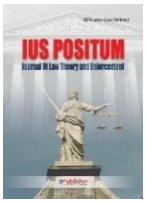

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The Urgence of Implementing Law in Money Laundering on the Eradication of Corruption to Optimize the Recovery of State Financial Loss

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ABSTRACT

Corruption in Indonesia has not decreased, as reflected in the Transparency International report. Indonesia's Corruption Perception Index (CPI) dropped by 3 points, from 40 in 2018‑2019 to 37 in 2019‑2020. One major impact of corruption is the loss of state finances; therefore, a different approach is needed to eradicate corruption effectively. This would ensure that state financial losses can be optimally recovered and reused for the nation's benefit and the people's prosperity. The research method employs a normative approach with a legislative framework. Additionally, it utilizes secondary legal materials, particularly literature that examines the correlation between corruption and money laundering. The research concludes that money laundering and corruption are closely linked, as the original crime stems from corruption. This is clearly and explicitly stated in Article 2, Paragraph (1) of Law No. 8/2010. Furthermore, Law No. 8/2010 does not only punish active and passive perpetrators but also regulates legal actions such as asset confiscation and recovery. This is achieved through tracking assets derived from crimes at different stages: placement of illicit funds into the financial system, layering, and ultimately, asset recovery, where transacted and utilized funds are reclaimed.

Keywords: *Asset Confiscation, Corruption, Money Laundering, State Financial Losses*

INTRODUCTION

Transparency International's report on the Corruption Perception Index (CPI) for 2019-2020 shows a decrease of 3 basis points, from 40 to 37. This decline is likely due to ineffective law enforcement against corruption, as well as a lack of understanding and proper implementation of regulations related to corruption. If left unaddressed, this situation could lead to financial losses for the state.

Efforts to eradicate corruption require adapting enforcement strategies to reflect changing times and integrating them with relevant regulations. By doing so, it is possible to gradually reduce corruption.

In combating and preventing corruption, legal instruments exist to strengthen anti-corruption measures, such as the Anti-Money Laundering Law. Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the PPTPPU Law) has been in place since 2002. The application of the PPTPPU Law is crucial in eradicating corruption, as it allows law enforcement to uncover and recover illicit assets more effectively than relying solely on Law No. 31/1999 on the Eradication of Corruption Crimes, which was later amended by Law No. 20/2001 (hereinafter referred to as the PTPK Law).

In cases of corruption, law enforcers should not only apply the PTPK Law but also utilize the PPTPPU Law as a preventive measure. This dual application serves as a deterrent, as individuals who engage in corruption face prosecution under both laws. The penalties are severe, with a maximum imprisonment of 20 years under the PPTPPU Law, in addition to the strict sanctions imposed by the PTPK Law.

Based on the above discussion, this paper seeks to examine the relationship between law enforcement against corruption and the application of the PPTPPU Law. It also aims to explore the legal actions that can be taken in implementing the PPTPPU Law to combat money laundering as part of broader anti-corruption efforts.

RESEARCH METHODOLOGY

The researchers use a normative legal writing approach. Normative legal research examines the law as an object, excluding any non-legal material from its scope.[1] This research focuses solely on written regulations and other legal materials, adopting a normative juridical approach that emphasizes the study of positive legal writing. In this case, the research concentrates on written legal materials related to corruption crimes, specifically the PTPK Law and the PPTPPU Law.

[1] Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660.

Given the normative writing approach, this study employs a statutory approach. Additionally, to enrich legal discussions, a case approach is also used, particularly focusing on corruption cases that occurred during the Covid-19 pandemic, such as the corruption case of former Social Minister Juliari P. Batubara concerning COVID-19 social assistance.

The legal materials used in this research consist of primary and secondary legal materials. The primary legal materials include the PTPK Law and the PPTPPU Law. Meanwhile, the secondary legal materials comprise sources that explain the primary legal materials, such as textbooks, legal journals, and expert opinions. To facilitate the discussion, the information is collected through a systematic process, starting with the PTPK Law and PPTPPU Law, followed by legal journals and textbooks related to corruption and money laundering crimes, which are then analyzed in connection with the case. The collected legal materials are processed as needed to serve as discussion material.

