The Application of Money Laundering Law Value-Based Justice to Wealth Obtained Offenders From the Proceeds of Corruption

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Abstract
The act of money laundering is very dangerous both at the national and international levels because money laundering is a means for criminals to legalize the money from their crimes to eliminate traces. In addition, the nominal money laundered is usually extraordinary in amount, so it can affect national and even global financial balances. This research method is normative legal research, namely research that refers to legal norms contained in laws and regulations, libraries, legal norms that exist in society, and the data obtained, the type of research used qualitative research is carried out by examining literature materials in the field of law and legislation related to the problem The application of money laundering law based on the value of justice to the wealth of perpetrators of crimes obtained from the proceeds of corruption. The results of this study show that the scope of the law on money laundering towards the eradication of corruption aims to find out how to put the results of evidence on the case being examined, by how the evidence is used, and by how the judge must form his conviction before the court session. The application of money laundering law based on the value of justice to the proceeds of crime from corruption needs to be imposed on severe crimes to perpetrators of corruption crimes as a legal policy in accordance with the provisions of the applicable law. So that the community understands and considers the verdict to be as fair as it is. The law is expressly separated from morals and justice is not based on good or bad.

1. Introduction

Advances in information technology and financial globalization have resulted in increasingly global trade in goods and services and the financial flows

that follow. This progress does not always have a positive impact on a country, because sometimes it becomes a fertile means for the development of crime, especially white-collar crime (Syahdi Buamona, 2019).

White-collar crime has developed at a transnational level that no longer recognizes state territorial boundaries (Elsa Priskila Singal, 2021). The form of crime is increasingly sophisticated and neatly organized, making it difficult to detect. Criminals always try to save money from crime through various means, one of which is by doing money laundering. In this way, they try to wash something illegally obtained into a form that looks legal. With money laundering, criminals can hide the true origin of funds or money from crimes committed freely as a result of legal activity (Legal Discourse, 2009).

Corruption is an integral part of the history of human development and is among the oldest types of crime (M. Martindo Merta, 2021). The main problem faced is that corruption increases with prosperity and technological advancement. Experience shows that the more advanced the development of a nation, the more the needs of life increase, and one of the impacts can encourage people to commit crimes, including corruption (Djoko Sumaryanto, 2009).

Money laundering fuels policymakers at national, regional, and global levels. They blame crime cartels, tax havens, and money laundering techniques such as cyber laundering. The governments of each country are urged to make laws and regulations against money laundering (Yonathan Sebastian Laowo, 2022). In addition, recommendations have also been established that are used as a reference to overcome money laundering crimes, including references in making laws and regulations issued by the FATF (Forty Recommendations and Eight Special Recommendations). The FATF also released a typology of money laundering crimes from the study of experts in this field (Amrullah 2022).

Eradicating the practice of money laundering, in 2002 the Indonesian government made a policy with the promulgation of Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning Money Laundering (hereinafter abbreviated as UU-TPPU) (Ade Riyanda Prasetia, 2019).

That despite having the law, Indonesia is still on the blacklist of countries that are not cooperative in eradicating money laundering. Assessing that Indonesia has not seriously enforced the money laundering law. The institution urged Indonesia to resolve major money laundering cases, including the case of Bank Negara Indonesia (BNI) 46 (Yusuf Syafruddin, 2006).

There are a number of compelling international interests and other countries criminalizing money laundering, namely that seeing the danger of the crime to the International. For example, in the United National Conference on the Prevention of Crime and Treatment of Offenders, Cairo, 1995, it is stated that there are 17 types of crimes included in the category of serious crimes and money laundering ranks first. In addition, if there is only one country that does not

regulate anti-money laundering, then international eradication efforts will not succeed.

The development of corruption in Indonesia is high, while its eradication is still very slow. Romli Atmasasmita, stated that corruption in Indonesia has been a flu virus that has spread throughout the government since the 1960s, and the eradication measures are still faltering until now (Romli Atmasasmita, 2004).

In the context of criminal law, criminalization means speaking part of criminal policy. Criminal policy is a rational effort of one country to tackle crime which is essentially an integral part of community protection efforts whose goal is to achieve public welfare. One of the spirits for the promulgation of Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning Money Laundering is to make it difficult for corruptors to hide the proceeds of crime. Thus, in the long run, it is hoped that corruption can be reduced, blamed or not, and about the imposition of certain crimes against him (Djoko Prakoso, 2009).

