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Law Enforcement towards Money Laundering Perpetrators Reviewed From the Presumption of Innocence

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Abstract

Law enforcement against perpetrators of money laundering crimes has recently become a separate polemic for many law enforcers who have problems, especially about the confiscation of assets suspected of being the result of money laundering, not guided by the presumption of innocence. This writing problem is how law enforcement is against money laundering perpetrators based on the presumption of innocence and how law enforcers should confiscate assets resulting from money laundering based on the presumption of innocence. Penelitian ini menggunakan pendekatan Yuridis Normatif dan Empiris. Normative research is carried out on theoretical matters in legal principles, while the empirical approach is carried out to study the law that occurs in the field. The



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results showed that law enforcement against money laundering perpetrators who have money laundering proceeds based on the presumption of innocence is carried out by law enforcement through confiscation. The confiscation process does not violate the principle of presumption of innocence because this is a security measure so that the suspected items do not move and transfer to a third party until the trial process is completed and has permanent legal force. Law enforcers should take action in confiscating the assets of money laundering proceeds based on the presumption of innocence must be proportional and prioritize the principles of prudence and prudence as long as it does not violate human rights and is carried out objectively by looking at whether the assets have anything to do with money laundering.

A. Introduction

The mode of practice of perpetrators of corruption who exploit and deceive law enforcers by disguising their crimes with money laundering are numerous and also worrying. The crime of money laundering is a crime that can damage the country's economic system, which is emerging from the post-monetary crisis in 1998. The practice of money laundering is not following the state's objectives as mandated in the 1945 Constitution.¹ The practice of money laundering is a way for perpetrators of economic crimes to freely enjoy and take advantage of their crimes' proceeds. According to Yenti Garnasih, besides that money is the pulse for organized crimes in developing their crime network, blocking the perpetrators from enjoying the proceeds of crime is very important.² Money laundering law enforcement systems and mechanisms or anti-money laundering regimes are different from conventional criminal law enforcement. Disclosure of criminal acts and perpetrators of money laundering focuses on tracing the flow of funds through financial transactions. In other words, tracing the flow of funds through financial transactions is the easiest way to find the type of crime, the perpetrator of the crime, and the place where the proceeds of crime are hidden or disguised.

The handling of money laundering in Indonesia began with the passage of Law Number 15 of 2002 concerning the Crime of Money Laundering as amended by Law Number 25 of 2003 concerning amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering has shown a different positive direction. Money laundering usually occurs in financial transactions between banks and between countries using banks to place proceeds

¹ Hana Krisnamurti, "KEDUDUKAN SAKSI ANAK DALAM PEMBUKTIAN PERKARA PIDANA," *Wacana Paramarta: Jurnal Ilmu Hukum* 15, no. 2 (2016), <http://paramarta.web.id/index.php/paramarta/article/view/28>.

² Yan Patmos, "Penegakan Pasal Tindak Pidana Pencucian Uang Dalam Rangka Pencegahan Dan Pemberantasan Korupsi," *Law and Policy Transformation* 2, no. 2 (2017): 103–24, <https://journal.uib.ac.id/index.php/jlpt/article/view/265>.

from crime money in their system.³ For the country of Indonesia, which is seen by the international community as an easy target for money laundering, according to an analysis by an economist at the University of Indonesia, Anwar Nasution, the causative factor is a combination of weaknesses in the social system, including the national legal system and the underdevelopment of the financial system. The process of bleaching illicit money is easier because the combination of technological progress and economic deregulation has accelerated the integration of the national economy and the world economy.⁴ Such integration facilitates entering and leaving dirty money through transactions in the market, namely transactions of goods and services, factors of capital production, and labor between Indonesia and abroad. Bleaching is carried out by converting money obtained illegally as if it later became a legal source.⁵

The connection between the criminal act of corruption and Money Laundering's Crime has a very basic or relationship. This can be seen in article 2, paragraph 1 of Law Number 8 of 2010 concerning the prevention and eradication of the Crime of Money Laundering. This law is known as a "predicate crime".⁶ Predicate crime is the main crime that is the source of the crime of money laundering. Acquisition of a criminal act is the assets obtained from a criminal act. Among others, the criminal act of corruption is committed in the territory of the Republic of Indonesia or outside the territory of Indonesia, and the crime is also a criminal act according to Indonesian law. Seeing the provisions above, it originated from a criminal act of corruption. This illegal flow of funds gave birth to the crime of money laundering. Money laundering is a means for perpetrators of corruption crimes to disguise crime proceeds obtained from predicate crimes, namely corruption through the financial traffic mechanism.⁷ The Law on Prevention and Eradication of the Crime of Money Laundering has a reverse proof system where the perpetrator must prove his financial origins. If the perpetrator cannot prove his financial origin, the judge should suspect corruption and money laundering.⁸

