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EVIDENCE OF CRIMINAL ACTS OF ORIGIN IN THE PREVENTION AND ERADICATION OF MONEY LAUNDERING LAW UNDER PRESUMPTION OF INNOCENCE PRINCIPLE.

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Abstract

This study aims to determine the contradiction between the provisions on the proof of the original criminal act with the principle of Presumption of Innocence in the Anti-Money Laundering Law 2010. The research was conducted with normative research method using statutory approach, conceptual approach, historical approach, and historical approach. Data analysis uses qualitative descriptive analysis with data analysis methods that are connected to existing principles, theories so that conclusions can be drawn on the answers and problems. The research results show that The provisions of the article have violated the principle of presumption of innocence in criminal law and also harmed human rights. The crime of money laundering is also a further criminal offense that has a prerequisite criminal offense so that without the initial criminal offense or the prerequisite criminal offense, the act can no longer be defined as a money laundering criminal offense.

Keywords: Money laundering; Crime of origin; Presumption of innocence.

Abstrak

Penelitian ini bertujuan untuk mengetahui pertentangan antara ketentuan pembuktian tindak pidana asal dengan asas praduga tak bersalah dalam Undang-Undang TPPU 2010. Penelitian dilakukan dengan metode penelitian normatif dengan menggunakan pendekatan perundang-undangan, pendekatan konseptual, pendekatan historis, dan pendekatan historis. Analisis data menggunakan analisis deskriptif kualitatif dengan metode analisis data yang dihubungkan dengan asas-asas, teori-teori yang ada sehingga dapat ditarik kesimpulan atas jawaban dan permasalahan. Hasil penelitian menunjukkan bahwa Ketentuan pasal tersebut telah melanggar asas praduga tak bersalah dalam hukum pidana dan juga mencederai hak asasi manusia. Tindak pidana pencucian uang juga merupakan tindak pidana lanjutan yang memiliki tindak pidana asal sehingga tanpa adanya tindak pidana awal atau tindak pidana asal maka perbuatan tersebut tidak dapat lagi dikatakan sebagai tindak pidana pencucian uang.

Kata Kunci: Pencucian uang; Tindak pidana asal; Praduga tidak bersalah.

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

INTRODUCTION

The crime of money laundering is one of the crimes that has a significant impact in a country because it is very impactful in the economic aspect. This has drawn the attention of the international community to prevent and prosecute money laundering activities. Various efforts are made to be able to minimize all forms of laundering and the losses it causes. The fight against money laundering in recent years has become almost the top priority of anti-crime policies. The international community, including the United Nations, has adopted a number of specific rules and regulations designed to combat this phenomenon. Money laundering was first declared a crime in the United States in 1986 and in Saudi Arabia.[1] Money laundering and terrorist financing were only fully criminalized in 2003. Meanwhile, the assessment of money laundering was not considered from the outset. Therefore, criminal liability for money laundering is a relatively new attempt to address this phenomenon, which is essentially a new crime. Money laundering has increasingly received special attention from various circles, not only on a national scale, but also has been globalized through cooperation between countries. This movement is triggered by the fact that now the rise of money laundering crimes from time to time, so that various international organizations have concretely taken steps that are deemed necessary. time to time, so that various international organizations have concretely taken steps that are deemed necessary to anticipate the problem of money laundering crimes.[2]