RESULT AND DISCUSSION

The Urgency of Implementing the Law on the Crime of Money Laundering in Handling Corruption Crimes Related to State Financial Losses

An act can be considered a criminal act if it is regulated in legislation. A criminal act, or strafbaar feit, is an act that contains elements of "actions that can be criminalized" and "criminal responsibility of the perpetrators." Simply put, no criminal punishment can be imposed on a person unless these two elements are clearly met.

Corruption is an act committed by an individual or another party within a company that causes harm to the state's finances or economy. Therefore, its eradication must be carried out in a structured manner. The legal basis for this is the PTPK Law, which was specifically established to regulate corruption-related laws.

Money laundering involves the enjoyment or use of proceeds from a crime.[2] The proceeds in question are not limited to money or funds but may also include movable or immovable assets, such as land, as well as tangible or intangible assets, including intellectual property rights (HAKI). Money laundering is categorized into two types: active and passive. Active money laundering involves committing prohibited acts (commission), while passive money laundering refers to the failure to perform required actions (omission). Active money laundering is addressed in Articles 3 and 4 of the PPTPPU Law, whereas passive money laundering is covered under Article 5 of the same law. In principle, money laundering offenses consist of three stages:

1. Placement – Introducing proceeds of crime into the financial system.

[2] M. Arief Amrullah, *Tindak Pidana Pencucian Uang Dalam Perspektif Kejahatan Terorganisasi Pencegahan Dan Pemberantasannya* (Jakarta: Kencana, 2020).

2. Layering – Transferring or changing the form of funds through complex financial transactions to obscure the origin of the funds.
3. Integration – Returning funds that appear legitimate to their owners so they can be safely used.[3]

Money laundering is closely linked to predicate offenses, which involve actions such as transferring, spending, gifting, or exchanging proceeds from a crime. The two key principles in money laundering crimes are the existence of a predicate offense and the proceeds of crime. The legal basis for this is the PPTPPU Law. Predicate crimes in money laundering involve proceeds obtained from criminal acts, as outlined in Article 2, Paragraph (1), letters a to z of the PPTPPU Law. Specifically, Article 2, Paragraph (1), letter a of the PPTPPU Law mentions assets obtained from corruption, demonstrating the strong connection between money laundering and corruption. Consequently, law enforcement authorities can apply the PPTPPU Law in relevant cases.

However, in practice, law enforcement officers often rely solely on the PTPK Law when prosecuting corruption cases. This is evident from Supreme Court decisions: in 2019, there were 27 rulings on money laundering crimes and 2,251 rulings on corruption crimes. In 2020, there were 31 rulings on money laundering and 1,849 rulings on corruption crimes.

The Relationship Between Law Enforcement Against Criminal Acts of Corruption and the Implementation of the Law on Money Laundering in Reimbursement of State Financial Losses

Law enforcement is an effort to establish norms while upholding the values behind them. Therefore, law enforcers must understand the legal authority that enacts the legislation to be enforced. It is an effort to prevent and eradicate money laundering crimes through criminal law, as formulated in the PPTPPU Law, which must then be operationalized, implemented, and enforced.

Money laundering crimes not only threaten stability but also the nation and the state, which are based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Therefore, financial loss recovery requires legal instruments to ensure certainty. Once recovered, the funds deposited into the state treasury can be utilized for the national interest of Indonesia.[4]

In 2020, state financial losses reached IDR 56.7 trillion, a significant increase from 2019, when losses were approximately IDR 12 trillion. The mechanism for returning state losses is administratively regulated in Law No. 1/2004 concerning the State Treasury. Efforts to recover state losses through civil law instruments are regulated in the PTPK Law. These efforts follow an ordinary

[3] Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, Publishing, 2017).
[4] Muh. Afdal Yanuar, *Tindak Pidana Pencucian Uang Dan Perampasan Aset* (Malang,: Setara Press, 2021).

