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Legal Analysis of Prosecution of Money Laundering Crimes (TPPU) Proceeds of Narcotics Crimes in Indonesian Criminal Law

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Abstract. *Money laundering (TPPU) derived from narcotics crimes is an organized crime that has a broad impact on economic stability, security, and the effectiveness of law enforcement. Narcotics crimes often generate significant financial profits, leading perpetrators to employ various money laundering methods to disguise the origins of their proceeds. This study aims to analyze the legal aspects of prosecuting money laundering (TPPU) derived from narcotics crimes based on Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering and Law Number 35 of 2009 concerning Narcotics. The research method used is normative legal research with a statutory, conceptual, and case study approach. The results indicate that prosecutions of money laundering derived from narcotics crimes still face several obstacles, including the lack of evidence to prove the predicate crime, limited asset tracking, minimal coordination between law enforcement agencies, and increasingly complex asset disguising patterns. However, prosecutions can be conducted without having to wait for a final and binding court decision on the predicate crime, as long as there is sufficient preliminary evidence. Furthermore, implementing a "follow the money" approach and optimizing the role of the Financial Transaction Reports and Analysis Center (PPATK) have proven to be crucial strategies in uncovering the flow of funds from narcotics crimes. This study concludes that effective prosecution of money laundering (TPPU) from narcotics crimes requires strengthened regulations, increased capacity of investigators and prosecutors, and cross-agency coordination to ensure the recovery of state assets and disrupt the sources of funding for narcotics crimes.*

Keywords: *Criminal Case; Money Laundering (TPPU) in Narcotics Crimes; Prosecutor.*

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1. Introduction

Various crimes have been committed by criminals, such as drug trafficking/sales, bribery, gambling, illicit arms trafficking, corruption, white collar crime, and so on. To prevent law enforcement from easily tracing the origin of the proceeds of these crimes, the perpetrators do not use the funds directly but attempt to disguise and conceal them. Efforts to disguise or conceal the origin of funds obtained from these crimes are known as money laundering.[1]

First, the impact of money laundering on the financial and economic system is believed to negatively impact the global economy. For example, it negatively impacts the effectiveness of resource and fund utilization, which is largely used for illicit activities and leads to suboptimal utilization of funds, thus harming society. This occurs because proceeds of crime are invested in countries perceived as safe for laundering, even though the returns are lower. These proceeds of crime can move from a country with a strong economy to one with a less so. Because its negative impact on financial markets can reduce public trust in the international financial system, money laundering can lead to instability in the national and international economy. Furthermore, money laundering also causes sharp fluctuations in interest rates. With these various negative impacts, it is believed that money laundering can hamper global economic growth. Second, by establishing money laundering as a crime, it will make it easier for law enforcement to take action. For example, by confiscating proceeds of crime that are difficult to trace or have already been transferred to third parties. In this way, the escape of proceeds of crime can be prevented. The orientation of crime eradication has shifted from prosecuting the perpetrators to confiscating the proceeds of crime.[2]

While the exact amount of money laundered each year through money laundering crimes is unknown, it is estimated to be substantial, making it the third-largest industry in the world. Recent estimates suggest the global value of this activity is approximately one trillion dollars per year, with money laundered from the drug trade alone valued at $300-500 billion.[3] The crime of money laundering as a crime has a unique characteristic, namely that this crime is not a single crime but is a double crime. The crime of money laundering does not stand alone because the assets placed, transferred or diverted by means of integration are obtained from criminal acts, meaning that there is already a predicate crime. In Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter referred to as the TPPU Law) as regulated in Article 2 paragraph (1) one of the predicate crimes of the crime of money laundering is the crime of narcotics.

According to data from the National Narcotics Agency, in 2019 alone, they managed to uncover 55 cases, and the TPPU Law was also applied to these cases, where the results of the narcotics transactions that were successfully confiscated were worth ± IDR 184 billion.[4] Money laundering, which is the proceeds of narcotics crimes, has now become a serious crime and a common enemy for all nations worldwide. However, there is currently no universal and comprehensive definition of money laundering. Many parties, including prosecutors, criminal investigation agencies, businesspeople and companies, and developed and third-world countries, each have their own definition of what constitutes money laundering based on different priorities and perspectives.

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2. Research Methods

This research uses a combined method of normative and empirical juridical approaches to gain a comprehensive understanding of the application of restorative justice in resolving traffic crimes. This method allows researchers to examine not only the normative aspects of the legal system but also the empirical realities that develop in law enforcement practices.