Money laundering is also one of the new types of criminal offense in the reference of criminal law in Indonesia. Although money laundering is a new type of crime, the law enforcement process against money laundering has a wide impact on the national financial and banking balance sheet. The crime of money laundering as one of the crimes included in serious crimes also has difficulties in terms of proof, because the crime of money laundering as a crime that has a distinctive feature, namely that this crime is not a stand-alone crime but a double crime. This is characterized by the form of money laundering as a follow-up crime or further crime, while the main crime or the original crime is referred to as predicate offense or core crime. Wealth obtained in crime is generally not used immediately. The perpetrators try to disguise it first so that it is not easily traced by law enforcement officials. Usually the perpetrators do loan back mode, international trade transaction mode, stock acquisition, investment or disguise into the banking system. In its development, the crime of money laundering, especially in the Republic of Indonesia, was first regulated since the enactment of Act Number 15 of 2002 concerning the Crime of Money Laundering which was followed by the establishment of an independent institution, namely PPATK (Financial Transaction Reporting and Analysis Center/*Pusat Pelaporan dan Analisis Transaksi Keuangan*). However, this act has not been optimal because there are still many things that have not been regulated, such as the existing laws and regulations that still provide room for different interpretations, the existence of legal loopholes, inappropriate sanctions, the shift in the burden of proof, limited access to information, the small scope of reporters and types of reports, and the lack of clarity of duties and authorities of the implementers of this legislation.[3]

[1] Rusanov G, Pudovochkin Y. "*Money laundering in the modern crime system", Modern crime System.*Vol.24 No.4, (November,2020),

[2] Amalia Syauket, Melanie Pita Lestari, Luqmanul Hakim, Passive perpetrators of money laundering crimes, Malang: CV.Literasi Nusantara Abadi, 2023,

[3] *Ibid*

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

In addition, to meet national interests and the demands of international standards, it is necessary to prepare a Law on Money Laundering Prevention and Control that replaces the Act No. 15 of 2002 on the Crime of Money Laundering as amended by Act No. 25 of 2003 of the Republic of Indonesia on the Crime of Money Laundering, and repealed in 2010, namely by Act No. 8 of 2010 on the crime of money laundering (State Gazette of the Republic of Indonesia of 2010 Number 122, Supplement to the State Gazette of the Republic of Indonesia Number 5164), hereinafter referred to as the 2010 Anti-Money Laundering Law. Finally partially revoked by Act No. 1 of 2023 concerning the Criminal Code (KUHP) article 607.

In the crime of laundering, there are several processes that are criminalized as stages of money laundering. The process of transferring criminal acts of money laundering uses three stages including placement, layering, and integration, which are explained as follows:

1. Placement stage

This stage is an attempt to place the proceeds of crime into the financial system through, among other things, the splitting of large amounts of cash into small, inconspicuous amounts to be placed in bank deposits (accounts), or used to purchase a number of financial instruments (cheques, money orders, etc.) which will be invoiced and then deposited in bank accounts located in other locations. At this stage, the proceeds of crime are sometimes used to purchase goods in local or overseas jurisdictions.

2. Layering stage

Once the proceeds of crime have entered the financial system, the money launderer engages in a series of conversion or movement actions intended to separate or distance the funds from the source. The funds may be channeled through the purchase and sale of financial instruments, or the money launderer may simply send the money by electronic funds/wire transfer to a number of banks located overseas.

3. Integration stage

This stage is an effort to use the proceeds of crime that appear legitimate, either for direct enjoyment, invested in legitimate economic activities, for example in the form of purchasing real estate, luxury assets, or invested in business activities that contain risk. In committing the crime of money laundering, the perpetrator does not really consider the results to be obtained, and the amount of costs that must be incurred, because the main objective is to disguise or eliminate the origin of the money so that the end result can be enjoyed or used safely. The three activities mentioned above can occur separately or simultaneously, but are generally carried out in an overlapping manner. Likewise, the modus operandi from time to time is increasingly complex by using technology and financial engineering that is quite complicated.[4]

Attempts to criminalize various forms of money laundering activities The criminalization of various forms of money laundering activities is intended as a form of effort to minimize and eradicate the act of laundering, the impact of which can affect various aspects of state life and the existence of the Act of Money Laundering in 2010 as a form of reformulation of law enforcement reform of money

[4] *Ibid*

laundering crimes, especially in terms of investigation, prosecution, and examination in court cases of money laundering crimes.