Confiscation of assets is a preventive measure to save state finances from corrupt practices.⁹ The application of an asset confiscation begins with tracking the asset, which is carried out since the investigation process. These assets will be decided by the court to be confiscated to return the state's financial losses if the convicted corruption is unable to pay the compensation penalty stipulated by the judge or as an additional punishment in the form of confiscation the proceeds of crime.¹⁰ Efforts to return stolen assets of the state (stolen asset recovery) are not an easy matter, such as turning the palms of perpetrators who have high

³ Yunus Husein, *Bunga Rampai Anti Pencucian Uang*, (Jakarta : Books Terrace & Library, 2007), pg. 3.

⁴ Nobel Abednego Daely, "PENYITAAN DAN PELELANGAN SAHAM MAYORITAS PERSEROAN DALAM PROSES PERADILAN AKIBAT TINDAK PIDANA PENCUCIAN UANG," *Calyptra* 5, no. 1 (2016): 1–22, <http://webhosting.ubaya.ac.id/~journalubayaac/index.php/jimus/article/view/2737>.

⁵ NHT Siahaan, *Money Laundering Dan Kejahatan Perbankan*, Jala, Jakarta, 2008, pg. 19

⁶ Sarmadan Pohan and Sarmadan Pohan, "TINJAUAN NORMATIF TENTANG TINDAK PIDANA PENCUCIAN UANG (MONEY LAUNDERING) YANG BERASAL DARI TINDAK PIDANA KORUPSI," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 7, no. 2 (April 15, 2020): 275–89, <https://doi.org/10.31604/justitia.v7i2.275-289>.

⁷ Marwan Efendi, *Tipologi Kejahatan Perbankan Dari Perspektif Hukum Pidana*, PT Sumber Ilmu Jaya, Jakarta, 2005 pg 44.

⁸ *Ibid*, pg 56

⁹ Dauglas Fernandho, "REFORMULASI PEMBUKTIAN TERBALIK DALAM MEMAKSIMALKAN PEMERIKSAAN PERKARA MONEY LAUNDERING DENGAN PREDICATE CRIME TINDAK PIDANA KORUPSI," *JURNAL LITIGASI (e-Journal)* 19, no. 2 (January 1, 2018): 148–62, <https://doi.org/10.23969/litigasi.v19i2.922>.

¹⁰ Keanu Putra Mentari, "URGENSI ASAS PRESUMPTION OF GUILT DALAM UPAYA PENCEGAHAN DAN PEMBERANTASAN TINDAK PIDANA PENCUCIAN UANG," *Kertha Wicara* 8, no. 4 (2019), <https://ocs.unud.ac.id/index.php/kerthawicara/article/view/50896>.

intellect and various easy ways to deceive and disguise their crimes' proceeds.¹¹ An international institution revealed the same statement, Basel Institute on Governance, International Center for Asset Recovery, argued that “*asset recovery is a difficult task and is fraught with the complicity of the banks involved, the navigation of a costly international legal labyrinth and the fact that those implicated in public looting are usually those with the most power and influence*”. This means that return on assets is a complicated problem to solve.

The problem of corruption is related to economic problems and problems with politics, power, and law enforcement. One of them is in law enforcement of corruption, where corruption results are not where the person committed a criminal act. The return of assets from corruption is significant, considering that returning the proceeds from corruption is the main objective in eradicating the criminal act of corruption. In Indonesia, corruption has caused huge losses to state finances but also the integrity of the nation. The problem of confiscating assets originating from a criminal act of corruption is indeed a controversy, especially when the assets confiscated by law enforcers do not originate from a criminal act of corruption, causing losses to the victim. In this case, what needs to be addressed is that special care is needed to make an inventory of assets originating from the criminal act of corruption, considering that it is not easy to trace assets originating from criminal acts of corruption that have been carried out by money laundering. This means that it becomes urgent when the confiscation must be carried out as quickly as possible for proof, and the defendant does not let the asset be lost. Whereas what is emphasized here is that law enforcers must act carefully and must pay attention to the presumption of innocence in confiscating assets, meaning that the criminal act must be proven first with an incremental court decision, then confiscation is carried out.

