Investigation of Money Laundering Cases by Investigators Who Do Not Investigated the Predicate Crime

Syahrijal Syakur

Indonesian Financial Transaction Report and Analysis Center, Indonesia
syakursyahrijal@gmail.com

Submitted: Oct 3, 2023; Reviewed: Oct 25, 2023; Accepted: Des 4, 2023

Article’s Information

Abstract

Combining predicate crime investigations with money laundering cases is very possible if investigators find sufficient preliminary evidence of the occurrence of money laundering crimes when investigating predicate crimes. Then the merger of predicate crime investigations and money laundering cases is the authority given to investigators. This paper aims to find out about the investigation of money laundering case by other investigators who did not investigate the predicate crime, and who have not investigated the predicate crime. The research method used in this paper is a doctrinal method with a statutory, case, and conceptual approach. The results of this study are that if in accordance with Article 74 of the Money Laundering Law in conjunction with Article 2 paragraph (1) of the Money Laundering Law, the two investigative agencies have the same authority to investigate predicate crimes and both are also authorized to investigate money laundering cases, the investigator agency is authorized to investigate money laundering cases where the predicate crime investigation was carried out by investigators from different agencies.

A. Introduction

Money laundering crime has a close relationship with the predicate crime. Money laundering crime is basically a further criminal act of the predicate crime (money laundering as

generous crime). Therefore, the principle of ‘no crime no money laundering’ emerged or it is also said that money laundering is a conditio sine qua non to predicate crime. So that the investigation of a money laundering case is carried out when the investigator investigates the predicate crime and then finds sufficient preliminary evidence of money laundering. This has been regulated in Article 75 of Law Number 8 Year 2010 (Anti-Money Laundering Law) which mandates the merging of investigation case files between the predicate crime and the money laundering crime. From this provision, it is known that the predicate crime investigator conducts a money laundering case investigation when evidence of money laundering is found. However, in law enforcement, the following issues may occur: 1) if the preliminary evidence of money laundering case is found by other investigators after the predicate crime is submitted to the trial and then came to the judge’s verdict. 2) The investigator investigates the predicate crime and the money laundering case and both cases have been decided by the judge, but another investigator finds assets or property owned or controlled by the convict which is the result of the crime of the previous case but has not been filed in the previous case. Therefore, the question is whether the other investigator has the authority to investigate the money laundering case which predicate crime was not investigated by the other investigator. Cases like this may occur in law enforcement related to money laundering because the level of difficulty of handling the predicate crime case and the money laundering case is different. The reason may be that the perpetrator of the money laundering case in disguising or hiding the assets of the crime uses various and increasingly complicated modes so that investigators have difficulty when investigating money laundering crimes. This has resulted in investigators not being maximized in tracing the assets of the perpetrators derived from their criminal acts. In addition, investigators are also faced with the detention of suspects which is limited to a certain time. So as to avoid the expiration of the suspect's detention period, investigators prioritize submitting the results of the predicate crime investigation to the public prosecutor who then submits the case file to the court.

For more detail, the first and second possible issues can be illustrated with the following examples:

1. In the investigation of a narcotics abuse case with the perpetrator on behalf of A, the investigator did not find initial evidence that the suspect committed an act that fulfilled the elements of disguising or hiding the proceeds of crime so that the narcotics case was submitted to the court without a money laundering case which was finally reached to judge’s verdict. However, later when another investigator authorized to investigate drug abuse cases, conducted an investigation of drug abuse committed by B, it turned out that the investigator found evidence that B had received money from A to buy a land plot in the name of B as a result of the abuse of narcotics trafficking that had been decided by the judge.

