

PROVING OF PREDICATE CRIMES IN CASES OF MONEY LAUNDERING CRIMES

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Abstract

This study aims to analyze the application of law in UURI No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes in proving predicate crimes. The research was carried out using normative juridical research methods using statutory and case approaches. The results of the study show that in the application of Article 69 to the crime of money laundering in the decision, namely Decision Number 43/Pid.Sus/2017/PN.Bir with the defendant Murtala Ilyas Bin Ilyas, has used Article 69 because there was no previous decision related to the predicate crime. As for some of the obstacles experienced in the application of Article 69, namely the potential for the accused to be free from legal bondage, the lack of certain facilities and amenities, and the potential for violating the principle of the presumption of innocence.

Keywords: Proof, Predicate Crime, Money Laundering

Abstrak

Penelitian ini bertujuan untuk menganalisis mengenai Penerapan hukum dalam UURI No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dalam pembuktian tindak pidana asal. Penelitian dilakukan dengan metode penelitian yuridis normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan kasus. Hasil penelitian menunjukkan bahwa dalam penerapan Pasal 69 terhadap tindak pidana pencucian uang pada putusan yaitu Putusan Nomor 43/Pid.Sus/2017/PN.Bir dengan terdakwa Murtala Ilyas Bin Ilyas, telah menggunakan Pasal 69 dikarenakan tidak adanya putusan terdahulu terkait tindak pidana asal. Adapun beberapa hambatan yang dialami dalam penerapan Pasal 69 yaitu adanya potensi terdakwa bebas dari jeratan hukum, kurangnya sarana dan fasilitas tertentu, dan adanya potensi melanggar asas praduga tak bersalah.

Kata Kunci: Pembuktian, Tindak Pidana Asal, Tindak Pidana Pencucian Uang

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INTRODUCTION

Indonesia is a constitutional state, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereby all activities of citizens must be in accordance with the regulations in force in the country of Indonesia. Criminal acts committed must be subject to sanctions in accordance with applicable regulations as well. If the violation is public, then the crime is included in the category of criminal law and must be in accordance with criminal law.

Crime is a term that contains a basic understanding in the science of law, as a term formed with awareness in giving certain characteristics to criminal law events. Criminal acts are concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined to be able to separate them from terms that are used daily in people's lives.¹

Criminal acts that often occur in today's society are increasingly sophisticated and more and more in line with the development of society and increasingly rapid technology, various forms of criminal acts that have international networks and use financial institutions, especially banks as their main target, in this case related to the crime of laundering money.

Sutan Remy Sjahdeini underlined that currently the term money laundering is commonly used to describe efforts made by a person or legal entity to legalize "dirty" money obtained from the proceeds of crime.²

In Indonesia in an effort to prevent and eradicate money laundering, the government has issued RI Law Number 15 of 2002 concerning Money Laundering Crimes which was amended by RI Law Number 25 of 2003 concerning Money Laundering Crimes, then refined in the Law Republic of Indonesia Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.³

The Financial Action Task Force (hereinafter abbreviated as FATF) formulates that the crime of money laundering is the process of concealing or disguising the origin of a crime. This process is for the sake of eliminating traces so that it allows the perpetrators to enjoy these benefits without disclosing the source of their income.⁴ Laundered money is the result of various crimes. Money laundering is a crime (underlying crime) originating from other crimes (predicate crime) as the source of funds. According to Barda Nawawi Arief, predicate crime or predicate offense are offenses that result in criminal proceeds or proceeds of crime which are then laundered.⁵

Money laundering is an underlying crime of predicate crime. The predicate crime will be the basis for whether a transaction can be charged under the anti-money laundering law. If an act is categorized as a criminal act, then the proceeds of the activity will be categorized as a money laundering

¹ Amir Ilyas. 2012. *Asas-Asas Hukum Pidana*. Yogyakarta: Rangkang Education, h.18.

² Aziz Syamsuddin. 2013. *Tindak Pidana Khusus*. Cetakan Ke-3. Jakarta: Sinar Grafika, h.17.

³ Juni Sjahfrien Jahja. 2012. *Melawan Money Laundering: Mengenal, Mencegah & Memberantas Tindak Pidana Pencucian Uang*. Jakarta: Visi Media, h.6.

⁴ M. Arief Amrullah. 2020. *Tindak Pidana Pencucian Uang Dalam Perspektif Kejahatan Terorganisasi: Pencegahan dan Pemberantasannya*. Jakarta: Kencana, h.8.