civil process, meaning lawsuits against corruptors (suspects, defendants, convicts, or their heirs) must go through formal legal procedures. Criminal cases of corruption are prioritized for examination, whereas civil lawsuits related to corruption do not hold the same priority. Criminal law differs significantly from administrative and civil law instruments; recovering state losses through criminal law is more stringent.[5] Even if perpetrators return the lost funds during the investigation process, criminal liability remains.[6]

Before the Constitutional Court Decision No. 25/PUU-XIV/2016, the PTPK Law defined corruption as a formal offense under Articles 2 and 3. This meant that state officials could face criminal sanctions and be required to pay compensation for financial losses, even if the losses were only potential and had not yet occurred. Since corruption was formulated as a formal offense, returning state losses did not eliminate criminal charges. However, after the Constitutional Court's decision, the word "can" was removed from Article 2, Paragraph (1), and Article 3 of the PTPK Law, as it was deemed unconstitutional and not legally binding. Additionally, the application of the element of financial loss shifted to emphasize actual consequences rather than mere actions. Consequently, what was initially classified as a formal offense transformed into a material offense.

Juridical Analysis of Corruption Crimes in Decision on Case No. 29/PID.SUS-TPK/2021/PN JKT

The legal case raised by the researcher concerns the bribery case related to Covid-19 social assistance, carried out by former Minister of Social Affairs, Juliari Batubara. During the trial on April 24, 2021, the KPK prosecutor revealed a flow of funds in the form of fees to Cita Citata in the alleged bribery case involving the procurement of Covid-19 social assistance at the Ministry of Social Affairs. According to the indictment, the prosecutor stated that part of the social assistance fund fee was used to rent a private jet, costing approximately IDR 900,000,000. Furthermore, the indictment detailed several fees from the Covid-19 social assistance funds that Juliari Batubara misused through Matheus Joko Santoso and Adi Wahyono, including the purchase of mobile phones for Ministry of Social Affairs officials amounting to IDR 140,000,000, payment of swab test fees at the Ministry of Social Affairs amounting to IDR 30,000,000, purchase of Qurban amounting to IDR 100,000,000, payment for food and drink accommodation for the social assistance team, volunteers, and monitoring team totaling IDR 200,000,000, payment for food and drink for leadership amounting to IDR 130,000,000, purchase of two Brompton bicycles for IDR 120,000,000, and operational activities of the Directorate of Social Protection for Victims of Social Disasters totaling IDR 100,000,000.

[5] Andi Hamzah, *Perundang-Undangan Pidana Tersendiri (NonKodifikasi)* (Depok: Rajagrafindo Persada, 2019).
[6] Adami Chazawi, *Pelajaran Hukum Pidana Bagian I Stetsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, Dan Batas Berlakunya Hukum Pidana,* (Depok: Rajagrafindo Persada, 2014).

In this case, the public prosecutor filed an alternative indictment under Article 12 letter b in conjunction with Article 18 of Law No. 31/1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No. 20/2001, in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code, and in conjunction with Article 64 Paragraph (1) of the Criminal Code, or Article 11 in conjunction with Article 18 of Law No. 31/1999 on the Eradication of Corruption Crimes, as amended by Law No. 20/2001, in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code, and in conjunction with Article 64 Paragraph (1) of the Criminal Code. Based on these indictments, the judge ruled that Juliari Batubara was legally and convincingly proven guilty of committing corruption in a joint and continuous manner as an alternative charge to the public prosecutor's indictment.

The juridical analysis conducted by the researcher indicates that Juliari Batubara's actions are closely related to money laundering. This argument is based on the prosecutor's revelation during the trial on April 24, 2021, that there was a flow of fee money from social assistance funds, which was also used to rent a private jet, purchase mobile phones, pay for swab tests, fund Qurban purchases, cover food and drink expenses, accommodate the social assistance team, purchase Brompton bicycles, and fund operational activities. In this case, the public prosecutor should have been more active and meticulous in examining the legal events, ensuring that the indictment accurately reflected the facts, as the indictment serves as the basis for court proceedings. The researcher further argues that this case involves independent crimes−corruption in the form of bribery and money laundering. The follow-up crime in this case includes spending, paying, and converting assets derived from criminal acts. Therefore, the charges of corruption and money laundering should have been compiled cumulatively.