Based on the background description above, the formulation of the problem that is the focus of this study is: First, what is the scope of the Law on Money Laundering towards the Eradication of Criminal Acts of Corruption? Second, how is the application of money laundering laws based on the value of justice to the proceeds of crime from corruption?

2. Research Methods

The method is a way of working or working techniques to be able to understand the object that is the target of the science concerned. Research is a scientific work that aims to reveal the truth systematically, methodologically, and consistently (Soerjono, 2001).

The specification of this study is normative legal research, namely research that refers to legal norms contained in laws and regulations, libraries, and legal norms that exist in society, and the data obtained are then analyzed to answer problems in the research (Kornelius Benuf, 2020). Research straightforwardly to analyze the application of laws, the type of research used qualitative research is carried out by examining literature materials in the field of law and laws and regulations related to the problem of the application of money laundering laws based on the value of justice to the wealth of perpetrators of crimes obtained from the proceeds of corruption.

3. Results and Discussion

Scope of Law on Money Laundering to Eradicate Corruption

Article 1 point 1 of the TPPU Law, money laundering is defined as the act of placing, transferring, paying, spending, granting, donating, entrusting, bringing abroad, exchanging, or other acts of Assets that are known or reasonably suspected to be the proceeds of criminal acts with the intention to hide or disguise the origin of Assets so that they appear to be legitimate assets.

The relationship between money laundering and corruption can be seen in Article 2 paragraph (1) letter a of the TPPU Law that the proceeds of crime are assets obtained from corruption crimes committed in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia and these crimes are also criminal acts according to Indonesian law. Thus, corruption is a predicate crime or a criminal act originating from money laundering (Afdal Yanuar, 2020).

The elements and principles covered by the Money Laundering Act in Law Number 15 of 2002 *jo* Law Number 23 of 2003 are:

a. The perpetrator is everyone, the definition of each person includes individuals and associations consisting of a collection of people and/or wealth organized by both legal entities and non-legal entities (Article 1 point 3). Legal entities in Indonesia such as PT, CV, Foundations, cooperatives, Firms, and so on;
b. The crime is cumulative and alternative, Article 3 to Article 11 regulates money laundering and other crimes related to money laundering, where the criminal threat is cumulative and alternative;
c. Attempted Money Laundering Crime, Malicious Aid/Consensus to Commit Money Laundering Crime is punished the same as the perpetrator and is considered a completed offense (Article 3 paragraph (2);
d. Everyone who is outside the territory of Indonesia providing assistance, opportunities, facilities, and information for the occurrence of money laundering is punished the same as the perpetrators of money laundering (Article 7);
e. Additional penalties only regulate additional crimes against the corporation, namely in the form of revocation of business licenses or dissolution of the corporation followed by liquidation 9 Article 5 paragraph (2);
f. In the event that the convict is unable to pay the fine as referred to in chapters II and III, the fine can be replaced with a maximum imprisonment of 3 (three) years, and the length of the crime must be stated in the court decision if it is not included the fine cannot be replaced with corporal punishment (Article 11);
g. Directors, officers, or employees of Financial Service Providers are prohibited from notifying financial services or other persons either directly or indirectly in any way regarding suspicious financial transaction reports that are ongoing or have been submitted to PPATK (Article 17A);
h. Investigators, public prosecutors, or judges are authorized to order financial service providers to block the assets of every person who has been reported by PPATK to investigators, suspects, or defendants who are known or reasonably suspected to be the proceeds of crime (Article 32);
i. Financial Service Providers, Officers, and their employees cannot be prosecuted either civilly or criminally for the implementation of reporting obligations (Article 15);]

j. For examination in cases of money laundering crimes, the Investigator, Public Prosecutor, or Judge is authorized to request information from Financial Service Providers regarding the Assets of every person who has been reported by PPATK, suspects, or defendants and does not apply the provisions regarding banking secrets (Article 33);
k. The judge orders the confiscation of property known or reasonably suspected to be the proceeds of a crime that has not been confiscated by the Investigator or Public Prosecutor (Article 34);
l. Existence of reverse proof (Article 35);
m. May be tried in Abstenia (Article 36);
n. In the event that the defendant dies before the judge's verdict is handed down and there is convincing evidence that the person concerned has committed a money laundering crime, the judge may issue a confirmation that the defendant's property that has been confiscated, is confiscated for the state (Article 37);
o. PPATK, investigators, public prosecutors, or judges must keep the identity of witnesses and reporters confidential (Article 39);
p. International mutual assistance cooperation (Article 44A).

