



Eradication Of Corruption By Tracing Money Laundering As An Integral Legal System That Can Not Be Separated

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ABSTRACT

Money laundering can undermine the national economy because it is closely related to confidence of a person or another state in the policy of the state. Money laundering is usually done by mixing illicit money with legitimate money so that legitimate businesses will be less competitive with honest companies, undermine the integrity of financial markets because financial institutions (financial institutions) even those that rely on proceeds of crime can face liquidity dangers; resulting in loss of government control of a country's economic policy resulting lack of confidence of other countries in the policies of the country's government. So that in an effort to eradicate the money laundering and criminal acts such as corruption origin is a unity that can not be separated to combat the evidence system is not clear, not balanced proof techniques and mafia Justice.

INTRODUCTION

The legal system has specific goals and objectives. The goals and objectives of the law can be people who actually act against the law, as well as in the form of legal acts themselves, and even in the form of tools or state apparatus as law enforcers. The legal system has a certain mechanism that ensures the implementation of the rules in a fair, definite and firm, and has benefits for the realization of order and public order. The working system of the law is a form of law enforcement (Ariman Sitompul, P Hasibuan, M Sahnan. (2021).

Corruption crimes are closely related to Money laundering, where today money laundering practices are very often carried out against money obtained from corruption crimes. The practice of money laundering (money laundering) is one way to disguise

or conceal the results of corruption committed. Money laundering is then used as a shield for the proceeds of corruption (Ariman Sitompul (2020).

In addition to taking away social and economic rights that are certainly very detrimental to the community, the apparatus is also very difficult in terms of tracking the results of corruption, because often money laundering is carried out by corruptors. Money laundering is often done by entering the proceeds of crime into the financial system. The crime of money laundering includes special forms of criminal acts that have a connection with various kinds of crimes. Money laundering is considered a follow-up crime, which is an attempt by the perpetrator to disguise the results of a crime that has been committed previously in order to enjoy the results without being tracked, including one of them,

namely from the results of corruption (Kusbianto, 2022).

The Indonesian government does not stay silent with the predicate that it carries as a country that is not serious in handling the problem of money laundering. To that end, the government is trying to deal with these problems by issuing the TPPU law which should be the moment where the Indonesian government should suppress TPPU problems, namely by forming a Financial Transaction Reporting and Analysis Center (PPATK), whose task is to collect and process information related to suspicions or indications of money laundering. Problems arise in law enforcement when someone becomes a suspect TPPU must be proven beforehand by tracing the origin of the crime in advance such as embezzlement, corruption and bribery or other crimes. Law enforcement in the case of TPPU whose initial crime of corruption has been carried out by law enforcement officers who are members of the criminal justice system, cannot be said to be optimal.

As for the reason that reverse proof is difficult to apply in the enforcement of the TPPU law, the initial crime is corruption, because it denies the principle of Indonesian criminal law starting from the principle of presumption of innocence as contained in Article 8 paragraph (1) of Law Number 48 of 2009 on Judicial Power (Judicial Power law) and the principle of self-blame as contained in Article 66 of the Criminal Procedure Code which states "suspects or defendants are not burdened with the obligation of proof", as well as various international conventions on human rights that have been ratified by Indonesia, so it can be seen that due to the reverse process of proof there is a reduction in the protection of the defendant's rights in court and also this concept contradicts or overlaps with other laws and regulations, such as Article 37A of the corruption law which states that:

- 1) The defendant is obliged to provide information about all his property and the property of his wife or husband, children, and property of any person or corporation who is suspected of having a relationship with the accused case.
- 2) in the event that the defendant is unable to prove that his wealth is not balanced with his income or the source of his additional wealth, the information as meant in Paragraph (1) is used to strengthen the existing evidence that the defendant has committed corruption.

Based on the description of the background that the author described earlier, the identification of problems in this study is as follows how the eradication of corruption and money laundering is

always related as one unified legal system that can not be separated.

