Ratio Legis Journal
Volume 1 Nomor 3, September 2022, (322-329)

# The Juridical Analysis of Potential Asset Recovery Using Act No. 8 of 2010 Concerning the Crime of Money Laundering

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*Abstract.*
*In particular, the purpose of this study is to examine and analyze the police strategy in implementing asset recovery in accordance with the Money Laundering Law. In this paper, the author uses a normative juridical method. The conclusion of the discussion is that the application of asset recovery is an effort by the Police with provisions regarding the blocking of assets, inquiries of assets, and confiscation. Because what is blocked is not an account, but assets worth or amount that is known or reasonably suspected to have originated from a criminal act, the account activity will not be disrupted, provided that the amount of funds blocked in the account may not temporarily reduce the amount of funds in the account completely blocked on condition that the Investigator/PU/Judge in the blocking order and the Minutes of Blocking must mention "certainty on the amount of assets/money that should be blocked, is still under investigation and the results will be announced later. Requests for information (opening bank secrets), to request information from Financial Services Providers regarding the assets of each person that has been reported by PPATK, suspects, or defendants, no application is required from the National Police Chief / Attorney General / Chief Justice of the Supreme Court to seek permission from the Governor of BI ( Article 33 of the Money Laundering Law.*
*Keywords: Asset; Crime; Money Laundering.*

## 1. Introduction

The Third Amendment to the 1945 Constitution of the Republic of Indonesia has added the norm regarding the rule of law in Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia which reads: "The State of Indonesia is a state of law".[1] This provision is a form of normalization that comes from the content in the Elucidation of the 1945 Constitution of the Republic of Indonesia which states "The Indonesian state is based on law (Rechtsstaat) not based on mere power (Machtsstaat)". With the inclusion in the norms of the 1945 Constitution of the Republic of Indonesia, the concept of the rule of law in the explanation of the 1945 Constitution of the Republic of Indonesia has binding legal force as the highest norm in the national legal system of the Indonesian state.[2]

Terminologically, the term "state of law" in the provisions of Article 1 paragraph (3) of the Third Amendment to the 1945 Constitution of the Republic of

[1]Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, *The Role of Judicial Commission on Supervision of Judge's Crimein Indonesia*, Jurnal Daulat Hukum, 1 (4), December 2018, url:http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793
[2] Nur Dwi Edie W,and Gunarto, *Analysis of Judicial Policy in Deciding Criminal Acts Based AlternativeIndictment (Case Study Decision Number 82 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum, 3 (1), March 2020,url:http://jurnal.unissula.ac.id/index.php/RH/article/view/8429/4063

Indonesia does not refer specifically to one of the main concepts in the Western legal tradition, both Rechtsstaat and the Rule of Law. This means that the term "state of law" in the 1945 Constitution of the Republic of Indonesia is a relatively 'neutral' concept that opens up space for interpretation for new understandings in accordance with the paradigm and reality of the Republic of Indonesia.[3]

The roll out of reforms that have occurred since 1997 provides hope for changes in all aspects of the life of the nation and state, namely politics, economics, and law. In the administration of state government, the expected changes are towards a more democratic, transparent, and highly accountable state government as well as the realization of good governance and freedom of action.[4]

Money laundering is universally classified as a crime and is classified as a white collar crime[5]and as an extraordinary crime or even a serious crime because it has a different and dangerous modus operandi from conventional crimes known in Indonesian criminal law[6], and greatly affects the growth and development of various predicate crimes, so that the two are interrelated, because the object of money laundering is the proceeds of criminal acts in the form of assets obtained from criminal acts, such as corruption; narcotics; psychotropic; in the banking sector; and so on which is punishable by imprisonment of 4 (four) years or more. These crimes have involved or resulted in very large amounts of money or assets (proceeds of crime).

Money laundering has many adverse economic, financial, social and security impacts. It does not allocate and distribute income, distorts asset and commodity prices, and breeds social ills, crime and corruption. Even because its modus operandi is generally cross-border, money laundering has been considered an international crime, and has become a worldwide phenomenon. is an international challenge.[7]

Asset recovery is a process that includes tracing, securing, maintaining, confiscating, returning and releasing criminal assets or state property controlled by other parties to victims or those entitled to at every stage of law enforcement.[8]The assets in question include all objects, both material and non-material, movable or immovable, tangible or intangible, and documents or legal instruments that have economic value.[9]

At the investigation stage, asset tracking is intended to collect as much information and data as possible including assets in order to find criminal events, perpetrators, and the potential for money laundering offences. At the investigation

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[3] Beno, Gunarto and Sri Kusriyah, *Implementation of Fully Required Elements in the Crime of PlanningMurder (Case Study in Blora State Court)*, Jurnal Daulat Hukum, 3 (1), March 2020, url: http://jurnal.unissula.ac.id/index.php/RH/article/view/8404/4058

[4]Titik Triwulan Tutik. (2011). *Hukum Perdata Dalam Sistem Hukum Nasional*, Surabaya: kencana, p.1

[5]Munir Fuady. (2004). *Bisnis Kotor, Anatomi Kejahatan Kerah Putih*, Bandung: PT.Citra Aditya Bakti, p 11.

