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Analysis of Evidence for the Crime of Money Laundering That Does Not Require Preliminary Proof of the Predicate Crime

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ABSTRACT

This study aims to analyze the the Legislative Ratio Article 69 UURI No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering that Does Not Require Proof of Excess Preliminary Crime in the Crime of Money Laundering. The research was conducted using a normative juridical research method using a statutory approach, a case approach, and a conceptual approach. The results of the study indicate that the process of handling money laundering cases is essentially very dependent on the original crime as contained in the provisions of Article 2 UURI No. 8 of 2010 which is an element in the crime of money laundering must come from a criminal act. In line with the above basis, Article 69 has been formulated which reads "In order to be able to carry out investigations, prosecutions, examinations in court proceedings against the crime of money laundering, it is not necessary to first prove the original crime". Where the crime of money laundering can be investigated, prosecuted, and brought to court without having to first prove the original crime and not having to wait for the verdict of the predicate crime which has permanent legal force (inkracht).

ABSTRAK

Penelitian ini bertujuan untuk Menganalisis mengenai *Rasio Legis* Pasal 69 UURI No 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang Yang Tidak Mewajibkan Pembuktian Terlebih Dahulu Tindak Pidana Asal dalam Tindak Pidana Pencucian Uang. Penelitian dilakukan dengan metode penelitian yuridis normatif dengan menggunakan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa proses penanganan perkara tindak pidana pencucian uang pada hakikatnya sangat bergantung dengan tindak pidana asalnya sebagaimana terdapat dalam ketentuan Pasal 2 UURI No. 8 Tahun 2010 yang merupakan unsur dalam tindak pidana pencucian uang haruslah berasal dari tindak pidana. Sejalan dengan landasan tersebut diatas telah dirumuskan Pasal 69 yang berbunyi "Untuk dapat dilakukan penyidikan, penuntutan, pemeriksaan di sidang pengadilan terhadap tindak pidana pencucian uang tidak wajib dibuktikan terlebih dahulu tindak pidana asalnya". Dimana tindak pidana pencucian uang dapat disidik, dituntut, dan dibawa ke pengadilan tanpa harus membuktikan terlebih dahulu tindak pidana asalnya dan tidak wajib menunggu putusan tindak pidana asal yang telah berkekuatan hukum tetap (*inkracht*).

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I. INTRODUCTION

Laundry companies were used by the mafia to bleach/launder money earned through illicit acts by purchasing companies' laundry, giving the impression that the money they receive came from the laundry company. This practice originally occurred in the United States in the early 20th century (Jahja, 2012).

One of the nations that is particularly vulnerable to becoming a money laundering target is Indonesia. This is because of a number of potential drivers of money laundering in Indonesia, including social system flaws, legal gaps in the financial system, a free foreign exchange market, foreign exchange traders, foreign countries, and internationalized banking networks. Given how seriously it affects the stability of the nation's economy, a lot of nations have enacted very stringent legislation to combat money laundering (Ayumiati, 2012).

Money laundering is a crime that has become more complex over time, has permeated many different industries, crosses jurisdictional boundaries, and employs a variety of more sophisticated methods. The Financial Action Task Force (hereinafter referred to as FATF) on Money Laundering has released an international standard known as the Revised 40 Recommendations and 9 Special Recommendations that is a measure for every country in the prevention and eradication of money laundering and terrorism financing crimes. (Updated 40+9) Regarding the expansion of reporting parties (reporting parties), among others, the FATF has included traders in precious metals, gems, and jewelry as well as auto dealers. Through bilateral or multilateral forums, regional and international collaboration is required to prevent and eradicate the crime of money laundering in order to lessen the severity of criminal acts that produce or involve enormous sums of wealth.

It is vital for law enforcement to adopt proactive measures in partnership with financial institution authorities and the Financial Transaction Reports and Analysis Center or sometimes known as FTRAC in order to foresee the development of money laundering offenses in the future, especially in Indonesia (hereinafter abbreviated as PPATK). With the passage of Law of the Republic of Indonesia (hereinafter abbreviated as UURI) Number 15 of 2002 concerning the Crime of Money Laundering (UURI TPPU 2002), which was later revised by UURI Number 25 of 2003, and since October 22, it has been renewed by UURI Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinaf), Indonesia criminalized money laundering in an effort to prevent and eradicate it (Garnasih, 2015).