2. In the investigation of the narcotics abuse case committed by X, the investigator merged the investigation of the narcotics abuse case with the money laundering case. The results of the investigation were then submitted to the public prosecutor to be processed in court, which finally decided that the defendant was proven to have committed narcotics abuse and money laundering cases with an order to confiscate the evidence of X's assets. Subsequently, another investigator authorized to investigate narcotics abuse cases developed an investigation into narcotics crimes committed by X. Based on sufficient preliminary evidence, it was found that X's assets were found to be in the possession of the defendant. Based on sufficient preliminary evidence, it turned out that X's property was found to be the alleged proceeds of narcotics abuse crimes which cases had been decided

---

2 Yunus Husein, Bunga Rampai Anti Pencucian Uang, (Bandung: Books Terrace and Library, 2007), p. 43

by the Judge but in the previous case had not been revealed and was not included in the evidence of the money laundering case in the previous case so that no confiscation was carried out.

In addition to the possibility of issues as mentioned above, another possibility arises, for example, that investigators who are authorized to carry out investigative actions for predicate crimes do not investigate an alleged predicate crime, but other investigators who are not authorized to investigate such predicate crimes but are authorized to investigate money laundering cases find sufficient preliminary evidence that money laundering is suspected. For example, when customs investigators do not find sufficient evidence that a criminal offense in the customs sector has occurred so they also do not investigate the criminal offense and money laundering cases, but at a later date Police investigators find an alleged money laundering case related to the crime in the customs sector. Illustrations of cases like this, although not expected to occur, need to be anticipated in the context of law enforcement.

If we look at Article 75 of the Anti-Money Laundering Law, which states that the investigator of the predicate crime combines the investigation of the predicate crime and the money laundering case, in practice it can lead to different interpretations when there are issues such as the first and second cases above. The first interpretation is that the investigation of the money laundering case must be carried out by the investigator of the predicate crime who first conducted the investigation. The second interpretation is that the investigation of money laundering cases can be carried out by other investigators of predicate crime who have the authority to investigate the same predicate crime.

The interpretation of the law is one of the most important factors in the implementation of criminal justice. This is because the enforcers of criminal justice are human beings who have different thoughts and understandings and are influenced by various ethnic backgrounds, cultures, languages, and customs. According to Hermann, the important factors in the implementation of criminal justice are: the first, legislative drafting technique used to design a criminal law, which in turn depends on the nature of the problem to be solved by the provisions of certain laws and regulations, the second, is the method of interpretation that the parties entrusted with carrying out criminal justice want to use, the third, is the nature and competence of these implementers, the fourth, is the nature of ensuring the unity of the implementation of the criminal justice system which is determined by the extent to which the effectiveness of the restoration of the law.

The word "interpretation" grammatically means a process, method, act of interpreting, an attempt to provide an explanation of the meaning of something that is still unclear. Meanwhile, interpretation in legal terms or commonly called legal interpretation can be interpreted as a method to explain the meaning of a provision in a regulation so that it can be applied in events or practices.

In a law, the legislator must have made an interpretation of the terms usually contained in Article 1, which is called an authentic interpretation. In addition to the authentic interpretation that the legislator has made about the words that he has used in a law that he has formed, it is necessary to know that every written law must require interpretations. According to van

---

6 https://kbbi.web.id/tafsir available online on 11 Oktober 2022
Hamel, the purpose of interpretation is to ascertain the meaning of the will of the legislator on what should apply as criminal law which has been stated in a statutory formulation.\(^9\)

In essence, in an attempt to interpret a statutory regulation in the field of criminal law, the rules of interpretation commonly used to interpret a statutory regulation in general apply.\(^10\) There is no reason to apply any other method of interpretation to interpret criminal legislation than that usually used to interpret other part of the law generally.\(^11\)

Related to the handling of money laundering cases with the possibility of events as described in the first and second issues above, a study is needed to find out how the legal interpretation can be used as a reference for law enforcement officials. For this reason, the author will conduct research that will discuss 2 (two) problems, namely: (a) How is the authority to investigate a money laundering case where the predicate crime is investigated by another investigator? (b) How is the authority to investigate a money laundering case where the predicate crime is not investigated by another investigator?