⁵ Barda Nawawi Arief. 2003. *Tindak Pidana Pencucian Uang dan Tindak Pidana Lainnya Yang Terkait*. Jurnal Hukum Bisnis Vol. 22 No. 2. Jakarta: Yayasan Pengembangan Hukum Bisnis, h.19.

crime. As an illustration, in country A, gambling is not considered a crime, therefore gambling proceeds that are entered into the financial system cannot be categorized as money laundering.⁶

However, in proving Article 69 UURI No. 8 of 2010 which reads "In order to be able to carry out investigations, prosecutions, examinations at trial courts against money laundering crimes it is not mandatory to prove the origin of the crime first".

That "What is meant by "not required to be proven" in Article 69 is that it is not obligatory to prove the existence of a court decision that already has permanent legal force". Therefore, in order to carry out investigations, prosecutions, and examinations at trial courts against money laundering crimes, there is no need for a court decision that already has permanent legal force against predicate crimes.⁷

METHODS

The research method is a method that must be used in order to find answers that are considered correct to provide answers to certain problems.⁸ This type of research uses a normative juridical research type or also called a normative legal research method. Normative legal research is legal research conducted by examining literature or secondary data.⁹

This research approach uses two kinds of problem approaches, namely, the statutory approach (statute approach), and the case approach (case approach). This statutory approach is basically carried out by examining all statutory regulations that are related to the problems (legal issues) that are being faced. Meanwhile, the case approach is carried out by examining cases related to the legal issues at hand.¹⁰

Analysis of legal material in this study will use qualitative analysis in this case to examine all data collected based on primary legal materials, secondary legal materials and tertiary legal materials which will then be linked to principles, legal theories, and statutory formulations. existing invitations so that conclusions can be drawn in order to answer the problems to be studied.

RESULTS AND DISCUSSIONS

1. *The Application Of Proof Of Predicate Offenses That Do Not Have To Be Proven First*

In Article 69 of the 2010 TPPU UURI which reads "In order to be able to carry out investigations, prosecutions, and examinations in court proceedings against money laundering crimes it is not mandatory to prove the origin of the crime first". This article implies that it is not obligatory to provide evidence at the level of investigation, prosecution and examination before a trial court. So that this makes it easier for investigators to prevent and eradicate money laundering cases without having to first prove the predicate crime.

⁶ Ivan Yustiavandan, Arman Nefi, & Adiwarmarman. 2014. *Tindak Pidana Pencucian Uang di Pasar Modal*. Bogor: Ghalia Indonesia, h.54.

⁷ R. Wiyono. 2014. *Pembahasan Undang-Undang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*. Cetakan Ke-1. Jakarta: Sinar Grafika, h.195.

⁸ Soetandyo Wigjosoebroto. 2002. *Hukum: Paradigma, Metode, dan Dinamika Masalahnya*. Jakarta: Elsam & Human, h.123.

⁹ Soerjono Soekanto & Sri Mamudji. 2003. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, h.13.

¹⁰ Irwansyah, & Ahsan Yunus. 2021. *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*. Edisi Revisi. Yogyakarta: Mirra Buana Media, h. 133.

The following is a court decision whose application does not require prior proof of the predicate crime, namely Decision Number 43/Pid.Sus/2017/PN.Bir:¹¹

Based on the case in Decision No. 43/Pid.Sus/2017/PN.Bir. Beginning in 2013, Central National Narcotics Agency (hereinafter abbreviated as BNN) officers arrested Darkasyi, then in 2014 Central BNN officers arrested Samsul Bahri and M. Irsan in narcotics and money laundering cases. Then when the investigation was carried out, it was found that there were suspicious transactions in the form of an amount of money that entered the bank account used by the defendant Murtala Ilyas. Furthermore, in the account in the name of Murtala Ilyas there was received a transfer of funds from the account in the name of Darkasyi, Samsul Bahri was for the purpose of paying for narcotics. From transactions between banks, it is suspected that the defendant used and/or controlled his own account and the accounts of other people who were allegedly used as a place for the purpose of disguising or hiding the origins of narcotics crimes. From the proceeds of this crime the defendant purchased land and buildings as well as gas stations and other assets.