The anti-trafficking law has restricted assets acquired from 24 types of crimes and other crimes punishable by 4 years in prison or more as mentioned in Article 2, which can be charged with money laundering as stipulated in Article 3 and Article 6 of the TPPU Law.

There are several types of crimes referred to in money laundering corruption, bribery, smuggling goods, labor smuggling, immigrant smuggling, banking crimes, crimes in the capital market, crimes in the field of insurance, narcotics crimes, psychotropic crimes, human trafficking, illegal arms trafficking, kidnapping, terrorism, theft, embezzlement, fraud, counterfeiting money, gambling, prostitution, tax crimes, crimes in the field of forestry, environmental crimes, marine crimes, other crimes with imprisonment for 4 years or more (Iskandar Wibawa, 2018).

Based on Law No. 25 of 2003, the category of criminal juridic is expanded as follows:

1) The proceeds of crime are no longer limited to starting from a certain amount of money, in other words, no longer only the proceeds of crime amounting to Rp. 500,000,000, - (Five hundred million rupiah) and above;
2) The category of crime or type of crime outside the above category becomes an inseparable part of money laundering, because every crime, both contained in the Criminal Code and outside the Criminal Code, which then produces a certain amount of money is called money laundering.

There are several reasons according to Husein, money laundering crimes need to be eradicated to the roots indiscriminately need to be carried out by Indonesia, as follows (Yunus Husein, 2004):

a. Undermine the integrity of financial markets because financial institutions that rely on proceeds of crime may face liquidity hazards;
b. Disrupt the legitimate private sector by frequently using front companies to mix illicit money with legitimate money, with the intent to hide money from its criminal activities. These front companies have access to large amounts of illicit funds, which allow them to subsidize the goods and services sold by these companies so that they can be sold well below market price;
c. Resulting in a loss of government control over economic policy. For example, in some emerging market countries, illicit funds can reduce government budgets, resulting in a loss of government control over economic policy;
d. The emergence of economic distortions and instability because money launderers are not interested in profiting from investments but prefer quick-term profits from activities that are economically unfavorable to the state;
e. The loss of state revenue from tax sources due to money laundering eliminates government tax revenues and thus indirectly harms honest taxpayers. It also makes tax collection by the government more difficult;
f. Endangering the privatization efforts of state enterprises carried out by the government and at the same time threatening the efforts of countries that are carrying out economic reforms through privatization efforts. The health organization with its funds was able to buy shares of privatized state enterprises at a much higher price than other prospective buyers;
g. High social costs because money laundering is an important process for organizations to carry out their criminal activities. Money laundering allows drug traffickers, smugglers, and other criminals to expand their activities (Abdul Munir Nasution, 2023).

Application of Money Laundering Law Based on Justice Value to the Proceeds of Crime from Corrupts

Analyzing the problems that arise related to the emergence of two models of the burden of proof with the balance of possibilities, there have been theoretical and practical references in the problem of proof. Of course, proof in terms of the rights of ownership of one's assets that allegedly come from corruption raises pros and cons. The counter view says that proof in the right of ownership of property is also contrary to human rights, namely everyone has the right to obtain his wealth and the right to privacy that must be protected (Atmasasmita Romli, 2004).

Contrary to the idea that corruption is a source of poverty and serious crime that is difficult to prove in the practice of legal systems in all countries, the human right of individuals to their property is not seen as an absolute right, but a relative right, and is different from the protection of one's freedom and the right to a fair and reliable trial (Hamrullah, 2021). The ratified 2003 Anti-

Corruption Convention contains provisions on evidence in Article 31 paragraph 8 in the context of freezing, seizure, and confiscation proceedings under the heading of Criminalization and Law Enforcement (Chapter III) (Eka Martiana Wulansari, 2011).

The ratification of the Anti-Corruption Convention in 2003, certainly has an impact on the law of evidence which is still based on Law Number 8 of 1981 concerning the Code of Criminal Procedure and the provisions regarding investigation, investigation, and prosecution as well as court examination in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Claudia, 2019).

In the law of proving corruption cases, it should be an element of real state loss, even those that are still expected to be real losses, are out of place and disproportionate to be used as the main element in a criminal act of corruption, and therefore do not need to be proven again. The losses of the wider community, especially third parties harmed by corruption, should be accommodated in the new anti-corruption law (Wicipto Setiadi, 2018).