Predicate crimes or offenses are those that lead to criminal proceeds or proceeds of crime that are later laundered, according to Barda Nawawi Arief (Arief., 2004). It is clear from the description above that there is a direct connection between money laundering and the underlying crimes. A money laundering crime will not take place if it is not preceded by a predicate crime since the purpose of a money laundering crime is property obtained through a predicate crime. Therefore, it is impossible for a money laundering crime to take place without a predicate crime (Halif, 2017).

Regarding the money laundering principle, there can be no money laundering crime without the initial crime (no money laundering without a core crime), but there are issues that arise, specifically the provisions of Article 69, which state that there is no requirement for a proven main crime to prosecute and convict the offenders. According to UURI TPPU 2010's Article 69, "It is not essential to first establish the initial crime in order to conduct investigations, prosecutions, and examinations in court procedures against the crime of money laundering."

The item is written in such a way as to make it simpler to prove the crime of money laundering, but because this is obviously not the case, does this provision also imply that it is not required to look for evidence of the crime of origin when investigating the crime of money laundering? Additionally, it has been highlighted in Article 69 of UURI TPPU 2010 which states that "It is not essential to first prove the original crime in order to be allowed to carry out investigations, prosecutions, and exams in court against money laundering offences."

However, in actual law enforcement practice, money laundering is frequently regarded differently

in terms of the proof and whether or not it is required to first show the primary offenses. The act of concealing, masking, or embezzling the proceeds of a crime, for instance, whose origin is a criminal act of corruption, is unquestionably not a requirement for it to be established that the crime of corruption be first proven. In other words, the legal process or the criminal act does not have to be separated (spiltsing) while awaiting the predicate crime court decision inkracht. This is because the growth of law enforcement for the crime of money laundering does not become a requirement to show the predicate crime (RI., 2021)

II. RESEARCH METHODS

This kind of study employs normative legal research (normative legal research method). Legal research that uses secondary data or library resources is known as normative legal research (Soekanto & Mamudji, 2003). Legal doctrinal research is another name for normative legal study. In order to find a legal rule of law, legal doctrines, and legal principles, normative legal research is a procedure, according to Peter Mahmud Marzuki (Marzuki, 2013).

The author of this paper employs three different problem-solving methodologies: the statutory approach, the case approach, and the conceptual approach. In essence, this statutory method entails a review of all laws and regulations pertinent to the difficulties (legal issues) that are being faced (Irwansyah & Yunus, 2021).

This study's legal analysis will make use of qualitative analysis, looking at all the data gathered from primary, secondary, and tertiary legal sources before connecting it to concepts, legal theories, and the creation of laws. so that conclusions can be made in order to address the research's intended problems.

III. RESULTS AND DISCUSSION

Legislative Ratio Article 69, which exempts money laundering from the need for preliminary evidence of underlying crimes.

Formulation UURI No. 8 of 2010 was created with a focus on money laundering prevention and eradication.

Money laundering has become a more sophisticated crime that now involves entities outside of the financial system, transcends jurisdictional lines, and has even infiltrated various industries. To counter this, the global organization that deals with money laundering, the Financial Action Task Force (FATF) on Money Laundering, has released worldwide guidelines as a benchmark for each nation in combating money laundering and terrorism funding offences. Since the passage of Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering (UURI TPPU 2002), as amended by UURI Number 25 of 2003 concerning Amendments to UURI Number 15 of 2002 concerning the Crime of Laundering, money laundering has been dealt with in Indonesia. Money, and lastly by adhering to the FATF International Standard on Money Laundering, UURI Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, also known as UURI TPPU, 2010 was born (Yurizal, 2017).