The author uses doctrinal or normative legal research methods in this research.\(^12\) In this research, the author chose to use the following approaches: a. statute approach, namely by analyzing and examining laws and regulations, including Law 8 of 2010 concerning Prevention and Eradication of Money Laundering Cases; b. case approach, namely by analyzing and examining court decisions that have permanent force, including the Constitutional Court Decision Number 15/PUU-XIX/2021 dated June 29, 2021; c. conceptual approach, namely by examining or citing the views and doctrines of criminal law experts that have developed in legal science regarding the theory of investigation.

B. Discussion

1. Authority to Investigate Money Laundering Case Where the Investigation of the Predicate Crime is Conducted by Other Investigators

In the money laundering law enforcement process regulated by the Anti-Money Laundering Law, namely Law No. 8/2010, which can be found in case handling practices (by examining judges' verdicts), there are 3 (three) possible processes of proving money laundering cases, namely (a) Money Laundering is proven together with combining it with the predicate crime case; (b) Money Laundering is proven after the predicate crime verdict; and (c) Money Laundering is proven before the proof of the predicate crime.\(^13\) Therefore, factually, in addition to materially proving the elements of the defendant's guilt of money laundering, the public prosecutor must also prove the correlation between the proceeds of crime and the predicate crime.\(^14\)

In relation to Article 75 of the Anti-Money Laundering Law, the merger of the investigation of the predicate crime and the money laundering case is an authority given to the investigator.\(^15\) The purpose of this concept of investigation is that the law enforcement of the predicate crime and money laundering crime can be implemented at the same time (known as parallel investigation).\(^16\) The investigator in this case is the predicate crime investigator who is

---

\(^9\) Ibid, p. 6
\(^10\) Ibid, p. 12
\(^11\) Ibid.
also authorized to investigate the money laundering case. However, in practice, this merger of investigations is the prerogative of the investigator, which may be related to the investigation strategy or due to obstacles so that the investigator chooses to investigate the predicate crime only.

When the predicate crime investigator does not combine his investigation with the money laundering case, the important question that must be answered is whether other investigators can investigate the money laundering case. Meanwhile, Article 74 of the Anti-Money Laundering Law stipulates that the investigation of money laundering cases is carried out by the investigator of the predicate crime in accordance with the provisions of procedural law and statutory provisions, unless otherwise determined by this Law (Anti-Money Laundering Law).

So how to interpret the content of Article 74 of the Anti-Money Laundering Law in relation to the application of Article 75 of the Anti-Money Laundering Law when the investigator who carries out the investigation of the predicate crime does not investigate the money laundering case?

Based on the author's analysis, Article 74 of the Anti-Money Laundering Law has 2 (two) main problems that require a firm interpretation so that it no longer causes discourse among law enforcers. The first is the issue of the authority to investigate money laundering cases by investigators of the predicate crime, or in other words, who are the investigators of the predicate crime who are authorized to investigate money laundering cases. Second, it is related to the authority of other investigators to investigate money laundering cases whose predicate crime is investigated by investigators of other crimes of origin. To answer the first problem, after the author analyzes several provisions of legislation, the author will try to explain in order.

First, we need to look back at one of the elements in Article 3, Article 4, and Article 5 of the Anti-Money Laundering Law, namely the element "proceeds of criminal offense as referred to in Article 2 paragraph (1)." The phrase "proceeds of a criminal offense as referred to in Article 2 paragraph (1)" means that the criminal offense which proceeds are laundered has been determined by the legislator, the details of which are contained in Article 2 paragraph (1), which is a criminal act referred to in the Anti-Money Laundering Law as a predicate crime or predicate offense. This element is related to the authority possessed by the investigator of the predicate crime and money laundering case as stated in Article 74 of the Anti-Money Laundering Law. This can be interpreted that if the investigator is not authorized to conduct investigative actions on money laundering cases, but the investigator still conducts money laundering investigative actions, then the results of the investigation are considered invalid according to the law. The logical consequence is that if the case is submitted to the Public Prosecutor, the investigation case file will be rejected by the Public Prosecutor.

