of examination in court, the defendant is obliged to prove that his assets are not the result of a criminal act.

Furthermore, based on Article 78 of Law Number 8 of 2010, the judge ordered the defendant to prove that the assets related to the case did not originate or are related to the predicate crime referred to in Article 2 paragraph (1). Thus, it is the obligation of the defendant to prove that the assets related to the money laundering offenses case do not originate from the predicate crime.

In addition, the author also strongly agrees with Expert Komariah's opinion, if the Money Laundering Law uses the follow the person method, it will have a negative impact if the defendant dies. Komariah said that this view is based on the Constitutional Court's decision no. 77/PUU-XII/2014 which states that if the perpetrator of the original crime dies, it means that the case is void and the recipient of the money laundering cannot be prosecuted, because the original crime must first be proven. This, he continued, becomes an injustice if someone who has actually received benefits from the crime of money laundering, because the crime is not processed just because the original crime has not been proven beforehand.[41]

[41] Experts presented by the Constitutional Court, Law Experts at Diponegoro University, Nyoman United Putra Jaya and experts presented by the Related Party, Komariah, will present their expertise in the judicial review of the Money Laundering Law (TPPU), Monday (19/10) in the Plenary Session Room of the Constitutional Court Building, accessed through https://www.mkri.id/index.php?page=web.Berita&id=12295, on December 30, 2020

CONCLUSION

The analysis of Article 69 of Law No. 8 of 2010 concerning the prevention and eradication of the crime of money laundering in the perspective of legal certainty is debatable because Article 69 does not need to have a proven main crime to prosecute and criminalize the perpetrators. This article appears with a philosophical basis so that law enforcement officers are not only focused on proving the predicate crime, but also demands the perpetrators to prove themselves from where the source of the assets obtained. From here it will be known the original crime if the perpetrator cannot show his assets legally.

Ideally, evidence in handling cases of money laundering in conducting investigations, prosecutions, and examinations in court is not required to prove the original crime. When the prosecutor has named a suspect because of alleged assets that are not in accordance with the work, and what the public prosecutor has indicted against the perpetrator, there should no longer be a need for a judge to say that proof of a predicate crime must be proven first.

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