According to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1998 (The Vienna Convention, 1988), also known as the 1988 Vienna Convention, only assets derived from drug and psychotropic crime were eligible at the beginning of the history of the emergence of the international anti-money laundering legal regime (Garnasih, Penegakan Hukum Anti Pencucian Uang dan Permasalahannya di Indonesia, 2015). The Financial Action Task Force on Money Laundering (hereafter referred to as FATF) was founded in Paris in 1989 by members of the G-7 group to further explore the nature of money laundering. Governments are required to properly execute anti-money laundering programs as one of the FATF's responsibilities. The forty FATF recommendations outline the necessity to address all pertinent components of anti-money laundering activities (Amrullah., 2020).

The FATF added Indonesia to its list of non-cooperative nations and territories (hereinafter referred to as NCCTs) on June 22, 2001. This was done because Indonesia lacks laws that make money laundering illegal and regulations that apply to non-financial institutions that follow the principle of knowing your customer. banks, a lack of international collaboration to combat money laundering crimes, and a limited competence to combat money laundering offenses (Husein, 2008).

The FATF, it turns out, believes that the 2002 UURI for money laundering is not in compliance with international standards and that revisions are therefore necessary. UURI 2003 made changes to UURI 2002's money laundering offenses (Wiyono, 2014). The management of money laundering in Indonesia, which started with the ratification of the 2002 UURI ML as amended by the UURI 2003 concerning Amendments to the 2002 UURI ML, has shown a positive direction, but is still not optimal due to the growing diversity of interpretations, legal loopholes, and less strict sanctions.

As a result, as of October 22, 2010, UURI 2002 ML, as revised by UURI 2003 ML, is deemed invalid and has been superseded by UURI 2010 ML (State Gazette of the Republic of Indonesia Year 2010 Number 122, effective as of October 22, 2010). With the adoption of the Law on Criminal Acts Money Laundering, the articles of this law now encompass the proceeds of crime obtained from, for instance, Criminal Acts of Corruption. The goal is to establish UURI 2002 on money laundering and update UURI 2003 and 2010 on money laundering based on a number of factors, including the fact that crime committed both within Indonesia and beyond international borders has increased assets. Given the size of the assets acquired, efforts have been made to cover up or obscure the source of assets obtained by illicit activity in a number of different ways. To preserve national economic stability and national security, these initiatives must be stopped and eradicated in order to reduce the extremely high crime rate for wealth-producing. Additionally, regional and global cooperation through bilateral and multilateral platforms is required for prevention and eradication. As things are, the crime is sustained by other multinational organized criminals.

On the other hand, improvements also aim to satisfy domestic needs and conform to global norms. Consequently, among other things, UURI 2010 ML contains crucial information (Kristiana, 2015):

a. A new definition for terms pertaining to the crime of money laundering;
b. The criminalization of money laundering is complete.
c. Rules governing the application of administrative and criminal punishments.
d. Improving how the idea of recognizing service consumers is applied.
e. The reporting party's growth.
f. Choosing the appropriate reporting format from other goods and/or service providers.
g. Arrangements for monitoring compliance.
h. Granting the reporting party the right to stall transactions.
i. Extending the Directorate General of Customs and Excise's ability to transport money and other payment instruments into or out of the customs area.
j. Giving investigators of primary crimes the power to look into claims of money laundering
k. A larger number of institutions are now eligible to receive the findings of the PPATK analysis or examination.
l. PPATK institution reorganization.
m. Addition of PPATK's power, including the power to pause transactions momentarily.
n. Reorganization of the procedural law to examine offences including money laundering, and.
o. laws governing the forfeiture of assets obtained through illegal activity.

Perumusan Pasal 69 Undang-Undang Nomor 8 Tahun 2010 Formulation the Article 69 of Law Number 8 of 2010

The procedural law that is applied is the procedural law as regulated in UURI Number 8 of 1981 concerning Criminal Procedure Code and other laws and regulations. This is true for investigations, prosecutions, and trial examinations at the District Court, High Court, and Supreme Court stages, as well as to the implementation of decisions. applicable law, unless expressly indicated in this Law

or a more particular Law. Accordingly, it is specified in UURI 2010 ML's Article 68, which says the following:

"Investigations, prosecutions, and examinations in court sessions as well as the implementation of decisions that have obtained permanent legal force against criminal acts as referred to in this Law are carried out in accordance with the provisions of laws and regulations, unless otherwise stipulated in this Law".