As described above, the element of criminal proceeds as referred to in Article 2 paragraph (1) of the Anti-Money Laundering Law is related to the authority to investigate the predicate crime and money laundering cases. So that the assets that the perpetrators of money laundering carry out actions so that their conditions become hidden or disguised must come from criminal acts as mentioned from letters a to z Article 2 paragraph (1) of the Anti-Money Laundering Law. Criminal offenses from a to z referred to in the Anti-Money Laundering Law are called predicate crimes. Consequently, the investigator who will investigate a money laundering case must be an investigator who has the authority to investigate criminal offenses from letters a to z or also known as the investigator of the predicate crime. Therefore, the Anti-Money Laundering Law maker included this provision in Article 74 of the Anti-Money Laundering Law which states that the investigation of money laundering cases is carried out by the
Investigation of Money Laundering

Syahrijal Syakur

investigator of the predicate crime in accordance with the provisions of procedural law and the provisions of laws and regulations, unless otherwise determined by this Law (Anti-Money Laundering Law). In the explanation of Article 74 of the Anti-Money Laundering Law, the investigators of the predicate crime are limited to 6 (six) investigators, namely the Indonesian National Police, the Attorney General's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and the Directorate General of Taxes and the Directorate General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia.\(^{18}\)

However, if we examine the types of predicate crimes listed in Article 2 paragraph (1) of the Anti-Money Laundering Law from letters a to z, then the investigation of these crimes is not only the authority of 6 (six) investigators as mentioned in the Explanation of Article 74 of the Anti-Money Laundering Law. In the process of law enforcement of money laundering cases, there are predicate crimes which investigation becomes the authority of other investigators based on the authority granted by the laws and regulations governing these investigators. The investigators of these other agencies that conduct investigations of money laundering cases are beyond those mentioned in the explanation of Article 74 of the Anti-Money Laundering Law. This is because if interpreted grammatically, based on the statement of the provisions of Article 74 and Article 2 paragraph (1) of the Anti-Money Laundering Law, it can be understood that the investigators of the predicate crime are all investigators from various agencies authorized to investigate the predicate crime as the types of crimes mentioned in Article 2 paragraph (1) of the Anti-Money Laundering Law.\(^{19}\)

Therefore, on April 14, 2021, investigators from the Ministry of Environment and Forestry together with investigators from the Ministry of Maritime Affairs and Fisheries submitted an application for Judicial Review of the Explanation of Article 74 of the Anti-Money Laundering Law which substantially contradicts the wording of the norms of Article 74 of the Anti-Money Laundering Law. Upon this request, the Constitutional Court decided to accept the PPNS Judicial Review application as outlined in the Constitutional Court Decision Number 15/PUU-XIX/2021 dated June 29, 2021.

In the ratio decidendi of the Constitutional Court Decision, it is stated that the Explanation of Article 74 of the Anti-Money Laundering Law does not have binding legal force because the explanation of the article is inconsistent or causes legal bias (vagenormen) when associated with the body of Article 74 of the Anti-Money Laundering Law. Which is contrary to the principles in the formation of laws and regulations.\(^{20}\)

Based on the decision of the Constitutional Court, a strict constitutional interpretation has been obtained on the meaning of the investigator of the predicate crime stated in Article 74 of the Anti-Money Laundering Law, namely an investigator who is given special authority based on statutory regulations to investigate criminal acts as stated in Article 2 paragraph (1) of the Anti-Money Laundering Law.

Second, in relation to the authority of investigators to investigate money laundering cases which predicate crime is investigated by other investigators of predicate crimes, it is necessary to analyze the wording of Article 74 of the Anti-Money Laundering Law and then seek an interpretation that is in accordance with the intent of the legislator of the Anti-Money Laundering Law. The intention of the legislator can be known from the General Elucidation of the Anti-Money Laundering Law.