[6]Teguh Sulistia dan Aria Zurnetti. (2011). *Hukum Pidana*, Horizon Baru Pasca Reformasi, Jakarta:PT Raja Grafindo Persada, p. 96.

[7] Sutan Remy Sjahdeini. *Pencucian Uang: Pengertian, Sejarah, Faktor-Faktor Penyebab, dan Dampaknya Bagi Masyarakat*, dalam Jurnal Hukum Bisnis, (Jakarta: Yayasan Pengembangan Hukum Bisnis), 22 (3), 2003, p 5

[8]Article 1 point 10 of the Attorney General's Regulation No. PER-013/A/JA/06/2014 concerning Asset Recovery

[9]Ibid.

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stage, asset tracking can be developed if new information is found related to assets belonging to the suspect and related parties related to his crime that has not been found at the investigation stage. If there is sufficient preliminary evidence on the ML, the investigator can stop the transaction, block, or confiscate assets related to the crime. At the prosecution stage, asset tracking can be developed if other information is found that has not been found at the investigation and investigation stage, in relation to recovering state losses.[10]

Based on this background, the purpose of this paper is to examine and analyze the police strategy in implementing asset recovery in accordance with the Law on Money Laundering.

## 2. Research Methods

In this writing, the author uses a normative juridical method. This study uses a writing specification with a descriptive method with the process of solving a problem investigated by describing or describing the current state of the subject or object of research based on the facts that appear or as they are.[11] The data used for this writing is secondary data. To obtain data in this paper, secondary data collection methods were used which were obtained from literature books, laws, and the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

## 3. Result and Discussion

### 3.1. Police Strategy in Implementing Asset Recovery in accordance with the Law on Money Laundering

Asset tracing and recovery and or recovery of asset losses (asset tracing and asset recovery) in accordance with the authority possessed by the Indonesian National Police in the context of law enforcement, has the aim of providing a deterrence effect to perpetrators of criminal acts in the context of preventing and suppressing the development of criminal acts crimes related to state financial losses.

Thus, the authority of POLRI investigators in eradicating criminal acts of corruption is clear and directed so that what is expected by the government/community to law enforcement officers, in this case the POLRI can run well.[12]

In Article 189 of the Criminal Procedure Code (KUHAP), to be able to convict the defendant, the judge must be sure of the two pieces of evidence presented by the public prosecutor in court. Two pieces of evidence are usually presented for each element of a crime. Based on Article 68 of Act No. 8 of 2010, the procedural law used in evidence is the procedural law regulated in the Criminal Procedure Code and other laws that also regulate procedural law such as the Money Laundering Law, and the Law on the Corruption Eradication Commission. . For criminal acts, the proof is

[10]Article 81 of Act No. 8 of 2010 concerning the Crime of Money Laundering
[11]Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, p. 24
[12]Abdul Muis Jauhari. (2016). *Fungsi dan Kewenangan Kepolisian Negara Republik Indonesia dalam Tindak Pidana Korupsi Guna Mengembalikan Kerugian Keuangan Negara di Indonesia*, Institutional Repositories & Scientific Journals, Universitas Pasundan

carried out by the public prosecutor. Meanwhile, in the ML case, it is known that there is reverse evidence, namely the defendant must prove that the assets related to the case do not originate from a criminal act. Elements that must be proven by the defendant, namely the object of the case in the form of assets related to the case not originating from a criminal act. The other elements still have to be proven by the public prosecutor.

The theory of evidence or the system of evidence adopted by the Criminal Procedure Code is a system of evidence according to the law in a negative way. The negative evidence system is reinforced by the principle of freedom of judicial power.[13] Indonesia adheres to a proof system called the negative proof system (negative wettelijk) as regulated in Article 183 of the Criminal Procedure Code. According to this article, in order to be able to convict someone, the judge is based on two pieces of evidence that are valid according to the law, and there is a judge's belief that a criminal act has actually occurred and the defendant is guilty of committing it.