Article 69 of the Anti-Money Laundering Act 2010 states that:

"In order to be able to conduct an investigation, prosecution, and examination at the court hearing of the criminal act of Money Laundering, it is not mandatory to prove the original criminal act in advance".[5]

The 2010 Anti-Money Laundering Act in its implementation has not been able to consider an objective balance between the interests of the suspect and the interests of society, the existence of Article 69 of this law is an obstacle or vagueness and contradiction in the law. The provision in Article 69 of the 2010 Anti-Money Laundering Act that does not require the proof of the original criminal offense has undermined the importance of proof in a criminal offense as a basic reference for judges to make decisions. Not only that, the phrase does not require the proof of the original criminal offense causes a conflict with the presumption of innocence, which is a principle in criminal law that must always be applied to protect the rights of the defendant. The presumption of innocence is explained in General Elucidation number 3 letter C of KUHAP, witch is :

"Every person who is suspected, arrested, detained, prosecuted and/or brought before a court of law, shall be presumed innocent until there is a court decision declaring his guilt and obtaining permanent legal force."[6]

Furthermore, the article on the presumption of innocence is regulated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Number 5076) Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), hereinafter referred to as the Judicial Power Law, which reads:

"Every person who is suspected, arrested, detained, prosecuted, or brought before the court shall be presumed innocent until there is a court decision that states his guilt and has obtained permanent legal force."[7]

In addition, Act Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia of 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886), hereinafter referred to as the Human Rights Law, also explains this principle in Article 18 paragraph (1), which reads:

"Every person who is arrested, detained, or prosecuted for allegedly of a criminal offense shall have the right to be presumed innocent, until his/her guilt is proven legally in a court hearing and shall

[5] Article 69 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering

[6] General Elucidation number 3 letter c of Law of the Republic of Indonesia Number 8 Year 1981 on Criminal Procedure Act

[7] Article 8 paragraph 1 of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

be given all legal guarantees necessary for his/her defense, in accordance with the laws and regulations".[8]

As a legal consequence of Article 69, it is possible that a defendant is convicted with charges that have not been proven materially and do not yet have binding legal force (inkracht). Law enforcement against Money Laundering Crime (TPPU) is still contradictory in substantive law (material law) and in procedural law (formal law), especially in the principle of presumption of innocence. With the guarantee of the presumption of innocence in sharing existing legal norms in Indonesia, it requires that a person cannot be prosecuted in the crime of TPPU as a follow-up crime or further crime, before the main crime or the original crime has not been proven first, which is also a form of guaranteeing human rights.

Based on what has been described above, the author examines and discusses it by raising the theme of research entitled *Evidence of criminal acts of origin in the Law on Prevention and Eradication of Money Laundering in terms of the principle of "Presumption of Innocence"*

METHOD

Based on the background that has been explained previously, the problem formulation in this research is how is the contradiction between the provisions on proving the crime of origin with the principle of Presumption of Innocence in the Anti-Money Laundering Act? The research was conducted using normative research methods using statutory approaches, conceptual approaches, historical approaches, and historical approaches. Data analysis uses qualitative descriptive analysis with data analysis methods that are connected to existing principles, theories so that conclusions can be drawn on answers and problems.

The type of research in this legal research is normative legal research or commonly known as doctrinal legal research, which is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systematics, the level of synchronization, comparative law and legal history.This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter.

RESULT AND DISCUSSION

1. *Contradiction Between Provisions on Proof of Original Crime and the Principle of Presumption of Innocence in the Anti-Money Laundering Act of 2010*

Money laundering has become one of the criminal offenses that has special attention in recent years not only in Indonesia but in many countries in the world. Money laundering in the concept of Indonesian criminal law is categorized as a special crime because of its special rules so that it is based on the principle of criminal law, namely *lex specialis derogat legi generali*, which is a special law that overrides the general law. The classification of special criminal offenses arises because of the dynamic

[8] Article 18 paragraph 1 of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

movement of the era which has implications for the emergence of a variety of crimes that are more modern and carried out in ways that are also more varied so that it is complicated to disclose. The substance contained in special criminal laws usually contains rules that are also special both materially and formally so that there will be some rules deviating from the provisions as regulated in the Criminal Code and the Criminal Procedure Code.[9]

Money laundering is an effort to hide or disguise the origin of money or funds or assets resulting from criminal acts through various financial transactions so that the money or assets appear as if they come from legitimate/legal activities, Money laundering or money laundering is an effort to hide or disguise the origin of money or funds or assets resulting from criminal acts through various financial transactions so that the money or assets appear as if they come from legitimate/legal activities, the 2010 Anti-Money Laundering Law provides a definition of money laundering in articles 3, 4, and 5.