From a legal perspective, each offense must be proven individually, even when adjusted to regulations on concursus in Articles 63 to 71 of the Criminal Code. It is essential to consider the combined regulations and theories when compiling charges. Additionally, Article 75 of Law No. 8/2010 states: "In the event that investigators find sufficient preliminary evidence of money laundering and predicate offenses, the investigator combines the investigation of the predicate crime with the investigation of money laundering and notifies the PPATK." This provision indicates that these two crimes constitute a concursus realis (meerdadse samenloop). Article 12B of the PTPK Law imposes a maximum imprisonment of 20 years and a fine of IDR 1,000,000,000 (one billion rupiahs). Meanwhile, Article 3 of the PPTPPU Law imposes a maximum imprisonment of 20 years and a fine of IDR 10,000,000,000 (ten billion rupiahs).

By applying the PTPK Law and PPTPPU Law in this case and structuring the indictment as a cumulative charge, the defendant faces a prison sentence of 20 years and a fine of IDR 10,000,000,000, excluding additional penalties such as

asset confiscation and revocation of certain rights.[7] Reviewing this case, which the researcher raised regarding the COVID-19 social assistance bribery scandal involving former Minister of Social Affairs Juliari Batubara, it is evident that fines and compensation payments will go to the state treasury. This, in turn, can help improve the economy and optimize the recovery of state financial losses.

Inspections in Money Laundering Cases

Inspection in money laundering cases is carried out by inspectors of predicate crimes in accordance with procedural law and statutory provisions, unless otherwise stipulated by the PPTPPU Law. These inspections play a crucial role, particularly in line with the philosophy behind criminalizing money laundering. Anti-money laundering efforts serve as a strategy to uncover predicate crimes by first tracking financial movements through money laundering offenses, applying anti-money laundering measures to trace crimes from downstream to their origins.

The PPTPPU Law expands the scope of evidence, allowing reports on analysis results (LHA) from the Financial Transaction Analysis Reporting Center (PPATK) to be used as evidence. As stipulated in Article 75 of the PPTPPU Law, when inspectors find sufficient preliminary evidence of money laundering and predicate offenses, they must inform the PPATK.

It is important to note that inspectors do not always have to wait for an LHA from the PPATK. They may conduct an earlier inspection into suspected money laundering even if the LHA is not yet available.[8] For instance, if an inspector already has preliminary evidence of corruption and has identified a suspect for both the predicate crime and money laundering offenses, they can immediately request the suspect's financial information from a relevant bank based on their investigation. The authority to temporarily halt transactions, block accounts, request asset information, or seize assets related to money laundering is also granted to public prosecutors and judges, depending on the stage of the legal process.

Regarding the role of prosecutors in money laundering cases, it is essential to emphasize that one of the key principles is addressing both the crime itself and the criminal intent behind it. Money laundering is inherently linked to predicate crimes, requiring a strategic approach to prosecution. Since recovering stolen assets or enforcing replacement payments under the PTPK Law is challenging, applying money laundering laws in predicate crime cases can enhance asset recovery efforts.

Furthermore, the simultaneous indictment of both the predicate crime and the money laundering offense is outlined in Article 75 of the PPTPPU Law. This

[7] Sadjijono H & Bagus Teguh Santoso, *Hukum Kepolisian Di Indonesia,* (Surabaya,: Laksbang Pressindo, 2017).
[8] Yenti Garnasih, *Penegakan Hukum Anti Pencucian Uang Dan Permasalahannya Di Indonesia* (Jakarta: Rajawali Pers, 2019).

provision recognizes the concept of realis concursus (meervoudige samenloop), ensuring that offenders are not only prosecuted under the original crime but also under the PPTPPU Law for enjoying the proceeds of their offenses.[9]

By merging charges, asset tracking and recovery can be expedited, reducing the risk of complications or loss of evidence. The legal basis for this merger is not only the principle of realis concursus but also provisions in the Criminal Procedure Code. The preparation of a cumulative indictment should align with the concursus realis framework, as regulated in Articles 65, 66, and 70 of the Criminal Code.