With regard to the unique characteristics of the crime of money laundering, the role of judges is crucial for the purpose of eradicating this crime. Judges must have a visionary nature based on the understanding that proving this crime is very difficult, because it must prove two crimes at once. The professionalism of judges is very much needed to follow all judicial procedural systems that use a pragmatic approach, for example the existence of witness protection, the practice of reversing the burden of proof (the shifting of the burden of proof).

The Anti-Money Laundering Law has not yet regulated in detail the specific trial procedure for this reversal of the burden of proof, but in the future this should be done. In addition to the prescribed procedures, judges must also be very understanding that considering the application of reversing the burden of proof basically violates the principle of non-self-incrimination.[14] It must be emphasized that this application is very limited to the trial stage and only for one element.[15]

Based on Article 75 of Act No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, to start an investigation there must be preliminary evidence. Regarding the Crime of Money Laundering and predicate offences, in the event that the investigator finds sufficient preliminary evidence, the investigator may combine and notify the PPATK.

The separation of the investigation of criminal acts of fraud from the crime of money laundering is very dependent on the dominant direction of the initial evidence. If the predominant evidence is predominant, the tendency leads to the crime of money laundering, then the investigation can be separated. However, if it is vague or leads to a criminal act of fraud as a predicate offense, a combined investigation must be carried out so that it is proven together to the maximum.

As for asset recovery (asset recovery) of victims due to criminal acts of fraud along with money laundering through law enforcement of money laundering crimes

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[13]Romli Atmasasmita. (1995). *Kapita Selekta Hukum Pidana dan Kriminologi*. Bandung, Mandar Maju, p.106.

[14] Muller Lissner, *Myths and Miconceptions About Chronic Constipation*. American Journalof Gastroenterology 100, Vol 1 2005

[15] Yan Patmos. *Penegakan Pasal Tindak Pidana Pencucian Uang dalam Rangka Pencegahan dan Pemberantasan Korupsi*. Journal of Law and Policy Transformation, 2 (2), December 2017, p. 114

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as described by the author above, it is not effective enough. This is because the courts often give lighter decisions than the prosecutor's demands.[16]Refunds applied to defendants in the crime of money laundering still do not have legal certainty and still depend on the understanding and conviction of the judge. Therefore, in order to carry out a more effective refund of the proceeds of money laundering, the understanding of the crime of money laundering must be equated among all levels of the court under the auspices of the Supreme Court.

Therefore, in effective law enforcement, special laws and regulations related to money laundering crime law enforcement should be established so that there is diversity in related law enforcement.

Implementation of asset recovery as an effort by the Police with provisions regarding the blocking of assets, requests for information on assets, and confiscation.

Blocking; The Money Laundering Law does not recognize that the blocking of accounts regulated in the Money Laundering Law is assets, therefore what can be blocked by investigators, public prosecutors or judges is assets and not accounts (see Article 32 of the Money Laundering Law). The value or amount of blocked assets is equal to or equal to assets that are known or reasonably suspected to have originated from the proceeds of a criminal act. Interest or other income that can be from blocked funds/assets is included in the clause in the Minutes of Blocking. In the event that the amount of funds in an account is smaller than the amount of funds that are known or reasonably suspected of originating from a criminal act, only the amount of funds in the said account at the time of blocking is blocked.

On the other hand, if the funds in the account are greater than the value that is known or reasonably suspected to have come from the proceeds of a criminal act, only the amount of funds that are known or reasonably suspected to have originated from a criminal act will be blocked. Because what is blocked is not an account, but assets worth or amount that is known or reasonably suspected to have originated from a criminal act, the account activity will not be disrupted, provided that the amount of funds blocked in the account may not temporarily reduce the amount of funds in the account blocked entirely on condition that the Investigator/PU/Judge in the blocking order and the Minutes of Blocking must mention "the certainty of the amount of assets/money that should have been blocked is still in the investigation process and the results will be notified later. "Regarding the procedure, the blocking order is made in writing and clearly by mentioning the points regulated in Article 32 paragraph (2) of the Anti-Money Laundering Law with a copy to the PPATK, and clearly stating the articles of the Money Laundering Law that are suspected of being violated. A copy must also be sent to Bank Indonesia if the predicate crime is a banking crime.[17]

Inquiry (opening bank secrecy); As described above, in order to request information from the Financial Services Provider regarding the Assets of each person that has been reported by the PPATK, suspect, or defendant, it is not necessary to request an application from the National Police Chief / Attorney