This is like the case in the Supreme Court Decision No. 2580 K/Pdt.G/2013 dated 13 March 2014, regarding the case of Judge Syarifuddin, who sued the Corruption Eradication Commission or *Komisi Pemberantasan Korupsi* (KPK) regarding the return of assets confiscated by the KPK wherein the decision the Supreme Court in its consideration stated that the items seized by the KPK in the Criminal Case of Judge Syarifuddin were is personal property and is not related to a criminal act committed by the Petitioner (Hakim Syarifuddin) so that in this decision the Supreme Court sentenced the Defendant (KPK) to return the confiscated goods which were not related to a criminal act and paid immaterial damages to the Plaintiff (Syarifuddin) in the amount of Rp. 100,000,000, - (one hundred million rupiah).¹² With so many criminal acts cases that have occurred, it is necessary to have law enforcement deal with these acts.

Law enforcement's problem is not as easy as it seems, but there are limitations both in terms of material laws that can be applied. Various weaknesses in the applicable law, inadequate quantity and quality of law enforcement officers, and lack of supporting facilities and infrastructure in law enforcement efforts, Menurut Soerjono Soekanto, law enforcement, are not just implementing laws, but also factors that hinder law enforcement. Law enforcement can guarantee legal certainty, order, and legal protection in the current era of modernization and globalization if the various legal life dimensions always maintain harmony, balance, and harmony between civil morality based on actual values in a civilized society. As an activity process that includes various parties, including the community, it is

¹¹ Ridho Ridho Ilham, Elwi Danil, and . Yoserwan, “PENERAPAN PRINSIP MENGENALI PENGGUNA JASA OLEH NOTARIS DALAM PENCEGAHAN DAN PEMBERANTASAN TINDAK PIDANA PENCUCIAN UANG,” *UNES Journal of Swara Justisia* 3, no. 4 (January 27, 2020): 390–402, <https://doi.org/10.31933/UJSJ.V3I4.126>.

¹²<http://www.hukumonline.com/klinik/detail/lt55e06170be878/dasar-hukum-penyitaan-aset-yang-dilakukan-kpk>. Accessed on 19 April 2018.

imperative to see criminal law enforcement as a criminal justice system to achieve goals.

Based on this background, the main issues to be studied are related to how law enforcement against money laundering perpetrators based on the presumption of innocence and how law enforcers should confiscate assets resulting from money laundering presumption of innocence.

B. Discussion

1. Law Enforcement towards Money Laundering Perpetrators Base on the Presumption of Innocence

Money laundering is popularly described as an act that utilizes a strategy of removing, using, or committing other actions based on the results of criminal acts that are often carried out by organized crime or individuals who commit acts of corruption, with the aim of disguising, hiding or obscuring the origin of the money originating from the proceeds of the crime so that it can be used as if it were legitimate money without being detected that the money originated from illegal activities.¹³ Meanwhile, the Black's Law Dictionary provides restrictions on money laundering, namely: *“Term used to describe investment or other transfer of money flowing from racketeering, drug transaction, and other illegal sources into legitimate channels so that its source cannot be traced”*.¹⁴ The free translation of money laundering is money investments or money transactions originating from organized criminal activities to invest or transactions through legal channels so that the source cannot be traced back (deletion of traces). Currently, almost all countries' focus is on suppressing and preventing an increase in money laundering crimes. The perpetrators of corruption take various methods so that their crimes are not known and are easily traced by law enforcers.

The context of law enforcement against the crime of money laundering must be oriented towards the presumption of innocence to speak effectively, like what law enforcement related to criminal law can be done in two ways with an integral approach and a quality scientific approach. Through an integrated approach, law enforcement is not merely partial, so it must go through stages such as the investigation, prosecution, trial, and then execution. According to Andri Wahyu Setiawan as Deputy Attorney for the Extraordinary Legal Efforts to Execution and Examination at the Lampung High Court for Criminal Cases. Law enforcement against the crime of money laundering through the return of crime proceeds can be pursued through criminal law or Criminal-Based Forfeiture (CBF). In Indonesia, the return of crime proceeds through criminal law means is deemed appropriate and provides legal certainty.¹⁵

According to Andri Wahyu Setiawan as Associate Attorney for Extraordinary Legal Efforts for Execution and Examination at Lampung High Prosecutor for criminal cases, the mechanism for confiscating assets resulting from crimes from criminal acts of corruption across national borders and also the rules for confiscating assets from each country differ. Meanwhile, law enforcers do not easily break through jurisdictions and enforce law in the jurisdictions of other countries. For this reason, good cooperation between countries is needed in pursuing and returning assets resulting from criminal acts of corruption, especially for countries that are the target of placing the proceeds of crime in their countries.¹⁶ According to the researcher, from the above description, we see the facts in the field of law enforcers in Indonesia that tend to act in law

¹³ Callista Dea Mira, “Upaya Pembuktian Penuntut Umum Dan Terdakwa Terkait Pembalikan Beban Pembuktian Dalam Perkara Tindak Pidana Pencucian Uang (Studi Putusan Nomor 1492/2015/PN.Jkt.Utr) ,” *Verstek* 6, no. 3 (2018), <https://jurnal.uns.ac.id/verstek/article/view/39176>.