Article 3 of the Anti-Money Laundering Act 2010:

"Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currencies or securities or other actions on Assets that he knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah).[10]

Article 4 of the Anti-Money Laundering Act 2010:

"Every person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of Assets which he knows or reasonably suspects to be the proceeds of a criminal offense as referred to in Article 2 paragraph (1) shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)."[11]

Article 5 of the Anti-Money Laundering Law 2010:

1) Any person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or use of Assets that he/she knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).
2) The provisions as referred to in paragraph (1) shall not apply to the Reporting Party who carries out the reporting obligations as stipulated in this Law.

Related to the criminalization of money laundering in the Anti-Money Laundering Law articles 3, 4, and 5 have been renewed in Law Number 1 of 2023 concerning the Criminal Code (KUHP) in article 607.

[9] Eddy O.S Hiarej, Principles of Criminal Law, Yogyakarta: Cahaya Atma Pustaka, 2017
[10] Article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.
[11] Article 4 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

Article 607 of Law Number 1 Year 2023 on the Criminal Code (KUHP):

1) Every person who:
   a) Places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currency or securities or other actions on Assets which he knows or reasonably suspects are the proceeds of Criminal Acts with the purpose of concealing or disguising the origin of the Assets, shall be punished with a maximum imprisonment of 15 (fifteen) years and a maximum fine of category VII;
   b) Concealing or disguising the origin, source, location, allocation, transfer of rights, or actual ownership of Assets which he/she knows or reasonably suspects to be the proceeds of Criminal Offenses, shall be punished with a maximum imprisonment of 15 (fifteen) years and a maximum fine of category VI;
   c) Receiving or controlling the placement, transfer, payment, grant, donation, deposit, exchange, or use of Assets which he/she knows or reasonably suspects to be the proceeds of Criminal Offenses, shall be punished with imprisonment of up to 5 (five) years and a maximum fine of category VI.
2) Proceeds of Crime as referred to in verse (1) are Assets obtained from Criminal Acts:
   a) corruption;
   b) bribery;
   c) narcotics;
   d) psychotropic substances
   e) labor smuggling
   f) migrant smuggling;
   g) in the field of banking
   h) in the field of capital market;
   i) in the field of insurance;
   j) customs;
   k) excise;
   l) trafficking in persons
   m) trafficking in illicit weapons;
   n) terrorism;
   o) kidnapping;
   p) theft;
   q) embezzlement;
   r) fraud
   s) counterfeiting of money;
   t) gambling;
   u) prostitution;
   v) in the field of taxation;
   w) in the field of forestry
   x) in the field of environment
   y) in the marine and fisheries sector; or other criminal offense punishable by imprisonment of 4 (four) years or more.

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

3) The Criminal Offenses as referred to in verse (1) shall constitute money laundering Criminal Offenses.[12]

The Objective Element (*Actus Reus*) of Article 607 of Law Number 1 of 2023 concerning the Crime of Money Laundering is very broad because it is the core of the offense, so it must be proven that the objective element consists of placing, transferring, paying or spending, granting or donating, entrusting, bringing out of the country, exchanging or other actions on assets (which are known or reasonably suspected of being the proceeds of crime). The Subjective Element (*Mens Rea*) which is also an intidelic is intentionally, knowing or reasonably suspecting that the assets come from the proceeds of crime, with the intention of hiding, or disguising the assets.[13]