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[16]Editorial (RK), *Menyikapi Globalisasi Pencucian Uang*, Jurnal Hukum Bisnis, (Jakarta:Yayasan Pengembangan Hukum Bisnis), 22 (3) 2003

[17]Joko Cahyono and Annisa Hidayati. *Peranan Kepolisian dalam Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang,* Jurnal Ilmiah Hukum: Inrichting Recht, 2 (2), August 2020

General / Chief Justice of the Supreme Court to seek permission from the Governor of BI (Article 33 ML Law). Meanwhile, for corruption cases, according to Law no. 31 of 1999, it is still necessary to request an application from the Chief of Police, the Attorney General and the Chief Justice of the Supreme Court to request information regarding the financial condition of a person suspected of corruption (Article 29). Thus, the provisions in the Money Laundering Law can accelerate efforts to obtain evidence in the context of eradicating corruption. Article 33 of the Money Laundering Law explains the criteria for parties whose account information can be requested without having to apply bank secrecy provisions, namely: Parties who have been reported by PPATK; Suspect; Defendant.

Outside of the three categories mentioned above, it is not possible to ask a bank for information on an account, except using a general mechanism, namely a written request from the head of the agency to the Governor of Bank Indonesia. If during the course of the investigation it is discovered that there are other parties suspected of being related to the flow of funds or related to a criminal act, while that person is not included in the three categories above, the investigators need to do things, including:

- The investigator informs the PPATK and then the PPATK notifies the PJK to be reported as STR. This STR is then analyzed by PPATK and the results of the analysis are reported to investigators for follow-up.
- Investigators inform PJK, and by PJK it is reported to PPATK as STR. Then the STR is analyzed by PPATK and the results are reported to investigators for follow-up.
- Investigators asked for permission from the BI governor to reveal bank secrets.[18]

Confiscation confiscated funds remain in the account at the bank concerned (the bank where the blocking was carried out) with the status of confiscated goods on behalf of the investigator or authorized official. This is in accordance with the instructions for implementing the Joint Decree of the Attorney General of the Republic of Indonesia, the Chief of the Police of the Republic of Indonesia and the Governor of Bank Indonesia No. KEP-126/ JA/11/1997, No. KEP/10/ XI/1997, No. 30/KEP/GBI dated 6 November 1997 concerning Cooperation in Handling Criminal Cases in the Banking Sector.

Soerjono Soekanto explained that in the sociology of law the problem of compliance or legal compliance with legal rules in general has become the main factor in measuring the effectiveness of something stipulated in this law.[19]Criminal law enforcement is the concrete application of criminal law by law enforcement officers. In other words, criminal law enforcement is the implementation of criminal regulations. Thus, law enforcement is a system that involves the harmonization of values with rules and real human behavior. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or should be. The behavior or attitude of the act aims to create, maintain, and maintain peace.

## 4. Conclusion

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[18]Susanto, *Penafsiran Asas Manfaat Tentang Asset Recovery Korban Tindak Pidana Pencucian Uang*, Jurnal Yudisial 13 (1) April 2020

[19]Soerjono Soekanto. (1996). *Sosiologi Suatu Pengantar.* Bandung : Rajawali Pers, p.20.

Legal ideas in the future in the context of confiscation of assets originating from crimes of perpetrators and their descendants so as to create a prosperous, just and prosperous Indonesia, with various advanced legal methods, namely: Making and revising criminal law rules related to asset return, Implementing Non Conviction Based (NCB) Asset Forfeiture into the judicial system with the aim of legal benefit, Expansion of StAR (Stolen Asset Recovery), Development of Mutual Legal Assistance (MLA) to make it easier to establish international cooperation and diplomatic relations related to asset recovery, Provide expansion of the authority of law enforcement agencies to be ready to face money laundering offenses transnational institutions such as the Indonesian Prosecutor's Office, the Indonesian KPK, the Indonesian Police, and the Financial Transaction Analysis Reporting Center (PPATK),Expansion and consolidation of synchronization of various institutions of law enforcement officers, Completing and ratifying the Draft Bill on Return of Assets.

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[8] Susanto, *Penafsiran Asas Manfaat Tentang Asset Recovery Korban Tindak Pidana Pencucian Uang*, Jurnal Yudisial 13 (1) April 2020

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[10] Yan Patmos. *Penegakan Pasal Tindak Pidana Pencucian Uang dalam Rangka Pencegahan dan Pemberantasan Korupsi*. Journal of Law and Policy Transformation, 2 (2), December 2017

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