The will of the legislator needs to be truly understood, especially by the implementers of the legislation, namely law enforcers who are directly actors who have been obliged to implement the law, because if law enforcers do not understand the true will of the legislator,

\(^{18}\) See Article 74 of the Anti-Money Laundering Law.


\(^{20}\) Vide Ratio Decidendi Constitutional Court Decision Number 15/PUU-XIX/2021 on point [3.12] to [3.15]
then the provisions agreed upon by the legislator and then included in the articles which are binding norms will be perceived by law enforcers as provisions that will be limiting the space for law enforcement rather than as provisions that are their obligation to implement.21

In the General Elucidation of the Anti-Money Laundering Law, it is stated that one of the contents regulated in the Anti-Money Laundering Law is the granting of authority to the originating crime investigator to investigate alleged money laundering cases. This charge, as has been understood, is regulated in Article 74 of the Anti-Money Laundering Law which clearly mandates that the investigator of the predicate crime carries out investigative actions in money laundering cases in accordance with the provisions of the procedural law in the Criminal Procedure Code and the provisions of other laws and regulations, unless otherwise determined by Anti-Money Laundering Law.

Then in Ratio Decidendi [3.12] of the Constitutional Court Decision Number 15/PUU-XIX/2021 it is explained "that against the arguments of the Petitioners, according to the Court, the phrase "investigator of the predicate crime " in Article 74 of Anti-Money Laundering Law (8/2010) provides that the investigator of the predicate crime is an official of the agency authorized by the law to conduct investigations in accordance with the provisions of procedural law and statutory provisions, in this case, all Investigators who investigate predicate crimes or criminal acts which later produce money laundering cases."22

From the description of the General Elucidation of the Anti-Money Laundering Law and the Constitutional Court Decision mentioned above, it is clear and firm (expressive verbis) that the purpose of the provisions of Article 74 of the Anti-Money Laundering Law is to grant authority to the investigator of the predicate crime as referred to in Article 2 paragraph (1), so it must be interpreted as the purpose of the article was made by the legislator.

Then, when in the handling of a money laundering case, it turns out that the investigator of the predicate crime only investigates the predicate crime but does not investigate the money laundering case, then to determine whether the other investigator of predicate crime is authorized to investigate the money laundering case, it is necessary to see the authority to investigate the predicate crime and the money laundering case of the two investigators from different agencies based on Article 74 of the Anti-Money Laundering Law in conjunction with Article 2 paragraph (1) of the Anti-Money Laundering Law. If according to Article 74 of the Anti-Money Laundering Law in conjunction with Article 2 paragraph (1) of the Anti-Money Laundering Law, the two investigating agencies have the same authority to investigate the predicate crime and both are also authorized to investigate money laundering cases, then investigators from one agency are authorized to investigate money laundering cases which predicate crime investigations are carried out by investigators from different agencies.

An example of a case, a police investigator investigates a narcotics abuse case on behalf of perpetrator A (police investigators are authorized to investigate narcotics and money laundering cases) but police investigators have not investigated the money laundering case. Then at a later date, it turns out that the National Narcotics Agency (BNN) investigators find preliminary evidence of a money laundering case committed by perpetrator A or his related parties and BNN investigators intend to investigate the money laundering case (BNN is authorized to investigate cases of narcotics abuse and money laundering case), then the investigation of the money laundering case on behalf of perpetrator A conducted by the BNN is valid according to law and does not conflict with the provisions of Article 74 of the Anti-Money Laundering Law.

According to Yunus Husein, it is possible that the investigation of a money laundering case is carried out by investigators from a different agency than the investigators who investigated the predicate crime. For cases where the suspect is the perpetrator (materiele dader)

22 Vide Constitutional Court Decision Number 15/PUU-XIX/2021 p. 51.
of the money laundering case but not the perpetrator (materiele dader) of the predicate crime (between the perpetrator of money laundering and the perpetrator of the predicate crime are different people) it is possible that the investigation of the money laundering case is carried out by an investigator other than the investigator of the predicate crime. The important thing is that the predicate crime must exist, which can be obtained from court verdict elsewhere, from the flow of funds, from sufficient preliminary evidence, from clues. However, for the perpetrator of the predicate crime who is also the perpetrator of the money laundering case (self laundering), the case should be investigated by the same investigator. For example, in the case of SN, which corruption offense was investigated by the KPK, the money laundering case should also be investigated by the KPK.