In keeping with the quote from the article above, unless specifically provided for in this legislation, the investigation, prosecution, and examination in court of the crime of money laundering are also based on the provisions in the Criminal Procedure Code and the laws and regulations. Understanding that money laundering is fundamentally a crime that depends heavily on the existence of a predicate crime is important before considering cases of money laundering. Even if the crime of money laundering is really a separate criminal, it needs to be seen as a subsequent or supplementary crime, as a subsequent or additional crime that starts with a predicate offense. According to the rules of Article 2 of UURI 2010, ML demonstrates that assets used as components of a money laundering crime must be the result of the crimes mentioned in the article (Eddyono & Chandra, 2015).

In accordance with the philosophical underpinning of the legal regime for the crime of money laundering, which is oriented to follow the money and not to follow the suspect, the 2010 UURI TPPU compilers have formulated that predicate crimes are not required in order to conduct investigations, prosecutions, and courtroom examinations. first establish the initial offense. Following is the full text of Article 69 UURI 2010 ML:

"It is not essential to first establish the crime of origin in order to conduct investigations, prosecutions, and examinations in court procedures against the crime of money laundering."

This means that a crime like money laundering can be looked into, prosecuted, and brought to court without needing to establish the original crime first. For instance, it is not essential to wait for evidence of the original crime in the form of a corruption crime before conducting an investigation, filing a lawsuit, and conducting a trial examination of a money laundering crime case where the predicate crime is a criminal act of corruption.

The provisions of Article 69 are meant to demonstrate that the crime of money laundering, which is mentioned in Articles 3, 4, and 5, is a separate offense whose legality is independent of other criminal laws. This demonstrates how Article 480 of the Criminal Code and the crime of money laundering are comparable. In other words, it is not essential to first establish the presence of a theft offense when looking into a criminal act of detention.

As was already established, the 2010 UURI for ML's Article 69 states that the money laundering regime's goal is to "follow the money, not the suspect." The investigation and prosecution of money laundering only becomes a weighing sentence imposed on the defendant in the main trial if the structure thinks that the predicate offense needs to be demonstrated first. This money laundering criminal system was created with the intention of penalizing those who commit money laundering crimes and recovering assets obtained through such crimes without first prosecuting those who committed the initial crime. Predicate crimes are not a component of money laundering as defined in Articles 3, 4, and 5, hence they do not need to be established during an examination in court. This is in reference to the absence of a requirement to prove predicate offenses during investigation, prosecution, and examination in court. In addition to other factors, assets that are the outcome of the predicate crime must also be demonstrated to be part of the money laundering crime.

Regarding the implementation of the provisions of Article 69 of the 2010 UURI TPPU, which states: "It is not necessary to first establish the crime of origin in order to conduct investigations, prosecutions, and examinations in court proceedings against the crime of money laundering," there are 2 (two) options, namely:

a. The predicate crime does not have to be shown first if the crime of money laundering is tried in a separate case without the inclusion of the predicate crime.

b. If the handling of the money laundering crime is discovered to contain the predicate crime, the two are integrated into one case file and then moved to one indictment, which will then be proven at trial.

However, this has resulted in a protracted discussion regarding the wording of Article 69 of the 2010 UURI for money laundering, which is less definitive in nature as can be seen in the history of the creation of Article 69 of the 2010 UURI for money laundering, namely the minutes of the trial of the draft UURI Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering by the Council. The People's Representatives (hereafter referred to as DPR) of Rhode Island each brought two experts to the General Hearing Meeting on May 19, 2010, to hear their thoughts on the draft law on the prevention and eradication of the crime of money laundering. Prof. Marjono Reksodiputro, Prof. Bismar Nasution, Sutan Remy Sjahdeini, SH, and Dr. Yenti Garnasih, SH, MH.