3. Results and Discussion

3.1. Proving the Link Between Money Laundering and Narcotics Crimes

Discussing the link between money laundering and narcotics crimes also involves discussing whether the predicate offense in money laundering requires prior proof, or vice versa. If the predicate offense, in this case narcotics crimes, requires prior proof, it supports Article 77 of the Money Laundering Law. However, if the predicate offense, in this case narcotics crimes, does not require prior proof, it contradicts Article 69 of the Money Laundering Law.

Article 69 of the Money Laundering Law states, "To conduct investigations, prosecutions, and court hearings regarding money laundering crimes, the predicate offense does not require prior proof." Predicate crimes are predicate crimes, namely offenses that produce criminal proceeds or proceeds of crime that are then laundered. In this study, the predicate crime is narcotics crimes. Judging from the formulation of Article 69 of the Money Laundering Law above, it means that the crime of money laundering is a crime that can be investigated, prosecuted and brought to court, without having to first prove the original crime, for example, for the crime of money laundering whose original crime is in the form of corruption, then to carry out an investigation, prosecution or trial of a Money Laundering case, it is not necessary to wait for the proof of the original crime in the form of corruption.[5] The provisions contained in Article 69 of the Money Laundering Law are intended to show that the crime of money laundering as referred to in Articles 3, 4, and 5 of the Money Laundering Law is an independent crime. The phrase "does not have to be proven first" means that it does not have to be proven first, that is, it does not have to be proven by a court decision that has permanent legal force.[6] However, this has sparked debate, which is still frequently heard in society. Responding to these differing opinions, M Yusuf emphasized that money laundering is a separate crime *(independent crime)*.[7]

The implementation of Article 69 of the Money Laundering Law allows for investigation, prosecution, and court hearings of money laundering crimes. There are two possibilities:

[5] Yudi Kristiana, 2015, *Pemberantasan Tindak Pidana Pencucian Uang :Perspektif Hukum Progresif*, Thafa Media, Yogyakarta, h. 157.
[6] R Wiyono, 2009, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi,* Sinar Grafika, Jakarta, h. 195.
[7] Muhammad Yusuf, 2011, "Ikhtisar Ketentuan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang", *Artikel,* The Indonesian Netherland National Legal Reform (NLRP), Jakarta, hal 17.

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1. If the money laundering crime is tried as a separate case without the underlying crime being included, the underlying crime does not need to be proven first.

2. If the underlying crime is also found in the money laundering case, both cases are combined into a single case file and then submitted to a single indictment. Both charges will be accepted upon presentation of evidence in court.

Judging from the history of the formulation of Article 69 of the Money Laundering Law and related discussions regarding the article, it can be concluded that Article 69 of the Money Laundering Law arose from the enthusiasm of both the lawmakers and law enforcement officials in Indonesia to enforce the crime of money laundering through Article 69 of the Money Laundering Law. This enthusiasm is clearly evident in the phrase "it is not necessary to first prove the underlying crime," which has certainly given rise to debate in practice. However, the actual purpose of this article is to address money laundering cases effectively, swiftly, and decisively.

Based on the history of the creation of Article 69 of the Money Laundering Law, it can be said that money laundering can actually be compared to the crime of receiving money, as explained by Marjono Reksodiputro and Yunus Husein in a Public Hearing on Wednesday, May 19, 2010, whereby the crime of receiving money does not require proof or punishment of the perpetrator of the theft. This opinion demonstrates that to investigate a money laundering case, the perpetrator of the predicate crime does not need to be proven or punished first. This explanation demonstrates that Article 69 of the Money Laundering Law is intended to enforce the crime of money laundering. Furthermore, Bismar Nasution's explanation further reinforces the point that if proof of money laundering depends on the predicate crime being proven first, then the crime of money laundering will not be enforceable, even until the end of time. On another occasion, Marjono Reksodiputro also stated that money laundering does not require proof of the underlying crime, as he believes money laundering has a similar concept, though not the same, as receiving money. In the case of receiving money under Article 480 of the Criminal Code, there is no need to first prove the theft that caused the item to meet the elements of receiving money.