The conclusion is that the investigation of money laundering cases where predicate crime is investigated by other investigators can be carried out as long as each investigator from different agencies has the same authority in investigating the predicate crime and money laundering cases. Although it is preferable and more efficient when the investigation of money laundering cases is carried out by those who investigate the predicate crime cases, but in certain circumstances that are casuistic in nature, if in the development of an investigation indications of money laundering cases are found, then whoever is authorized can investigate the money laundering case. What must be considered is the need for coordination. In this coordination, two possibilities may appear, namely that the predicate crime investigator follows up by investigating the money laundering case or another investigator takes over the money laundering case. This coordination is very important considering that if the investigator wants to investigate a money laundering case which predicate crime case is investigated by another investigator, then the investigator must start the investigation of the money laundering case from the beginning again.

2. Authority to Investigate Money Laundering Case Where the Predicate Crime Is Not Investigated by Other Investigators

One of the most important developments in legal politics in the field of prevention and eradication of money laundering cases contained in the Anti-Money Laundering Law is the granting of authority to investigators of the predicate crime to investigate alleged money laundering cases. The provision is contained in Article 74 of the Anti-Money Laundering Law as a legal norm that must be obeyed by the implementer of the law, in this case, law enforcement. Law enforcers as one of the three elements in the legal system (as a legal structure) that determines the effectiveness of the implementation of the law must be able to utilize the tools provided by the law in carrying out their duties in accordance with the authority given.

Article 74 of the Anti-Money Laundering Law is closely related to Article 75 of the Anti-Money Laundering Law. So when the investigator of the predicate crime begins to investigate the allegations of a criminal offense that produces wealth, the investigator immediately looks for preliminary evidence of a money laundering case. Therefore, it is necessary for the investigator to have the authority to investigate the predicate crime and the money laundering case. Then the investigation of the two criminal offenses is combined so that the prosecution by the public prosecutor will also be combined in one indictment. The aim is that a simple, fast and low-cost judicial process can be realized.

23 Yunus Husein, ‘Webinar Penerapan Pasal 74 UU TPPU’ on date 20 Mei 2021 held by PPATK.
24 See General Elucidation of the Anti-Money Laundering Law.
25 Lawrence M. Friedman states that there are three elements in the legal system, namely legal substance, legal institutions (legal structure) and legal culture. Lihat: Al-Habsy Ahmad, “Analisis Pengaruh Penerapan Sistem Hukum Eropa Kontinental dan Anglosaxon Dalam Sistem Peradilan di Negara Republik Indonesia,” Jurnal Petitum, Vol. 9, 2021, hlm. 52
26 This principle is mentioned in Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power. Simple means that the examination and settlement of cases in court must be carried out effectively and efficiently. The principle of speed, this principle means that case settlement is carried out with a fast time and settlement time that is not protracted. The principle of speed can also be known as the adage justice delayed justice denied, which means that a protracted and slow judicial process
However, in practice, there may be dynamics situation in the investigation process of the predicate crime and money laundering cases carried out by investigators. These dynamics may occur due to constraints from the legislation itself, such as the Explanation of Article 74 of the Anti-Money Laundering Law which limits the number of investigators, as well as other technical and non-technical constraints, especially when investigators will combine the investigation of the predicate crime with the investigation of money laundering cases, as the author has previously described above.