METHOD

This study employs normative legal methodologies. This study utilizes both primary and secondary legal resources. Through the study of literature, the technique for gathering legal materials is carried out. Normative research methods in which research begins with das solen (law on paper) and ends with das sein (law in actions). This research is classified as ke in normative legal research based on a literature review or a review of merely secondary sources. It is said to be normative because the law is assumed to be an autonomous entity whose enforceability is determined by the law itself and not by external factors. This research methodology employs the Statute and Conceptual approaches. Primer Legal Material, which is authoritative legal material, has authority in the form of laws and regulations relevant to this paper's discussion (Ariman Sitompul, 2022)

RESULTS AND DISCUSSION

In Indonesian positive law, the reverse proof system is adopted in 2 (two) laws and regulations, namely Law No. 31 of 1999 on the eradication of corruption as amended by Law No. 20 of 2001 on amendments to Law No. 31 of 1999 on the eradication of corruption (corruption law) and Law No. 8 of 2010 on the Prevention and Eradication of money laundering (TPPU law).

In accordance with the initial idea of the government, the limited and balanced reverse proof in the corruption law can only be applied in 2 (two) objects of proof, (Nurasia Tanjung, 2016) namely:

1. On "corruption bribes receive gratification" the value of Rp. 10.000.000.00.- (Ten million rupiah) or more (article 12b paragraph (1) letter A and Article 37); and
2. In the "defendant's property" which is divided into 2 (two) types, namely: property that is charged and which has to do with the proof of corruption in the main case (article 37A) and the defendant's property that has not been charged (Article 38b Jo Article 37).

Whereas in the TPPU law, reverse proof is applied in 2 (two) types of money laundering crimes:

1. Active money laundering (Article 3 and Article 4), Money laundering as referred to in Article 3 of the TPPU law, using the phrase "placing, transferring, transferring, spending, paying, giving, depositing, taking out of the country, changing forms,

exchanging for currency, or securities or other acts that are active sentences in the formulation of Article 3 of the TPPU law, it can be seen that money laundering as referred to in Article 3 of the TPPU law in the library of money laundering including or called active money laundering. Money laundering as referred to in Article 4 of the TPPU law, using the phrase "hide" and "disguise" which is an active sentence in the formulation of Article 4 of the TPPU law, it can be known that money laundering as referred to in Article 4 of the TPPU law, in the library of money laundering is included or called active money laundering (R. Wiyono,2014)

2. Passive money laundering (Article 5), money laundering as referred to in Article 5 of the TPPU law, using the phrase "receive" and "Master" which is a passive sentence in the formulation of Article 5 of the TPPU law, in the library money laundering is included or called passive money laundering

The TPPU law does provide for the burden of proof obligation on the defendant, but the framers of the TPPU law did not provide a comprehensive explanation of how the reverse arrangement of evidence in the TPPU law. Unfortunately, based on Articles 77 and 78 of the TPPU law, it is not regulated regarding the procedure of the procedure or at least regulates the consequences of the reverse proof. It should be that the law strictly regulates the consequences of the reverse proof carried out by the defendant.

In the TPPU Law, Article 77 is the opening article that discusses the reverse proof provisions, Article 77 states that: "For the sake of the examination of the court hearing, the defendant is obliged to prove that his property is not the result of a criminal offense".

The sentence in this article is the same as the sentence in the previous law and from this provision the judge can also order the defendant or legal counsel to prove the property owned by the defendant is not related to the criminal offense charged by the public prosecutor. This article is related to Article 78 of the TPPU law which contains how the defendant or his legal counsel proves the origin of the defendant's property. Article 78 of the TPPU law is divided into two paragraphs which state that:

1. in the examination in the court session as meant in Article 77, the judge orders the defendant to prove that the property related

to the case is not derived from or related to the criminal act as meant in Article 2 Paragraph (1).

2. The defendant proves that the property related to the case is not derived from or related to the criminal act as meant in Article 2 Paragraph (1) by submitting sufficient evidence.

Furthermore, Article 78 paragraph (2) of the TPPU law states that "the defendant proves that the property related to the case is not derived from or related to a criminal offense as Article 2 Paragraph (1) by submitting sufficient evidence". This article is related to the provisions of evidence contained in Article 73 of the TPPU law which explains explicitly the forms of valid evidence in proving money laundering crimes, and in accordance with the initial concept of reverse proof, the defendant or legal counsel in proving in reverse that his wealth is not related to criminal acts also uses evidence in accordance with Article 73 of the TPPU law.