The Role of Judges in Deciding Money Laundering

A judge's decision, better known as one of the prosecution's efforts, can also serve as a legal mechanism to prevent corruption and money laundering. This is evident in the Constitutional Court Decision, which imposes restrictions on individuals running for the Regional Representative Council (DPD), House of Representatives (DPR), Regional House of Representatives (Provincial, Regency, or City), regional head and deputy regional head, as well as former convicts sentenced to five or more years in prison, including those convicted of corruption and money laundering.[10]

The court examination of money laundering cases significantly differs from the process outlined in the Criminal Procedure Code. According to Articles 77 and 78 of the PPTPPU Law, defendants are required to prove that their assets are not the proceeds of a criminal act. The law on evidence in money laundering cases broadens the scope and strength of admissible evidence beyond what is prescribed in the Criminal Procedure Code. Specifically, the PPTPPU Law allows additional types of evidence beyond those listed in Article 184 of the Criminal Procedure Code.

In seeking justice for cases initiated by allegations and prosecutions, the role of the judge is crucial. Court examinations of money laundering cases follow the in absentia judicial system. In accordance with the principles of the PPTPPU Law, the focus is not only on prosecuting and punishing perpetrators ("follow the suspect") but also on tracing and recovering illicit assets ("follow the money"), as stated in Article 79(4) of the PPTPPU Law. This provision aims to prevent the defendant’s heirs from controlling or owning assets obtained from criminal activities. Additionally, it serves as a means of recovering state assets when financial losses to the state have occurred.

Furthermore, under Article 81 of the PPTPPU Law, if sufficient evidence indicates the existence of undiscovered assets, the judge may order the public

[9] Ade Mahmud, *Pengembalian Aset Tindak Pidana Korupsi Pendekatan Hukum Progresif* (Jakarta: Sinar Grafika, 2020).
[10] Oly Viana Agustine, “Judge Decision as an Engineering Tool in the Prevention of Corruption and Money Laundering,” *Asia Pacific Fraud Journal* 1, no. 1 (February 3, 2017): 113, http://apfjournal.or.id/index.php/apf/article/view/9.

prosecutor to seize them. Although the PPTPPU Law does not explicitly regulate the confiscation of assets in money laundering cases, such procedures are governed by Supreme Court Regulation (PERMA) No. 01/2013, which outlines the process for handling assets linked to money laundering or other crimes.

Asset Forfeiture in Model Regime of Money Laundering

In the disclosure of criminal acts and perpetrators of money laundering, the focus is on following the money or financial transactions. However, in the concept of anti-money laundering, the perpetrator and the proceeds of the crime can be identified through a search so that the proceeds of the crime are confiscated for the state or returned to the rightful person. Therefore, assets suspected to be the proceeds of crime require a more modern asset management model than a mere conventional approach.

According to Muh. Afdal Yanuar, asset forfeiture is not only about seizing the proceeds of crime but also involves a broader concept within the anti-money laundering regime as a system. This includes both punitive and administrative measures. Asset seizure in this context refers to a property management system aimed at securing assets acquired, controlled, or illegally owned, either through administrative or judicial processes. This definition can be interpreted as a dimension of asset forfeiture in a broad sense, with its foundation based on the asset forfeiture system.

In the opinion of Muh. Afdal Yanuar, asset confiscation is not limited to the seizure of criminal assets but extends to a more general concept that forms part of the anti-money laundering regime. This system encompasses both punitive and administrative measures and is intended to take strategic steps to obtain assets that have been illegally acquired, controlled, or owned, whether through administrative or judicial processes. This definition can be understood as an aspect of asset forfeiture in a broader sense, with its foundation based on the asset forfeiture system.

The asset confiscation system in the anti-money laundering regime can take the form of administrative forfeiture and judicial forfeiture, along with their various derivatives for handling asset confiscation. The entire implementation of asset forfeiture is aimed at recovering assets that have been illegally obtained by those whose assets are seized. The imposition of administrative sanctions, which represent administrative asset forfeiture, is outlined in Article 13 of Government Regulation No. 99/2016. This article includes provisions on administrative sanctions for failing to notify the presence of cash or other payment instruments that are required to be declared according to the amount being carried.