¹⁴ Henry Campbell Black, *Black Law Dictionary*, Sixth Edition (St. Paul Minn: West Publishing, Co.,1991), pg. 611.

¹⁵ Interview with Andri Wahyu Setiawan as Associate Prosecutor for Extraordinary Legal Efforts to Execution and Examination at the Lampung High Prosecutor's Special Office, on 12 February 2019

¹⁶ Interview with Andri Wahyu Setiawan as Associate Prosecutor for Extraordinary Legal Efforts to Execution and Examination at the Lampung High Prosecutor's Special Office, on 12 February 2019

enforcement against the crime of money laundering, which leads to a crime control model or prioritizes speed and efficiency rather than prioritizing (due processes of law) prudence in a procedure that emphasizes the presumption of innocence. This can be seen from law enforcers' attitude, especially the KPK, in confiscating goods that are suspected to be the result of a crime of money laundering, even though there has been no decision that has permanent legal force/resignation of the mistake.¹⁷ According to researchers, this is reasonable to address because such law enforcement actions see that the criteria for money laundering are rooted in crimes classified as extraordinary crimes. Law enforcers put forward the principle of speed in exposing the perpetrators of money laundering, and securing assets have been disguised by doing money laundering.¹⁸ According to the researcher, this is fine as long as it does not violate human rights and is carried out objectively by seeing whether the asset is related to money laundering. If the asset indicates a crime of money laundering, the panel of judges will seize the asset. On the other hand, if the asset is not related to the crime of money laundering, law enforcement will, of course, immediately return the asset to the defendant.¹⁹ This follows the theory of law enforcement put forward by Josep Golstein, saying that one of the law enforcement prioritizes total enforcement, namely the scope of criminal law enforcement as formulated by the substantive law of crime.²⁰ The point here is that a scientific approach is an approach that must go through criminal law procedures that are substantive, material, and also formal. No other approach is taken so that legal products become quality and successful without intervention from wrong behavior. This also applies to law enforcement against the crime of money laundering, which is oriented towards the presumption of innocence so that the court cannot refer to the presumption of guilt so it must refer to the presumption of innocence so that when the defendant is brought to trial, he cannot be in guilty judgment until a court decision has permanent legal force.

2. The Act of Law Enforcement Officials in Confiscating the Assets of Money Laundering based on the Presumption of Innocence

Confiscation of assets is an increasingly responsive step to save or prevent the loss of property. Assets that the court will later decide should be taken to recover state financial losses or as an additional punishment in the form of seizing the proceeds of crime.²¹ The confiscation method is a forced attempt that is part of the investigation process, while the confiscation process occurs after a judge's decision has permanent legal force (*inkracht*). Asset tracking can be carried out since the investigation stage. Law enforcement against perpetrators (money laundering) through the return and seizure of assets resulting from crimes (criminal asset recovery/asset forfeiture) is part of the punishment imposed on the court's

¹⁷ Renata Amalia, "Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 2, no. 2 (December 21, 2016): 385–407, <https://doi.org/10.15642/aj.2016.2.2.385-407>.

¹⁸ Arhjayati Rahim and Madinah Mokobombang, "Analisis Penerapan Pembuktian Terbalik Dalam Kasus Tindak Pidana Korupsi:," *Al-Mizan* 16, no. 2 (December 31, 2020): 225–48, <https://doi.org/10.30603/AM.V16I2.1897>.

¹⁹ Ridwan Arifin and Shafa Amalia Choirinnisa, "Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Dalam Prinsip Hukum Pidana Indonesia (Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle)," *JURNAL MERCATORIA* 12, no. 1 (June 25, 2019): 43, <https://doi.org/10.31289/mercatoria.v12i1.2349>.

²⁰ Ahmad Dwi Nuryanto, "Problem Penyidikan Tindak Pidana Pencucian Uang Yang Berasal Dari Predicate Crime Perbankan," *BESTUUR* 7, no. 1 (August 31, 2019): 54, <https://doi.org/10.20961/bestuur.v7i1.43437>.

²¹ Fransiska Novita Eleanor, "BAHAYA PENYALAHGUNAAN NARKOBA SERTA USAHA PENCEGAHAN DAN PENANGGULANGANNYA (Suatu Tinjauan Teoritis)," *Jurnal Hukum*, vol. 25, July 13, 2020, <http://jurnal.unissula.ac.id/index.php/jurnalhukum/article/view/203>.

decision on the offense that occurred.²² This means that if the defendant is found guilty by the court for the offense that occurred and is subject to confiscation of assets, the procedural law for confiscation of assets can be carried out.