Indonesia's money laundering cases are among the highest in the world. But uncovering money laundering cases is not an easy task. Authorities need more effective ways of working and cooperating with national and foreign agencies to determine the source of suspects' assets. Money launderers can be exempted from punishment if the responsible authorities, such as the KPK and the police, fail to find the case. Therefore, special and effective measures must be taken by field officers to detect money laundering or the commission of money laundering by an individual or a group of people so that the suspect can be punished after causing financial loss to the state. Legal reformulation continues to be carried out in order to ensnare the perpetrators of money laundering crimes. With the birth of the 2010 Anti-Money Laundering Law, which is considered a revolutionary step in the prevention and eradication of money laundering crimes, especially in article 69, which provides a phrase that it is not mandatory to prove the original criminal act in order to conduct an investigation, prosecution, and examination in court. The birth of article 69 in the money laundering regime raises legal problems. The article has deviated from the provisions of the presumption of innocence and human rights.

2. *The Position of Predicate Crime in the Crime of Money Laundering*

Money laundering is an act that does not stand alone because it is a follow-up action so that it has an original criminal act (Predicate Crime). In the anti-money laundering regime, there is a predicate crime. Which produces wealth, which is then used as an object of money laundering. According to the 2010 Anti-Money Laundering Law, the predicate crime includes: corruption, bribery, goods smuggling, labor smuggling, immigrant smuggling, banking, capital markets, insurance, narcotics, psychotropic drugs, human trafficking, arms trafficking, terrorism, kidnapping, theft, embezzlement, counterfeiting, gambling, prostitution, taxation, forestry, environment, marine and other crimes punishable by imprisonment of more than 4 years committed in the territory of Indonesia or outside Indonesia and the crime is a criminal offense under Indonesian law. Conceptually, money laundering is a derivative crime (predicate crime) that must always be preceded by a predicate crime, because the object of money laundering is the assets generated from the predicate crime. In addition, if we observe the material legal construction of the regulated money laundering crimes in which one of the elements of each article is the element of known or reasonably suspected proceeds from criminal acts regulated in the 2010 Anti-Money Laundering Law. Assets resulting from criminal acts regulated are referred to as criminal acts of origin, such as corruption crimes, narcotics trafficking crimes, human trafficking crimes and others.

[12] Article 607 of Law Number 1 Year 2023 on the Criminal Code
[13] Amalia Syauket, Melanie Pita Lestari, Luqmanul Hakim, Passive Perpetrators Of Money Laundering Crimes, Malang: CV.Literasi Nusantara Abadi, 2023

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

Likewise, according to Romli Atmasasmita, money laundering crimes that are not proven in advance of the original criminal act, as regulated in Article 69 of the 2010 Anti-Money Laundering Law, need to be questioned if it is connected to Article 77 and Article 78 which explain reverse proof, which in its provisions "requires the suspect to prove that the assets owned are obtained from legal activities or not". This contains a contradiction in the substance of the norm between Article 69 which states that it is not necessary to prove the crime of origin while Articles 77 and 78 require the defendant to prove whether the assets are from the crime of origin or not. Law enforcers, especially judges and public prosecutors, have mistakenly linked reverse proof with *Illecit Anrchman*. proving that the assets of an official who is exposed do not match his profile so that he can be investigated, prosecuted and processed in court.

In practice, the prosecution of money laundering offense (TPPU), the act of money laundering and the crime of origin have been viewed as independent acts (Article 65 and/or Article 66)), not continuing acts (Article 64), but it still needs to be questioned from a legal theoretical point of view regarding the intent and purpose of the formulators of the 2010 TPPU Law regarding the position of the provisions of Article 2 of the 2010 money laundering offense (TPPU) Law which emphasizes 26 (twenty-six) types of criminal acts of origin. This provision is in stark contrast to the provision on stacking (Article 480 of the Criminal Code) which does not emphasize the criminal offense of origin of the goods received by the collector. If then the provisions of Article 69 of the Anti-Money Laundering Law 2010 do not require proof of the crime of origin of the assets suspected of being derived from a criminal offense, but in the provisions of Articles 77 and 78 of the same Law, the defendant is obliged to prove that his assets are not related to the criminal offense (alleged) - reverse proof, then the two aquo provisions clearly contradict the principle of lex certa which demands legal certainty in accordance with the principle of legality (Article 1 verse (1) of the Criminal Code). In money laundering offense, it is not necessary to prove the predicate crime because what is targeted is the property suspected of originating from the original crime, not the fault of the defendant's actions. However, when referring to the provisions of Articles 77 and 78 of the 2010 Anti-Money Laundering Law, it becomes odd, because the judge ordered the defendant to prove that his assets were "not related to the criminal offense charged to the defendant".