3.2. The Consequences of Narcotics Crimes as a Predicate Crime for Money Laundering

In the International Narcotics Control Strategy Report (INCSR) issued by the Bureau for International Narcotics and Law Enforcement Affairs, United States Department of State in March 2003, Indonesia was placed back in the list of major laundering countries in the Asia Pacific region along with 53 countries including Australia, Canada, China, Chinese Taipei, Hong Kong, India, Japan, Macau China, Myanmar, Nauru, Pakistan, the Philippines, Singapore, Thailand, the United Kingdom and the United States. The title of major laundering countries is given to countries whose institutions and financial systems are considered contaminated

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by the international narcotics business which is suspected of involving very large sums of money.[8]

Furthermore, the INCSR also highlighted several factors, including Indonesia's efforts to eradicate illicit drug trafficking, which are considered inadequate; the rise in domestic drug abuse; and the rampant illicit drug trafficking to and from Indonesia, involving countries such as Thailand, Burma, Singapore, Afghanistan, Pakistan, and Nigeria. Illicit drug trafficking has long been believed to be closely linked to money laundering. The history of money laundering typologies indicates that drug trafficking is the most dominant source and the primary predicate crime that gives rise to money laundering. Organized crime consistently uses this money laundering method to conceal, disguise, or obscure the proceeds of illicit business, making them appear to be legitimate. Furthermore, the laundered proceeds from drug trafficking are reused to commit similar crimes or develop new crimes.

Drug trafficking in several countries has even reached its nadir. Gerard Wyrsch revealed that money laundering originating from the narcotics business in the United States is estimated to reach 100 to 300 billion dollars per year. Meanwhile in Europe it ranges from 300 to 500 billion dollars per year, a fantastic figure. The FATF (Financial Action Task Force on Money Laundering) in its 1995-1996 annual report estimated that of the 600 billion to one trillion dollars laundered annually, most of it comes from the illicit narcotics trade. The estimated amount above has increased every year, thus becoming known as the narco dollar, at the same time showing that the problem of illicit narcotics trafficking is History also records that the birth of the international legal regime that combats money laundering crimes began when the international community was frustrated with efforts to eradicate the crime of illicit narcotics trade. international crime and the problem of all countries.[9]

At that time, the anti-money laundering regime was considered a new paradigm in eradicating crime, no longer focused on arresting perpetrators but rather on confiscating and confiscating the assets they generated. The logic behind focusing on the proceeds of crime is that perpetrators' motivation will be diminished if they are prevented from enjoying the proceeds of their crimes. Given the close correlation between drug trafficking as a predicate crime and money laundering as a derivative, it is clear that the success of the fight against drug trafficking in a country is largely determined by the effectiveness of that country's anti-money laundering regime.

In the Indonesian context, an interesting point of concern is whether Indonesia's anti-money laundering regime is sufficient to support efforts to prevent and eradicate drug trafficking in the country. Money laundering has been known in the United States since the 1930s. At that time, Al Capone, who controlled the illegal drug trade, alcohol trafficking, prostitution, and gambling, was the biggest criminal known not only in the United States but also internationally, with networks spanning many countries. At that time, the international

[8] Yunus Husein dalam paper pendukung Delegasi RI pada Forthy-Seventh Session of The Comisión on Narcotic Drugs, yang diselenggarakan di Wina, 15-22 Maret 2004. http://www.google.co.id, diakses tanggal 18 Agustus 2022.
[9] *Ibid*.

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community did not yet have an international legal framework that could serve as a strong basis for combating money laundering. The emergence of an international legal regime to combat money laundering, among other things, was the issuance of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention 1988).[10] The birth of this convention marked a time when the international community was frustrated in eradicating the illicit drug trade. This is understandable, given that the target of the fight is organized crime, characterized by a solid organizational structure with clear divisions of authority, very strong funding sources, and networks that span national borders. The international anti-money laundering legal regime can be considered a step forward, with a strategy that no longer focuses on drug crimes and capturing perpetrators, but is directed at eradicating the proceeds of crime through anti-money laundering regulations.

Thus, the birth of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) is seen as a historical milestone and the culmination of international attention in establishing an international anti-money laundering legal regime. Essentially, this regime was established to combat drug trafficking and encourage all ratifying countries to immediately criminalize money laundering activities.[11] In addition, the Vienna Convention 1988 also seeks to regulate infrastructure covering international relations issues, the establishment of norms, regulations and procedures agreed upon in order to regulate anti-money laundering provisions. Prior to the Vienna Convention 1988, various instruments had been issued since 1912. International efforts began with the ratification of the International Opium Convention of 1912. At that time, public attention was directed to efforts to combat the circulation and use of opium in the United States and Western European countries. This international step was then followed by the issuance of various international instruments, namely the Suppression of the Manufacture of, Internal Trade in and use of, prepared Opium, Geneva 11 February 1925 and the International Opium Convention 19 February 1925, both of which were organized by the League of Nations. Because it was felt that it was not optimal for eradicating opium, it was continued with various conventions, namely the 1931 Convention on the Suppression of Smoking, and the 1946 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs. A convention known as the Single Convention on Narcotics Drugs 1961 was issued in 1961.