As for the indictments submitted by the Public Prosecutor at trial with alternative indictments, namely: Kesatu Primair violated Article 3 UURI No. 8 of 2010 concerning PPTPPU, Subsidiaries violate Article 4 UURI No. 8 of 2010 concerning PPTPPU, More Subsidiaries violate Article 5 paragraph (1) UURI No. 8 of 2010 concerning PPTPPU. Or both Primair violated Article 137 letter a UURI No. 35 of 2009 concerning Narcotics, Subsidair violates Article 137 letter b UURI No. 35 of 2009 concerning Narcotics. As well as the criminal charges the Public Prosecutor demanded that the defendant Murtala Ilyas be found guilty of committing the crime of money laundering with a prison term of 20 years in prison and a fine of Rp. 1,000,000,000.- (one billion rupiah) subsidiary 6 months in prison.

In the consideration of the Panel of Judges in the alternative indictment submitted by the Public Prosecutor, namely the First Primary Indictment for violating Article 3 UURI No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. And the Panel of Judges considered that the defendant's actions were included in the scope of the crime of money laundering at the layering stage which aims to remove traces, both of the original characteristics or the origin of the money. For example transferring funds from several accounts to another location or from one country to another and can be done many times, dividing the amount of funds in the bank with the intention of obscuring their origin and transferring them in foreign currency, and from the proceeds of crimes committed by the defendant has used the funds to buy land and buildings as well as gas stations.

According to the author, regarding the considerations of the Panel of Judges in this decision, even though in their considerations there was no mention of Article 69 of the 2010 TPPU UURI, in the above considerations it has applied Article 69 of the 2010 TPPU UURI where in proving this decision it has proven the crime of money laundering without having to prove the crime original crime first. It can be noted that this decision started with the arrest of Darkasyi, Samsul Bahri, and M. Irsan, then an account was examined and a suspicious transaction was found in the form of an amount of money that entered the defendant's account, and based on sufficient initial evidence of committing the crime of money laundering which was suspected of originating from a narcotics

¹¹ Putusan Nomor 43/Pid.Sus/2017/PN.Bir.

crime, then BNN officers arrested the defendant, then when proving it in court the Panel of Judges had prioritized proving the crime of money laundering without first proving the predicate crime. And for the considerations the Panel of Judges has also implemented reversal of the burden of proof against the defendant as stipulated in Article 77 and Article 78 of the 2010 Money Laundering Law, but the defendant and his legal advisers were unable to prove the origin of his assets, so it should be suspected that the defendant committed the crime of money laundering.

As for the ruling of Decision Number 43/Pid.Sus/2017/PN.Bir as follows: Declare the defendant Murtala Ilyas Bin Ilyas legally and convincingly proven guilty of committing the crime of money laundering. Sentenced the defendant Murtala Ilyas Bin Ilyas to imprisonment for 19 (nineteen) years and a fine of Rp. 5,000,000,000.- (five billion rupiah) provided that if the fine is not paid it is replaced by imprisonment for 3 (three) months.

2. *Obstacles To The Application Of Predicate Crime Evidence That Is Not Required To Be Proven First*

The proof system or theory of proof adopted by the Criminal Procedure Code is a negative proof system according to law. The negative proof system according to law is strengthened by the principle of the freedom of the judiciary.¹² In the negative proof system according to law, a person is declared guilty if the Judge believes that the defendant is guilty based on the evidence that has been regulated in the law, and the proof is borne by the Public Prosecutor, and the application of all criminal acts is still directed at the perpetrator (follow the law). suspected).

However, the development of the criminal proof system has also introduced something new, namely the system of reversing the burden of proof. In the crime of money laundering, following the flow of funds has been implemented, so that the system of proving money laundering is known as reversing the burden of proof which is not an obligation for the Public Prosecutor to prove but it is the defendant who is obliged to prove that his assets were legally obtained, as the burden of proof reversed is regulated in Article 77 of the 2010 TPPU UURI which reads "For the purposes of examination at court hearings, the defendant is required to prove that his assets are not the proceeds of a crime".

In the application of Article 69 of the 2010 Money Laundering Law there are obstacles to proving the crime of money laundering if the predicate crime is not proven, among others as follows:

1. There is a potential for the accused to be free from legal bondage

In criminal law theory it is said that each form of offense consists of the core elements of the offense (*bestaedeelen*) and the elements of the offense (*elementen*). The essence of the offense is an element listed in the form of the offense and everything related to the essence of the offense must be included in the indictment and then the public prosecutor must prove it. If one of the main facts cannot be proven, then the accused must be acquitted. The classification of the core elements of the offense includes objective elements (*actus reus*) and subjective elements (*mens rea*). Whereas the elements of offense are elements that are not visible in form but are considered to exist but do not need to be prosecuted or proven unless the Judge is in doubt.¹³

¹² Romli Atmasasmita. 1995. *Kapita Selektta Hukum Pidana dan Kriminologi*. Bandung: Mandar Maju, h.106.