The proof of corruption cases both in Indonesia and several foreign countries is indeed felt very complicated. Especially for Indonesia, this complexity in addition to the enforcement process is also due to the policy of lawmaking legislation whose products can still be multi-interpretation, so that relatively many weaknesses are found in it.

As in the provisions of the law, it is stated that corruption is an extraordinary crime so extraordinary measures are also needed (extraordinary measures). Justify the statement in its implementation. As it turns out, not everything is true. For example, specifically for bribery is not an extraordinary crime but an ordinary crime so extraordinary legal remedies are not needed (Wicipto Setiadi 2018).

Public opinion and experts who want to prove corruption cases use the reverse burden of proof (Omkering van het Bewijslast or Reversal Burden of Proof/Onus of Proof) which assumes that proving corruption cases can be eradicated. Maybe this statement has some truth but it invites a lot of polemics and can be debated because of several aspects (Wahyu Wiriadinata, 2016).

First, it examines the history of corruption and corruption legislation in Indonesia since the central war ruler until now it turns out that many corruption cases have not been "eradicated" and even relatively increased in intensity based on surveys of corruption monitoring agencies in the world. In addition, several institutions tasked with monitoring corruption have been formed, but corruption also persists and is even more prevalent. Second, there is no theoretical justification that can be used as a benchmark to eradicate corruption by using the reverse burden of proof so the policy of legislation to eradicate corruption in Indonesia has not been able to act optimally (Valentino A Sumampow, 2013).

The correlation between privaatrechtelijk haid and corruption, there is a development of concern in the understanding of law enforcement on the national banking community. The existence of this misconception includes, for example, the process of granting deviant credit, negligence in returning credit, and decisions of banking leaders in determining credit approvals that result in bad loans and violations of prudential banking principles (Khalimi, 2022). This is all perceived as a criminal act of corruption, both in the form of unlawful acts and abuse of authority.

Parameters in the form of basic regulations as positive laws are not in accordance with the development of society and the state to determine whether or not there is an abuse of authority, so the principle of propriety is one of the existing parameters, and this parameter is not written in nature and is included in the category as a criterion to determine whether or not elements of abuse of authority are proven. However, in the area of State Administration Law, although this discretionary authority often deviates from the principle of propriety, it is justified in terms of active authority.

The Indonesian Criminal Law System in cases of corruption crimes relies on strict legality principles in determining the proven or unproven formulation of delicacies. If there is no ground regulation or there is a basic regulation regarding policies concerning the assessment of the presence or absence of abuse of this authority, then the element of abuse of authority must have its connection with the habits or propriety that develop in society, because the criteria or measures to determine are the principles of propriety and accuracy in the State Administration Law known as Algemene Beginselen Van Behoorlijk Bestuur (General principles of good government) (Robertho Yanflor Gandaria, 2015).

The corruption that occurs in Indonesia today is already in a very severe position and is deeply rooted in every aspect of life. The development of corrupt practices from year to year is increasing, both in the quantity or amount of state financial losses and in terms of quality is increasingly systematic, and sophisticated and its scope has expanded in all aspects of society. The increase in uncontrolled corruption will bring disaster not only to the life of the national economy but also to the life of the nation and state in general (Wiyono. R, 2005).

The crime of corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. Because conventional methods that have been used have proven unable to solve corruption problems that exist in society, handling them must also use extraordinary methods (Wali Manda Parapat, 2020)

4. Conclusion

The conclusions of this study are as follows:

a. The scope of the law on money laundering against the eradication of corruption aims to find out how to put the results of evidence on the case being examined, by the ways in which the evidence is used, and by how the judge must form his conviction before the court. In essence, in order to apply

evidence or the law of evidence, the judge then points to the evidence system with the aim of knowing how to put an evidentiary result on the case he is trying for.

b. The application of money laundering law based on the value of justice to the proceeds of crime from corruption needs to be imposed on severe crimes to perpetrators of corruption crimes as a legal policy in accordance with the provisions of the applicable law. So that the community understands and considers the verdict to be as fair as it is. The law is expressly separated from morals and justice is not based on good or bad. The principle of guilt is a principle applied to criminal liability, meaning that crimes are only imposed against those who have committed wrongdoing in a criminal act.

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