Reverse proof of the origin of assets or assets that are not reasonably owned by the defendant can be done at a minimum in relation to the intersection of the defendant's human rights if the public prosecutor first proves the defendant's property then followed by the defendant to prove his property. Proof of the defendant's property is an obligation contained in the law, not in the form of rights that can be used or cannot be used (Silva Da Rosa, 2018).

Reverse proof is the obligation of the defendant in money laundering to prove that the origin of the property owned does not come from a criminal offense as referred to in Article 2 Paragraph (1). The legal basis for this reverse proof is regulated in Articles 77 and 78 of the TPPU law. In Article 77, it is stated that for the purpose of examination at a court hearing, the defendant is obliged to prove that his property is not the result of a criminal offense. The reverse proof system for money laundering in Articles 77 and 78 is for the purpose of examination in court hearings. Therefore, reverse proof can only be applied at the time of examination at a court hearing.

The concept of inverse proof in TPPU is the concept of limited and balanced inverse proof. The limited intent is that the reverse proof is limited to a specific criminal offense, while the intent of balanced is that the public prosecutor remains obliged to prove his charges (Lilik Mulyadi,2018).

There are 2 (two) possibilities, whether the defendant cannot prove that the property he owns is not derived from the results of a criminal offense. If the defendant cannot prove that his property is not

the result of a criminal offense, it can be a clue for the judge that the defendant's property is derived from or the result of a criminal offense. On the other hand, if the defendant can prove that the property he owns does not come from the proceeds of a criminal offense, then the prosecutor does not lose the right to prove that the defendant's property comes from a criminal offense. This means that the prosecutor who charged must still equip themselves with a number of evidence to prove their charges. In conditions where the defendant can prove that he is innocent, while the prosecutor proves that the defendant is guilty, then the assessment of the evidence in the trial is on the judge. So the reverse proof in practice must be applied in the process of proving money laundering including the initial criminal offense is a criminal offense (Nasir Sitompul,2022).

In the provisions of Article 69 of the TPPU law, it is stated that: "to be able to conduct investigations, prosecutions, and examinations in court hearings against money laundering crimes, it is not necessary to prove the origin of the criminal offense first". Based on the article that "to investigate, prosecute and examine and prosecute cases of money laundering do not need/do not have to be proven in advance of the original crime".

To encourage a fair and targeted reverse proof process, both the investigator and the public prosecutor must coordinate with the Financial Transaction Reporting and Analysis Center (PPATK) to conduct a thorough tracking of the assets owned by the defendant. This process is carried out to prevent the "blind confiscation" of assets blindly against the entire property owned by the defendant. It is also undeniable that not all assets belonging to the defendant come from or are related to criminal acts, so that in a fair and proper enforcement process investigators and Related Agencies must be careful and thorough to separate assets resulting from criminal acts and assets that are not related to criminal acts (Ariman Sitompul, 2020).

Limited and balanced reverse proof does not provide too much relief for the prosecutor. The reason is that the prosecutor still prepares evidence to strengthen the indictment of money laundering and the public prosecutor is also obliged to prove the defendant's property is the result of a criminal offense. Even the concept of reverse proof can be used as a loophole by the defendant or legal counsel to be able to attack the evidence presented by the public prosecutor. So without the preparation of mature evidence in the investigation process, the reverse proof process can backfire on the public prosecutor himself, because the defendant or his legal counsel can include new evidence that has not

been previously verified with the public prosecutor. Therefore, it is also necessary to improve the professionalism and competence of law enforcement, be it the National Police, Attorney General, BNN, KPK, Director General of Customs, Director General of taxes so that the concept of reverse proof in the TPPU law can run effectively and efficiently.

It is sufficient reason to conduct a money laundering investigation against someone who is suspected of committing corruption if in the process of investigating corruption, preliminary evidence of the alleged origin of money from corruption is obtained. For example, for actors who have the status of civil servants or State administrators who are obliged to report their assets as referred to in Article 5 of Law No. 28 of 1999, the data on the report of the State Administrator's assets (LHKPN) submitted to the KPK can be used as a basis. If it turns out that investigators found other wealth outside of the data reported in LHKPN, so it looks lifestyle deviates far from his profile as a civil servant or state administrator, plus if his wealth is on behalf of someone else, then this fact is sufficient as initial evidence to suspect the state administrator of corruption which is then followed by money laundering. This has happened since the implementation of Law No. 15 of 2002 and to this day there have been many cases that have been decided on this matter.