¹³ Yulianto & Bambang Waluyo. 2020. *Implikasi Hukum Tidak Diwajibkan Pembuktian Tindak Pidana Asal (Tinjauan Pasal 69 UURI No. 8 Tahun 2010 dan Putusan Mahkamah Konstitusi Nomor 77/PUU-XII/2014)*. Jurnal Humani Vol. 10 No. 2. Semarang: Universitas Semarang.

In money laundering cases, the public prosecutor must prove that the defendant knows or should suspect that the assets in his possession originate from a crime. At the implementation level, it is acknowledged that proving this intention (*mens rea*) is not an easy task. Therefore, the 1988 Vienna Convention and subsequent international instruments assumed that “knowledge, aims and objectives can be inferred from factual/objective circumstances”. This extends the mental part of the crime of money laundering not only to the subjective intentions of the accused, but also to the objective circumstances of the case. With this formula, the *mens rea* element of the crime of money laundering changes from actual knowledge to constructive knowledge. Therefore, proof of intention to commit a crime of money laundering can be provided if it can be shown that the defendant knows and or should suspect that his assets originate from a crime.¹⁴

Regulations concerning not being required to prove a predicate crime in the investigation stage as stipulated in Article 69, namely in the event that when investigators identify money laundering suspects based on the results of investigations conducted by investigators, assets are found that do not match the suspect's profile. However, if the case is to be submitted for prosecution, the investigator must present appropriate evidence of the predicate crime committed by the suspect which forms the basis for obtaining unfair fees.

2. Lack of certain facilities or facilities.

In the process of law enforcement against money laundering crimes, legal facilities and infrastructure are very important to accelerate and create legal certainty. Appropriate legal facilities and infrastructure must balance technological advances and globalization which have affected the sophistication of crimes, such as bank robberies using information technology, money counterfeiting crimes using sophisticated equipment and so on, as well as money laundering crimes. The crime of money laundering is a white collar crime, so adequate facilities and infrastructure are needed to handle it.¹⁵ Law enforcement cannot function smoothly without some means or facilities. These facilities or facilities include trained and qualified human resources, good organization, adequate equipment, and so on. If these things are not fulfilled, it will be impossible for law enforcement agencies to achieve their goals.¹⁶

3. There is potential to violate the presumption of innocence.

One of the fundamental legal principles that guides the work of the criminal justice system is based on the presumption of innocence.¹⁷ In essence, this principle emphasizes that in order to achieve legal objectives, every criminal procedure process must be based on the principle of the presumption of innocence. The principle of the presumption of innocence applies universally not only in Indonesian criminal procedural law but also in international criminal procedural law. This legal principle is an absolute requirement to guarantee and state that the process is carried out in an honest, fair and independent manner (*due process of law*).¹⁸ The principle of presumption of innocence contains 2 (two) very important meanings, namely, the principle of presumption of innocence only applies to crimes and the principle of presumption of innocence is essentially the main deviation of evidence before a trial, where it is not an innocent person who proves that he is innocent. , but for the public prosecutor to prove that the defendant is indeed innocent by proving all elements of fact.¹⁹

¹⁴ Hanafi Amrani. 2015. *Hukum Pidana Pencucian Uang*. Yogyakarta: UII Press, h.11.

¹⁵ Chairuman Harahap. 2003. *Merajut Kolektivitas Melalui Penegakan Supremasi Hukum*. Bandung: Cita Pustaka Media, h.37.

¹⁶ Soerjono Soekanto. 2005. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: Raja Grafindo Persada, h.37.

¹⁷ Andi Hamzah. 2008. *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika, h.3.

¹⁸ Yulianto & Bambang Waluyo. *Op.Cit*, h.244-245.

¹⁹ Achmad Ali. 2004. *Meluruskan Jalan Reformasi Hukum*. Jakarta: Agatama Press, h.54.

CONCLUSION

In the application of Article 69 to the crime of money laundering in the decision, namely Decision Number 43/Pid.Sus/2017/PN.Bir with the defendant Murtala Ilyas Bin Ilyas, has used Article 69 because there was no previous decision related to the predicate crime. Some of the obstacles experienced in applying Article 69 are the potential for the accused to be free from prosecution, the lack of certain facilities or facilities, and the potential for violating the presumption of innocence.

In applying the law on money laundering, especially Article 69 of the 2010 Money Laundering Law, it is hoped that the facilities and infrastructure will be more adequate so as to create legal certainty.

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