One of the dynamics situation in the application of Article 74 and Article 75 of the Anti-Money Laundering Law is the possibility of conditions as illustrated, namely: an investigator authorized to investigate a money laundering case receives information accompanied by evidence indicating the occurrence of a money laundering case, but the investigator does not have the authority to investigate the predicate crime. Meanwhile, the investigator of the predicate crime who is authorized to investigate the criminal case is not aware of the existence of the case. In the first example, the National Police as an investigator of a money laundering case finds a flow of funds that indicates money laundering allegedly originating from a criminal offense in the field of customs. When the police investigators will investigate the predicate crime, namely customs, they will collide with the issue of authority because the police investigators do not have the authority to investigate criminal cases in the field of customs. Then the question is whether the police investigators can investigate the alleged money laundering case without investigating the predicate crime in the field of customs. In the second example, investigators from the Indonesian Attorney General's Office received an Analysis Report from PPATK regarding a person's flow of funds indicating money laundering activities allegedly originating from corruption. When an investigation was conducted by the Attorney General's Officer, it turned out that the flow of funds did not originate from a corruption crime but from a criminal offense that was included in the qualification of embezzlement in office. The problem arises because the prosecutor does not have the authority to carry out investigative actions for criminal acts with embezzlement qualifications (in office), while the alleged money laundering case is very clear. The question is how the authority of the Attorney General's Officer to carry out investigative actions on the alleged money laundering case. This requires an analysis of the provisions of the legislation.

To answer the problem above, it is necessary to re-analyze the wording of Article 74 of the Anti-Money Laundering Law. Grammatically, the article can be interpreted that the investigation of money laundering cases can only be carried out by investigators of the predicate crime in accordance with the provisions of procedural law and statutory provisions. The predicate crime investigator referred to in the article is the investigator authorized to investigate the predicate crime as stated in Article 2 paragraph (1) of the Anti-Money Laundering Law. So it can be clearly understood that when an investigator will investigate a money laundering case, the investigator must see again whether he is an investigator authorized to investigate the predicate crime of a criminal offense listed in Article 2 paragraph (1) of the Anti-Money Laundering Law. If authorized, then the investigation of the money laundering case can be carried out, otherwise if he is not authorized, then he must handover the investigation of the money laundering case to other investigators who have the authority to investigate criminal acts as stated in Article 2 paragraph (1) of the Anti-Money Laundering Law.

In the author's opinion, in the event that the investigator of a particular predicate crime finds preliminary evidence of a money laundering case originating from a predicate crime that is not the object of his authority, then based on Article 74 of the Anti-Money Laundering Law, the principle of low cost means that the cost of cases in the judicial process must be affordable by the community as a seeker of justice.. Muhammad Yasin, “Peradilan Yang Sederhana, Cepat, dan Biaya Ringan,” https://www.hukumonline.com/berita/baca/t5a7682eb7c974/peradilan-yang-sederhana--cepat--dan-biaya-ringan/ available online on date 11 Oktober 2022.
the investigator of the predicate crime should transfer the investigation of the money laundering case to the investigator authorized to investigate the predicate crime.

In relation to Article 74 of the Anti-Money Laundering Law mentioned above, Deputy Attorney General for Special Crimes (JAMPIDSUS) has issued Instruction Letter No. B-2107/F/Fd.1/10/2011 regarding Investigation of Anti-Money Laundering Cases with the predicate crime in the form of corruption. The content of the provision is essentially mandating that if in the process of investigation of money laundering cases no indication of corruption crime is found (which is the object of investigation authority for the prosecutor's office), then the results of the investigation are handed over to the authorized investigator.27

Another possibility in the practice of handling money laundering cases is if there is a case of predicate crime and money laundering case being investigated by one of the investigating agencies and it turns out that during the investigation process, the perpetrator (materiele dader) of the predicate crime in the name of A as well as the perpetrator (materiele dader) of money laundering fled (DPO) so that the investigation process cannot be continued. However, later it turns out that investigators from other agencies find evidence that there is another perpetrator by the name of B who is suspected of receiving or controlling property suspected of being the proceeds of crime from the absconding perpetrator of the predicate crime and money laundering (A), then investigators from other agencies can investigate the money laundering case against the other perpetrator (B) with the provision that investigators from other agencies have the same authority to investigate the predicate crime as the investigating agency that has conducted the initial investigation (whose perpetrator is named A) by using the legal basis, namely Article 74 of the Anti-Money Laundering Law in conjunction with Article 2 paragraph (1) of the Anti-Money Laundering Law. In this case, the investigation of the perpetrator of the money laundering case (B) whose original perpetrator (materiele dader predicate crime) is A (absconded/DPO) is the implementation of Article 69 of the Anti-Money Laundering Law.