Many jurisprudences related to investigating, prosecuting and examining and prosecuting money laundering cases do not need/do not need to be proven in advance of the original crime. The provisions of Article 69 of the TPPU law have been submitted for Material Test at the Constitutional Court by Akil Mochtar, who is the former chairman of the Constitutional Court, with the results of the decision that the application for material test was rejected. In other countries such as the Netherlands, the United States and Australia that to investigate, prosecute and examine and prosecute cases of money laundering is not necessary/not required to be proven in advance of the crime of origin which is important criminal acts must exist (Nasir Sitompul,2023).

The application of a limited and balanced reverse proof system does not provide too much relief for the prosecutor, because with this concept the prosecutor must still prepare evidence to strengthen the charge of money laundering and the public prosecutor is also obliged to prove the defendant's property is the result of a criminal offense. Technically, the application of the reverse proof system in money laundering crimes whose crimes originate from the current corruption

committed by the public prosecutor is by proving first the charges of money laundering then after that it is the turn of the defendant to prove that the defendant's property is not related to or derived from the crime as charged by the public prosecutor. Therefore, the indictment is usually drawn up in a combined (cumulative) form between the offense of criminal origin and the offense of money laundering. The reason why this is done is because the sequence of events (sequence) must be explained from the start of the original crime (predict crime) which then boils down to money laundering (money laundering).

After the examination of the witnesses, including the testimony of expert witnesses and the testimony of the defendant, with reference to the provisions of Article 78 paragraph (1) of the TPPU law, in the case of Jiwasraya the panel of judges asked questions related to the origin of the defendant's seized property. If during the examination at the trial the defendant can prove that his property is not the result of a criminal offense, then the defendant must be released from all lawsuits, but if at the trial it turns out that the defendant cannot explain and prove the origin of the property is not the result of a criminal offense, then the defendant's property must be seized for the state. However, in the case of Jiwasraya, the defendant Benny Tjokrosaputro could not prove the origin of his wealth, so for other elements in the actus reus act of money laundering such as placing, transferring, spending...etc. and elements with the aim of hiding and disguising became the obligation of the public prosecutor as in the indictment of a quo according to the standard of proof in.

There are 3 (three) main factors that hinder the eradication of corruption by making money laundering as a whole in law enforcement:

A. UU TPPU In The Evidence Is Not Clear

In principle, the existence of a reverse proof system in TPPU cases whose criminal acts originate from corruption is a procedure to assist the prosecutor in conducting evidence at the trial. This proof system is not included in the realm of legal substance or material law, but only formal or can be said to be included in the realm of procedural law. Although included in the procedural Law category, the framers of the TPPU law did not provide a comprehensive explanation of how the reverse proof arrangement in the TPPU law. It can be seen that the provisions of Articles 77 and 78 of the TPPU law do not regulate the procedure for proceeding or at least regulate the consequences of the reverse proof included in the explanation of the article. In the

future, the TPPU law should firmly regulate the consequences of the reverse proof carried out by the defendant (Mokhammad Najih dan Soimin,2014).

This situation certainly makes the application of reverse proof cannot run properly and measurably. Because the TPPU law does not regulate the details that should exist in an ideal procedural law such as who has the right to request the application of this evidence, who has the right to activate it in a corruption trial, whether there are special evidence tools intended for this evidence, when is the right time to apply this reverse burden of proof and various other questions. All these questions certainly cannot be answered because there is indeed no single law that regulates the burden of proof to be reversed clearly in the TPPU law.

As a result, in the enforcement of TPPU still uses the type of conventional or ordinary burden of proof that generally applies in the procedural code of Criminal Procedure, as well as in the examination of the Jiwasraya case. By not enforcing the rules in detail, this proof could have been used by the legal advisory team so that the procedure was not carried out. Because the vagueness of the procedure will plunge people in error consciously or not.

However, it seems that this is less effective to apply the procedural law of the reverse burden of proof system, because the judge's decision cannot regulate the procedural law more comprehensively. While the burden of proof must be set in reverse in detail and clearly to make it easier to apply. For this reason, the author agrees more if the regulation on procedural law is regulated by law.