3.3. Current Criminal Law Policy on Money Laundering

The criminal law policy on Money Laundering (TPPU) in Indonesia is a national policy formulated by the Indonesian Government and serves as the policy direction and framework for the development of the Anti-Money Laundering Regime in Indonesia. The formulation of this National Strategy is an urgent need for the development of the Anti-Money Laundering Regime in Indonesia. Since its establishment in 2002, the development of the Anti-Money Laundering Regime in Indonesia has been based on short-term work programs, spanning one year, thus orienting itself more closely to the needs faced at that time.

[10] *Ibid.*
[11] *Ibid.*

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The Anti-Money Laundering Committee explains that the policy direction and development of the Anti-Money Laundering Regime in Indonesia are based on five main pillars: First, Legislation, Law Enforcement, and the Implementation of Special Protection for Witnesses and Reporting Parties. Second, Compliance of Financial Service Providers (PJK) and Analysis and Submission of Analysis Results from Suspicious Financial Transaction Reports (LTKM). Third, Information Systems Technology and Human Resources. Fourth, Domestic Cooperation and the Development of International Networks. And fifth, Public Campaigns to raise public awareness and understanding.

Strengthening the first pillar aims to establish a robust legal and regulatory framework that creates clarity and certainty regarding the Anti-Money Laundering Regime, thereby facilitating its enforcement process, including the implementation of special protections for witnesses and reporting parties. The second pillar aims to create conditions that encourage financial services providers (PJK) and other institutions to understand their roles and obligations under the Anti-Money Laundering Regime in Indonesia, particularly regarding the obligation to submit reports as a source of data for analysis by the Financial Transaction Reports and Analysis Center (PPATK). The analysis of these reports is expected to yield high-quality conclusions that can optimally assist law enforcement officials in enforcing the law.

The third pillar primarily aims to provide an integrated and secure global information and communication platform, as well as to develop resilient, skilled, and morally sound human resources, which in turn can enhance the effectiveness and efficiency of the Anti-Money Laundering Regime. Strengthening the Information Technology System and Human Resources pillars aims to ensure the adequate availability of these two infrastructures, as they are absolute prerequisites. The availability of a reliable Information Technology System will facilitate the submission of financial services providers' reports to the PPATK and the processing of information received by the PPATK. Meanwhile, skilled, knowledgeable, and highly integrated human resources will determine the credibility of this regime. Information technology systems and human resources are the lifeblood of the Anti-Money Laundering Regime in Indonesia, determining the effectiveness of its implementation. Therefore, its development must be planned/programmed, measurable, efficient, and effective based on needs.

The Fourth Pillar aims to strengthen cooperation between domestic agencies and international networks to create effective and efficient cross-sectoral coordination. Furthermore, collaboration with the Financial Intelligence Unit (FIU) is necessary to accelerate the exchange of information without compromising confidentiality. The Fifth Pillar aims to ensure that the public, as the primary stakeholder in this regime, has sufficient information, knowledge, and understanding, thereby fostering individual and collective awareness of the importance of an effective Anti-Money Laundering Regime in Indonesia. Public participation is the most significant contributor to the success of this regime's implementation.

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4. Conclusion

The provisions for prosecuting money laundering crimes from narcotics crimes in Indonesian criminal law are still unclear, so that perpetrators of money laundering crimes are often difficult to prosecute under Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. This is because the charges are filed based on the charges given, not in the form of cumulative charges. Ultimately, only the initial crime can be prosecuted (primary crime), and the perpetrator of the money laundering is free. The provisions for prosecuting money laundering crimes from narcotics crimes in Indonesian criminal law in the future depart from the weakness of the formulation of the authority of the public prosecutor in Article 68 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes when linked to related laws and regulations can occur at the stage of preparing a cumulative indictment between the predicate crime of corruption and the crime of money laundering, the stage of case transfer, the stage of asset blocking, and the stage of authority to request written information about assets. Alternative formulations for public prosecutorial authority in future money laundering crimes must align with Indonesia's long-term development direction and the national legislative program, which calls for a reformulation of the Criminal Procedure Code (KUHAP), including centralized public prosecutorial authority exercised by the Indonesian Attorney General's Office. The public prosecutorial authority in the draft KUHAP can address the weaknesses of Article 68 of the Money Laundering Law and eliminate the potential for overlapping public prosecutorial authority currently held by two institutions, the Corruption Eradication Commission (KPK) and the Indonesian Attorney General's Office.

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