Article 69 of the Anti-Money Laundering Law states "In order to be able to conduct an investigation, prosecution, and examination at the court hearing for the crime of Money Laundering, it is not mandatory to prove the original crime first." The enactment of Article 69 of the Anti-Money Laundering Law has been strengthened by the Constitutional Court Decision No. 35/PUU-XV/2017 which states that money laundering is a follow-up crime, but the predicate crime is not required to be proven first. To conduct an investigation, prosecution, and examination in a money laundering case, it must still be preceded by the existence of a predicate criminal offense, but the predicate criminal offense does not need to wait long until the predicate criminal case is decided or has obtained permanent legal force.

An example that can illustrate this situation is when Investigators in the forestry sector investigate a criminal act of illegal logging and money laundering with the perpetrator A, but the perpetrator has fled abroad so that he is declared a DPO. It turns out that later on, Police investigators received information that the proceeds of the illegal logging crime were channeled into an account belonging to B and B has bought lands and buildings using that proceeds of crime. In this case, if we look at the provisions of Article 74 of the Anti-Money Laundering Law, then Police investigators can investigate money laundering cases committed by B, because Police investigators have the authority to investigate predicate crimes in the forestry sector and Police investigators also have the authority to investigate money laundering cases.

Examples of cases for the application of Article 69 of the Anti-Money Laundering Law to perpetrators of money laundering cases where the original perpetrator is a DPO inter alia:
1. Decision of Batam District Court No. 929/Pid.B/2016/ PN.Btm on behalf of the defendant Tommi Andika Janur.

In these cases, there are money laundering cases where the predicate crime has not been investigated/prosecuted/judicial process, because the predicate crime's materiele dader is on the

27 Vide Instruction Letter of Deputy Attorney General for Special Crimes (Jampidsus) No. B-2107/F/Fd.1/10/2011
wanted list (DPO), and shows the relevance of the application of Article 69 of the Anti-Money Laundering Law

C. Conclusion

In accordance with Article 74 of the Anti-Money Laundering Law in conjunction with Article 2 paragraph (1) of the Anti-Money Laundering Law, if there are two investigating agencies that have the authority to investigate the same predicate crime and both are also authorized to investigate money laundering cases, then investigators from one agency are authorized to investigate money laundering cases which predicate crime investigations are carried out by investigators from different agencies.

When an investigator will investigate a money laundering case which predicate crime investigation has not been or is not carried out by another investigator, the investigator must review whether he is an investigator authorized to investigate the predicate crime of a criminal acts listed in Article 2 paragraph (1) of the Anti-Money Laundering Law. If authorized, then the investigation of the money laundering case can be carried out, otherwise if he is not authorized, then he must handover the investigation of the money laundering case to other investigators who have the authority to investigate criminal acts as listed in Article 2 paragraph (1) of the Anti-Money Laundering Law.

References

Constitutional Court Decision No. 15/PUU-XIX/2021
Constitutional Court Decision No. 35/PUU-XV/2017
Constitutional Court Decision No. 74/PUU-XVI/2018
https://kbbi.web.id/tafsir
https://www.hukumonline.com/berita/baca/lt5a7682eb7e074/peradilan-yang-sederhana--cepat--dan-biaya-ringan/
Instruction Letter of Deputy Attorney General for Special Crimes (Jampidsus) No. B-2107/F/Fd.1/10/2011
Law No, 8 of 2010 concerning Prevention and Eradication of Money Laundering
Law No. 48 of 2009 concerning Judicial Power