It is not necessary to prove the crime of origin in the crime of money laundering in the Memorie van toelichting of the Anti-Money Laundering Bill based on the regime of the crime of storing in Article 480 of the Criminal Code, which also does not need to prove the crime of theft first. There is a mistake in adopting the main elements of Article 480 of the Criminal Code (collection) into the formation of Article 5 of the Anti-Money Laundering Law. In theory, the mistake lies in the formation of the Anti-Money Laundering Law, which cannot distinguish between the provisions of Article 480 of the Criminal Code and the provisions of passive ML (Article 5). Money laundering is a continuation of the crime of origin, which is limitedly listed in Article 2 verse (1) of the Anti-Money Laundering Law[14]. There are two deviations from the general principles and functions of conventional criminal law.

The first deviation is to the function of the ultimum remedium of criminal law. The second deviation from the beyond reasonable doubt method of proof is the reversal of the actual burden of proof on assets suspected of being derived or obtained from criminal acts. This process of deviation is

[14] Rika Kurniasari Abdulgani, Evidence of Original Crime as the Basis for Prosecuting Money Laundering Crimes, International Journal of Science and Society, Volume 4, Edition 4, 2022,

reflected in Article 69 of the Anti-Money Laundering Law, which emphasizes that an original criminal act that is strongly suspected of having occurred ML does not need to be proven (by the public prosecutor). This article emphasizes that the target of the Anti-Money Laundering Law is not on the defendant's actions (guilt), but on the assets suspected of originating from or related to the (original) criminal offense. Thus, what is pursued in the TPPU judicial process is not the defendant acting on the assets.

There are several problems in making assets the subject to be pursued:

1) The reverse disclosure of the defendant's assets does not mutatis mutandis prove the defendant's guilt for his actions (original crime). The purpose of reverse proof of assets suspected of originating or obtained from a criminal offense aims to confiscate the defendant's assets in civil in rem confiscation or confiscation based on civil). It is far different from proving the defendant's guilt for the original crime which aims to find his guilt and then confiscate his assets criminally (*in personam forfeiture* or criminal forfeiture).
2) There is ambiguity or ambiguity in the provisions of Article 69 in relation to Articles 77 and 78 of the Anti-Money Laundering Law. On the one hand, the crime of origin does not have to be proven (prosecution), on the other hand, the defendant is obliged to prove that the assets (owned by him) alleged (the principle of probable cause) originated from or related to the crime. (origin) of the crime. The contradiction in the substance of these articles is not explained in the Anti-Money Laundering Law.
3) The reverse corroboration provisions of the Anti-Money Laundering Law have been misunderstood by judges and prosecutors. The concept of illicit enrichment that is adopted, namely proving the wealth of a public official or state organizer associated with his legitimate income. It has nothing to do with the crime he is accused of. The definition of illicit enrichment in the 2003 UN Convention against Corruption covers the acts that are criminalized.
4) Refer to the provisions of Articles 77 and 78 of the 2010 Money Laundering Law. Based on the principle oflex certa, unless there is another explanation in the article, the assets that must be proven by the defendant are assets that are only related to criminal acts or negatively interpreted as assets that are not derived from criminal acts. This provision expressly obliges the public prosecutor to selectively determine the defendant's assets that must or must not be proven by the defendant. This means that only the assets of the defendant that are related to the criminal offense are included in the prosecutor's indictment (material aspect) which must be proven by the defendant, and not assets that are not related and not demanded in the prosecutor's indictment.
5) In the case of money laundering, the *Tempus* and *Locus* as well as the details of the defendant's assets are crucial because the Anti-Money Laundering Law does not specifically regulate the *Tempus Delic* of assets (not acts) that are allegedly derived from a criminal offense. *Tempus Delic* assets that are allegedly derived from or related to a criminal offense are not *Mutatis Mutandis*. *The Tempus Delic* imposed on assets specifically intended for state administrators is the assets obtained since the person concerned was appointed, at the time and after leaving his position.[15]