According to Novian Saputra as Judge of Corruption at the Class I A Tanjung Karang District Court, confiscation of assets resulting from a criminal act is an additional sanction/punishment according to the classification of types punishment based on the Criminal Code. The implementation of sanctions for the confiscation of assets for the proceeds of corruption crimes, Law Number 8 of 2010 does not explicitly regulate the sentence to be imposed on individual perpetrators. However, suppose it refers to the Criminal Code provisions and Law Number 31 of 1999 concerning the Eradication of Corruption. In that case, an additional penalty in the form of confiscation of assets can be imposed by the judges' panel.²³ According to researchers, law enforcement actions in confiscating assets suspected of being a crime of money laundering must be proportional and prioritize the principle of prudence because if it is not done, there will be potential for human rights violations. Law enforcement officials have to think progressively to resolve the legal vacuum that exists so far. Regarding confiscation, Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering does not exclusively regulate the issue of seizure in handling money laundering cases. However, the prosecutor is given the authority to confiscate any assets that have not been confiscated.

Its technical implementation is regulated in Supreme Court Regulation No.1 of 2013 concerning Procedures for Settlement of Requests for Handling Assets in the Crime of Money Laundering, or Other Crimes is a manifestation of the application of progressive law because so far the law has not explicitly described confiscation that should be carried out in preventing money laundering from occurring.²⁴ By looking at the fact that so far, many corruption suspects, when they were about to confiscate, accused law enforcers of committing human rights violations by confiscating their assets without heeding the presumption of innocence. According to the researcher, from the case description, the position above is the act of seizure not violating human rights and does not violate the principle of presumption of innocence. Instead, confiscation is a temporary security measure so that the suspected assets do not change and do not change shape because during the trial process.

The law enforcement process is initiated, it is necessary to carry out confiscation to prove it in court. Suppose the confiscated assets are not the result of the criminal act of money laundering. In that case, the panel of judges will order the Public Prosecutor to return the assets to the defendant. It will violate human rights when the assets are not confiscated and are allowed to be controlled by the defendant as if law enforcers are not optimal in eradicating the crime of money laundering. According to researchers, the above treatment is not necessarily an act of "revenge" against money laundering perpetrators. However, it is a step forward (progressive) to eradicate corrupt practices and money laundering.

C. Conclusion

Based on the research and discussion results above, the conclusion is that law enforcement against perpetrators (money laundering) who have money laundering assets is based on the presumption of innocence. Conducted by law enforcers through criminal law. The return or

²² Indra Waspada Yuda, Hambali Thalib, and Kamri Ahmad, "Penegakan Hukum Tindak Pidana Pencucian Uang Yang Berasal Dari Tindak Pidana Narkotika," *Journal of Lex Generalis (JLG)* 1, no. 2 (July 3, 2020): 225–38, <http://pasca-umi.ac.id/index.php/jlg/article/view/108>.

²³ Based on the interview results, according to Novian Saputra as the Corruption Judge at the Tanjung Karang Class I A District Court, 11 March 2019.

²⁴ I Ketut Sukawati Lanang Putra Perbawa, "TINDAK PIDANA PENCUCIAN UANG DALAM SISTEM PERBANKAN INDONESIA," *Advokasi* 5, no. 1 (2015), <http://jurnal.unmas.ac.id/index.php/advokasi/article/view/148>.

confiscation of assets resulting from new crimes can be carried out based on a court decision that has permanent legal force, so it takes a relatively long time. For this reason, law enforcers emphasize efficiency and speed in taking action against assets suspected of being related to the crime of money laundering by confiscating without having to wait for a legally binding decision. In principle, the confiscation did not violate the presumption of innocence as long as it did not violate human rights and was carried out objectively. Law enforcement actions should be taken in confiscating assets resulting from money laundering based on the presumption of innocence must be proportional and prioritize the principles of prudence and prudence because if it is not done, there will be potential for human rights violations.

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Law Number 2 of 2002 concerning the Indonesian Police

Law Number 16 of 2004 concerning the RI Prosecutor's Office

Law Number 48 of 2009 concerning the Judicial Power of the Republic of Indonesia

Law Number 8 of 2010 concerning the Crime of Money Laundering

Government Regulation Number 27 of 1983 Jo Government Regulation Number 58 of 2010 in conjunction with Government Regulation Number 92 of 2015 concerning the implementation of the Criminal Procedure Code

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