Prof. Sutan Remy Sjahdeini, SH provided little commentary during this public hearing session because he had already written out his viewpoint, and the presentation was then continued with the discussion of Article 69 of the 2010 UURI TPPU proposed by Prof. Marjono Reksodiputro, whose contents are as follows:

"The investigation, prosecution, and court examination are not required to be demonstrated before the predicate offence in this article. Article 480 of the Criminal Code, specifically its provisions involving detention, should be mentioned in the explanation of this article. Heconsheiling, or healing shelter. The goal is to stop someone from profiting off of someone else's crime. Therefore, it is not necessary to demonstrate that the items seized are stolen in order to pursue the unlawful act of detention in a criminal court. It is reasonable to assume that the wealth comes from crime as long as he is aware of this".

The author might infer from the presentation of the Public Hearing Meeting connected to Article 69 of the 2010 UURI TPPU above that it is not essential to establish the predicate crime first throughout the investigation, prosecution, and court examination. The idea of treason as defined in Article 480 of the Criminal Code is comparable to but distinct from that of Article 69 of UURI 2010 TPPU. So that investigations, prosecutions, and court hearings on the crime of money laundering can be conducted without having to wait for a court decision with lasting legal effect or an inkrach.

In this scenario, a holistic and thorough understanding of the contents of Article 69 is required in order to comprehend its requirements. Since the text of this article states that "it is not mandatory to prove it first," it is clear that the intention is that the original crime need not be proven in order to conduct an investigation, bring a case, or testify in court. However, it must be understood and carefully read that the word "first" is used to clarify more about the timing of the original crime's proof.

According to Article 75 of the 2010 UURI for money laundering, which is a continuation of Article 69, demonstrating a predicate crime must be done concurrently with proving money laundering, which is regarded as a concursus realis crime. The Criminal Code's Article 65, Paragraph 1 formulates the realist concursus. It is also known as a samenloop van delicten, or a series of crimes, in criminal law. Concursus realis can be seen as a combination (combination) of various acts, each of which must be regarded as a separate act and has satisfied the requirements for the creation of a criminal act covered by the Criminal Law. Therefore, the idea behind the criminal act of money laundering is similar to the idea behind the criminal act of embezzlement in that there is no requirement to first establish, prosecute, and punish the perpetrator of the theft before penalizing the person who collects.

According to the law, the applicant's petition's claim that the wording "predicate offenses do not have to be established first" in Article 69 of the 2010 UURI for ML violates the 1945 Constitution of the Republic of Indonesia is unfounded in light of the aforementioned factors. As a result, the entire application was denied according to the Constitutional Court's Decision Letter.

Almost all countries have anti-money laundering regimes that treat money laundering as a crime that does not depend on the crime of origin in terms of how the money laundering investigation process is carried out, despite the fact that the crime of money laundering is born from or stems from the crime of origin. Article 2 of the 2010 UURI TPPU's definition of the predicate offenses is only intended to demonstrate that the assets used in the crime of money laundering come from the crimes covered by the article. According to the wording of UURI 2010's money laundering Articles 3, 4, and 5, there is a degree of "predictability" in terms of asset identification, indicating that it is not essential to establish the predicate offense before examining the money laundering offence. As a result, since money laundering is a separate offense, examination in money laundering cases does not violate the presumption of innocence. In order to begin the process of reviewing the crime of money laundering, the Law on the Offense of Money Laundering does not need to be established prior to the initial crime.

IV. CONCLUSIONS

According to Article 69 UURI No. 8 of 2010: "It is not essential to first establish the initial crime in order to conduct investigations, prosecutions, and examinations in court procedures against the crime of money laundering." The phrase "It is not essential to prove it beforehand" means that a court ruling against the underlying crime need not already have permanent legal effect in order for the investigation, prosecution, and court examination of the crime of money laundering. However, the controversy surrounding Article 69 of UURI No. 8 of 2010 led to a number of experts who agreed and disagreed with it. As a result, the article was the subject of multiple judicial reviews at the Constitutional Court, where the Court determined that Article 69 did not violate the 1945 Constitution of the Republic of Indonesia and must continue to be in place.

The House of Representatives (hence referred to as DPR) must exercise greater caution and judgment when drafting the law's article-specific provisions. A great deal of theoretical research has gone into the development of this article since it will directly affect efforts made by law enforcement to combat money laundering.

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