The authors opinion that money laundering cannot be categorized as a stand-alone criminal act, but rather a criminal act that has an original criminal act or is categorized as a prerequisite criminal act.

[15] Rika Kurniasari Abdulgani, Op cit.,

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

In the formulation of the article of the 2010 Anti-Money Laundering Law, which has provided 26 initial criminal acts as predicate crimes of money laundering, it is a strong basis that money laundering is a further criminal act and not a stand-alone criminal act because the original criminal act is a prerequisite for the birth of money laundering.

3. *The Position of the Principle Presumption of Innocence in Criminal Law*

The criminal law system in Indonesia adheres to several legal principles, one of which is the principle of presumption of innocence. "The principle of presumption of innocence is a principle where a person is considered innocent until the court declares guilty". "In Code of Criminal Procedure (KUHAP), the principle of presumption of innocence is explained in the general explanation of Code of Criminal Procedure (KUHAP) number 3 letter c, namely: "every person who is suspected, arrested, detained, prosecuted or brought before a court session, shall be presumed innocent until a court decision declares his guilt and obtains permanent legal force."

Meanwhile, in Act Number 48 of 2009 concerning Judiciary, the principle of presumption of innocence is regulated in Article 8 paragraph (1), which reads: "every person who is suspected, arrested, detained, prosecuted or brought before the court shall be presumed innocent until there is a court decision that states his guilt and has obtained permanent legal force".

With the presumption of innocence adopted in the Code of Criminal Procedure (KUHAP), it provides guidance to law enforcement officials to use the principle of accusator at every level of examination. Law enforcement officials stay away from "inquisitorial" examination methods or inquisitorial systems that place the suspect / defendant in the examination as an object that can be treated arbitrarily." Principle the presumption of innocence is also mentioned in Article 18 paragraph 1 of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights which reads "Every person who is arrested, detained and prosecuted on suspicion of committing a criminal offense has the right to be considered innocent, until his guilt is proven legally in a court session and given all legal guarantees necessary for his defense, in accordance with the provisions of the legislation.

In the handling of money laundering after the enactment of the 2010 Anti-Money Laundering Law, especially in Article 69, the principle of presumption of innocence has been violated because indirectly a person has been deemed to have committed a prerequisite criminal offense of money laundering, even though the prerequisite criminal offense has not been proven. This is also in line with the results of the Judicial review of Law Number 8/2010 on Prevention and Eradication of Money Laundering by the Constitutional Court Number 77/PUUXII/2014 dated February 12, 2015. In the Decision, there were dissenting opinions filed by two Constitutional Court judges Aswanto and Maria Farida Indrati, as follows:

"The word no in Article 69 is inconsistent and can be interpreted with a meaning that is actually contrary to the provisions of Article 3, Article 4, and Article 5 paragraph (1) of Law 8/2010, which in principle states that in order for a person to be charged with the crime of money laundering, the assets must be the result of one or more predicate crimes or predicate offenses, in other words, there is no money laundering crime if a person is charged with the crime of money laundering if there are no predicate crimes or predicate offenses. Thus, if a person is charged with money laundering, not referring to or not based on the occurrence and proof of predicate crimes or predicate offenses, it is contrary to the principle of presumption of innocence as explained in the General Elucidation of Code of Criminal Procedure (KUHAP) point 3 letter c and Article 8 paragraph (1) of the Judicial Power Law, which is then further