B. Unbalanced Burden Of Proof

In the facts on the ground can not be denied if it turns out that not everyone understands and understands about the meaning of the burden of proof reversed even from law enforcement officers themselves. This reverse burden of proof is only considered as a mere discourse or only as a legal accessory, so it is only a second choice and not a primary choice. Whereas in countries that adhere to the continental European legal system or Civil Law such as Indonesia, the law means that it must be the same as the sound of the law so that if the TPPU law places the burden of proof upside down as a system of proof, then it must be implemented in practice in the field. This means that it should not be considered only as a second or last resort (Zainal Arifin Hoessein,2014)

The weakness of the evidence system is limited or balanced is the potential for rebuttal from the defendant, as in the case of corruption on the basis of harming state finances (Jiwasraya case),

defendant Benny Tjokrosaputro has denied/ evaded the indictment of the public prosecutor by saying if the prosecutor's indictment is not true and never committed corruption on the basis of harming state finances in any form. The defense of the defendant Benny Tjokrosaputro makes the reverse burden of proof cannot run effectively because the defendant's statement is only evasive, not proof if he is innocent in detail and clearly, so that the judge as the person in charge of examining the Jiwasraya case in court cannot impose the obligation of the reverse burden of proof completely on the defendant. Therefore, in the future, the application of the reverse proof system in cases of money laundering crimes whose criminal acts originate from corruption must be regulated firmly and specifically (Nurhayani,2015).

C. The Judicial Mafia

Karl Marx as a critical philosopher once expressed a theory that the law is actually the interests of people have. This cannot be separated from its critical nature when it sees many owners of capital who act arbitrarily against workers in the name of the law in their time. By law, certain economic classes exploit the classes below them so that their interests are always accommodated and not hampered in the least. Marx's criticism was continued by contemporary Marxians who gave rise to instrumentalist theory. This theory says that in fact the law is a tool of domination, a tool of oppression and a cause of suffering (Bernard,2019).

As already explained above, in the tppu law, the reverse proof arrangement is regulated in Article 77 and Article 78. The provision basically regulates the defendant's obligation to prove that his property is not the result of a criminal offense. As for the procedure, in the examination at the court hearing, the judge ordered the defendant to prove that the property related to the case was not derived from or related to a criminal offense. When the defendant proves that the property related to the case is not derived from or related to a criminal offense, it is carried out by submitting sufficient evidence. The application of the reverse proof system in money laundering cases as stipulated in Article 77 and Article 78 of the TPPU law is included in the explanation without legal consequences if the reverse proof is not applied. This is one of the barriers to the implementation of reverse proof that causes reverse proof in cases of money laundering crimes whose criminal acts originating from corruption have never been optimally applied so far. In the future, the TPPU law should firmly regulate the consequences of reverse proof if it is not applied.

Money laundering is a new type of crime in reference to International Criminal Law and criminal law in Indonesia. Although a new type of crime, the enforcement process against money laundering is directly related to National Economic Policy and can have a wide impact on the national financial and banking balance in a country.

Money laundering in general has been classified as a crime and classified as a white collar crime (white collar crime), and is considered an extraordinary crime (extraordinary crime) or even a serious crime (serious crime), because it has a different modus operandi and is more dangerous than conventional crimes known in criminal law in Indonesia (Munir Fuady,2011). Money laundering has a very detrimental impact on the economy, finance, social, and security, even because the scope is cross-border, then money laundering is considered a transnational crime that has become a world phenomenon and an international challenge (Roberts Kennedy,2017).

The government of Indonesia in relation to the politics of money laundering law has established various related laws and regulations in order to counter money laundering the latest is Law Number 8 of 2010 on the Prevention and Eradication of money laundering (UU TPPU).

CONCLUSION

There are 3 (three) main factors that impede the application of the burden of proof in the case of money laundering criminal acts originating from corruption, among others: 1) the reverse proof system has not been clearly regulated in the TPPU law; 2) the existence of a legal paradigm that the burden of proof is always given to the public prosecutor; and 3) the existence of a judicial mafia that inhibits the regulation of the reverse proof system. In the event that the reverse proof is not applied by the law enforcers, juridically as provided for in Article 77 and Article 78 of the TPPU law there are no legal consequences whatsoever. This is one of the barriers to the implementation of reverse proof which causes reverse proof in cases of money laundering whose criminal acts originating from corruption have never been optimally applied so far

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