The handling of instruments under the PTPK Law and the PPTPPU Law concerning money laundering offenses linked to predicate crimes of corruption is interconnected to maximize asset confiscation. The provisions of the PPTPPU Law can be applied to enhance asset tracking for suspected proceeds of criminal

acts, while the provisions of the PTPK Law, particularly Article 18, can be utilized to maximize the value of confiscated assets. According to Oemar Seno Adji, as cited by Muh. Afdal Yanuar, this provision extends the range of objects that can be confiscated beyond those specified in Article 39 of the Criminal Code. This means that even assets not belonging to the defendant can be confiscated, although with the limitation that confiscation does not apply if the third party's rights are protected in good faith.

To ensure coherence in law enforcement, it is necessary to establish regulations regarding asset confiscation as a system. This should include legal options defined under a legal framework, such as the ratification of the Draft Law (RUU) on Asset Confiscation. Until this bill is enacted, law enforcement agencies will continue to have discretionary space in interpreting and implementing asset confiscation laws.

Furthermore, civil forfeiture is a model of asset confiscation in which the subject does not need to be proven to have committed a crime. If it is suspected that assets originate from criminal activity, the state can proceed with confiscation by filing a lawsuit against the assets (in rem) in court, without needing to prove that the individual committed a criminal act. This concept is cited by Muh. Afdal Yanuar through the Financial Transaction Reports & Analysis Center.

Internationally, civil forfeiture is typically conducted through an in rem asset forfeiture approach, as practiced in countries such as the United States and Australia. The in rem legal procedure is widely recognized in the United States and is recommended by the World Bank for use in Indonesia to combat crimes that generate high-value assets and ensure their confiscation. This approach is particularly crucial for asset recovery in cases where the perpetrator has died, left the jurisdiction, or is immune from investigation or prosecution.

In practice, Indonesia has handled cases using the in rem asset forfeiture approach. Juridically, in rem asset forfeiture is outlined in Articles 64-67 of the PPTPPU Law, as well as in Supreme Court Regulation No. 1/2013 on the Procedures for Settlement of Applications for Assets in Money Laundering Crimes and Regulation of the Head of PPATK No. 18/2017 on the Implementation of Temporary Suspension and Postponement of Transactions by Financial Service Providers. In civil forfeiture, besides the in rem approach, asset confiscation can also be carried out through a personal approach (in personam), where a civil suit is filed directly against an individual suspected of controlling illegal assets. Currently, this approach is primarily found within anti-corruption regimes.

Implemented Civil Forfeiture in Indonesia

The forgery case involving an email by Foshan Zebro was tried and decided in court. In this case, the judge ruled that Jinxiang County was entitled to the property held in the account under the identity of Foshan Zebro Ltd at the State

Savings Bank, amounting to IDR 2,000,000,000 (two billion rupiah). The State Attorney filed a lawsuit against H.M. Suharto (Defendant I) and the Supersemar Scholarship Foundation (Defendant II). At the time, H.M. Suharto served as the Chairman of the Foundation. The lawsuit concerned the defendants' irregular handling of state-owned funds collected under Government Regulation No. 15/1976, which required all state-owned banks to allocate 2.5% of their net profit to the foundation. Among the arguments presented in the legal posita, the State Attorney, as the petitioner in the case, highlighted these irregularities.

CONCLUSION

Money laundering cases related to criminal acts of corruption have a close connection, making it essential to apply the proper methods in eradicating corruption. One such method is the application of the UU PPTPPU. This law not only punishes both active and passive perpetrators but also traces the flow of funds obtained from criminal activities, from downstream to upstream. This approach helps optimize the confiscation of criminal assets and indirectly contributes to recovering state financial losses.

The application of the UU PPTPPU aims to recover state financial losses by tracing and confiscating assets derived from crime at all stages−placement, layering, and integration. These legal actions are carried out through investigations by law enforcement officers, prosecutions by prosecutors, and trials leading to judicial decisions.

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