Alauddin Law Development Journal (ALDEV)
Vol. 6, No. 3, 2024

emphasized by M. Yahya Harahap, S.H. in the Discussion of Problems and Application Code of Criminal Procedure (KUHAP) Investigation and Prosecution, which states that: the suspect must be required to prove his innocence.), which states that: the suspect must be placed in the position of a human being who has the essence of dignity. He must be considered as a subject, not an object. What is examined is not the human suspect. It is the commission of the criminal offense that is the object of the examination. The examination is directed towards the guilt of the criminal offense committed. The suspect must be presumed innocent, in accordance with the principle of presumption of innocence until a final court decision is obtained so that the principle of presumption of innocence must be upheld by a legal and democratic state as referred to in Article 1 verse (3) of the 1945 Constitution."[16]

Criminal law should be able to guarantee the fulfillment of a person's rights, especially rights related to the presumption of innocence. The fundamental weakness in the enforcement of criminal law through the implementation of the functions of the criminal justice system is the neglect of the rights of victims of crime in the process of handling criminal cases and the consequences that must be borne by victims of crime, because legal protection for victims of crime has not received adequate regulation[17]. The freedom to fight for their rights is very small. The principles of criminal procedure adopted by the Code of Criminal Procedure almost all prioritize the rights of suspects. There are at least ten principles adopted by the criminal procedure code with the intention of protecting the rights of citizens in a fair legal process, namely:

1) Equal treatment before the law without any discrimination.
2) Presumption of innocence
3) Violation of the rights of individual citizens (i.e. in the case of arrest, detention, search and seizure must be based on law and carried out with a warrant;
4) A suspect shall be informed of the allegations and charges against him;
5) A suspect or accused is entitled to the assistance of legal counsel;
6) A defendant has the right to appear before the court
7) There shall be a free trial which shall be conducted in a speedy and simple manner;
8) The court must be open to the public;
9) Suspects and defendants are entitled to compensation and rehabilitation.[18]

Considering all the principles in the Code of Criminal Procedure (KUHAP), it can be understood that normatively KUHAP only pays attention to the rights of perpetrators, without giving space to victims to fight for their rights. In the legal formulation of Article 69 of the 2010 Anti-Money Laundering Law, the author argues that the original criminal offense and the money laundering crime should be proven first in order to provide legal certainty and not violate the principle of presumption of innocence. If what is feared is the slow process of money laundering criminal cases if the original criminal act is proven first, then the concept of concurrence in Article 65 of the Criminal Code concerning Concursus Realis (Concurrence of Acts) is a very possible middle ground to be offered which in this concept if there is a combination of several acts, each of which must be considered as a single act and each of which constitutes a crime threatened with the same principal punishment, then only one punishment shall be imposed, the maximum punishment is the maximum amount of punishment threatened for each of these acts but may not exceed the heaviest plus one third.

[16] Constitutional Court Decision 77/PUU-XII/2014
[17] Sidik Sunaryo, Capita Selekta of Criminal Justice System, (Malang: UMM Press, 2002),
[18] Dr. Gomgom T.P Siregar, Rudolf Silaban, Victims' Rights in Criminal Law Enforcement, Medan: CV Manhaji, 2020

However, the concept offered by the author is not Concurrent Acts in the normative sense in Article 65 of the Criminal Procedure Code but the concept of pure *Concursus Realis*, which allows a criminal offense not to stand alone but still must be proven both.

CONCLUSION

The existence of these provisions violates the principle of presumption of innocence in criminal law and also violates human rights. The crime of money laundering is also a further criminal act that has a prerequisite criminal act so that without the initial criminal act or the prerequisite criminal act, the act can no longer be defined as a money laundering criminal act. To be able to eradicate the act of money laundering, the concept of the concept of pure Concursus Realis which allows a criminal offense is not solely independent but must be proven both and both are not considered independent. In the application of the law of money laundering crimes, especially Article 69 of the 2010 Anti-Money Laundering Law, both can be proven, especially in terms of the original criminal act or criminal act as a prerequisite for money laundering criminal acts.

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