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Legal Review of the Role of Prosecutors in Implementing Judges' Decisions in the form of Confiscation of Assets in Money Laundering Criminal Cases

Ahmad Bagir[1)] & Gunarto[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: ahmadbagir.std@unissula.ac.id
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: Gunarto@unissula.ac.id

Abstract. *The Money Laundering Crime Act has regulated sanctions against perpetrators of money laundering crimes, but this does not necessarily reduce the level of money laundering crimes. Because the sanctions given to perpetrators are usually prison sentences, it turns out that they are not effective enough in combating money laundering crimes. Realizing this, law enforcement officers then began to apply other methods, namely asset recovery. In general, the role of the Prosecutor's Office is as an institution that manages confiscated assets. That is why the Prosecutor's Office formed a work unit, which specifically handles asset recovery. This unit is the Asset Recovery Center (PPA). The aim of this research is to find out and analyze (1) the development of the concept of law enforcement for money laundering crimes in Indonesia, (2) the role of prosecutors in implementing court decisions in the form of confiscation of assets for money laundering crimes, (3) the legal problems of prosecutors' efforts to implement court decisions in the form of confiscation of assets for money laundering crimes. The approach method used in this study is normative juridical. The specifications of this study are descriptive analytical. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials.*

Keywords: *Asset; Confiscation; Laundering; Prosecutor; Money.*

1. Introduction

The State of Indonesia as a State of Law, and the State of Law is a term that although depicted simply, contains a relatively long philosophical historical load. The state of law is an Indonesian term formed from two syllables, state and

law[1]This equivalent word shows the form and nature of mutual complementarity between the state on one side and the law on the other. The purpose of the state is to maintain public order (rechtsorde). Therefore, the state needs law and vice versa, the law is implemented and enforced through state authority.

In general, the role of the Prosecutor's Office is as an institution that manages confiscated assets. The confiscated assets then remain the Prosecutor's task to maintain the value of the assets so that they do not decrease.[2]That is why the prosecutor's office formed a working unit, which specifically handles asset recovery. The unit is the Asset Recovery Center (PPA), the main task and function of PPA is to provide services for the recovery of criminal assets and to restore and return criminal assets to those entitled including the state.

Efforts to suppress crime by relying on the use of criminal provisions also still leave other obstacles. There are several criminal acts or violations of the law that cannot be prosecuted using criminal provisions. For example, at this time material unlawful acts that result in losses to the state cannot be prosecuted under the provisions of corruption.[3]

2. Research Methods

Research method is a method of working to be able to understand the object that is the target of the relevant science. Method is a guideline for how a scientist studies and understands the environments that are understood.[4]Meanwhile, research is a method based on certain systematic methods and thinking that aims to solve a scientific problem.The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and other documents related to this study.

[1]Tafta Aji Prihandono and Sri Kusriyah, Awareness on Constitutional Rights of Citizens and Form of Protection of Constitutional Rights of Citizens in Indonesia, Jurnal Daulat Hukum, 1 (4), December 2018, page 1004

[2]I Kadek Warga Pernada, et al. Implementation of a Judge's Decision That Has Permanent Legal Force Regarding Replacement Money in Corruption Crimes Decision Number 02/Pid.Sus-TPK/2017/PN DPS, Jurnal Analogi Hukum, 1 (3), 2019, page 349

[3]On July 25, 2006, the Constitutional Court, based on Decision No. 003/PUU-IV/2006, stated that the explanation of Article 2 of Law Number 30 of 1999 which regulates material unlawful acts as part of criminal acts of corruption is no longer valid.

[4]Soerjono Soekanto. Introduction to Legal Research, Jakarta: UI Press, 1986, p. 14.

3. Results and Discussion

3.1. Development of the Concept of Law Enforcement of Money Laundering Crimes in Indonesia

The third amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) in 2001 placed the provisions regarding Indonesia as a state based on law in the body, as stated in Article 1 paragraph (3) of the 1945 UUD NRI. This is different from previous provisions where the principle of a state based on law was placed in the general explanation number IV regarding the State Government System, which states that Indonesia is a state based on Law (Rechtsstaat), not based on mere power (Machtsstaat).[5]

History states that the concept of a state based on law was born as a counterbalance to a state based on power. In Germany, the concept of a state based on law was born as a challenge or correction to the term "Police State" (Polize Staat), or a state run solely on the basis of power (Machtsstaat). As a developing country and a former colonized country, Indonesia has experienced extraordinary ups and downs in the concept of a state based on law. The legal concepts that have developed today cannot be separated from long historical experiences and are a continuation of laws based on the anatomy of the state.[6]

The issuance of Law No. 15 of 2002 by the Indonesian government is basically inseparable from the pressure and threat of sanctions imposed by the international community. Based on the decision of the Financial Action Task Force (FATF), a task force formed by the G-7 countries in 1998, Indonesia was declared as one of the countries categorized as Non-Cooperative Countries and Territories (NCTTs).

At this time, more than ever, money laundering is a global phenomenon and an international challenge. This money laundering activity has become a transnational crime because the process is not only carried out within a country but has crossed national borders (crossborder). The perpetrators of the crime try to hide as far as possible from the source so that it is not easily traced by law enforcement in the country concerned.

with Law No. 25 of 2003 concerning the Prevention and Eradication of Money Laundering (PPTPPU). Eight years later, the DPR passed Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (PPTPPU),

[5]Valina Singka Subekti, Democracy in the Implementation of Elections in Indonesia, Anthology Strengthening Indonesian Legal and Constitutional Civilization, 2019, pp. 37–60
[6]Ucuk Agiyanto, Law Enforcement in Indonesia: Exploration of the Concept of Justice with a Divine Dimension, Ransendental Law, 4 2018, pp. 493-503

Money Laundering cannot be separated from the criminal law formulation policy.[7]

Efforts to combine the use of TPPU instruments in eradicating corruption in Indonesia as mandated by the United Nations Convention Against Corruption (UNCAC) are increasingly visible in the authority of the Corruption Court which is not only authorized to try corruption cases, but also to try TPPU cases with the predicate crime of corruption. This is specifically regulated in Article 6 of Law Number 46 of 2009 concerning the Corruption Court (Corruption Court Law) which stipulates that the Corruption Court has the authority to examine, try, and decide cases:

1) criminal acts of corruption;

2) the crime of money laundering where the predicate crime is the crime of corruption; and/or

3) criminal acts which are expressly defined in other laws as criminal acts of corruption.

Explicitly, Indonesian legal products legitimize acts that fulfill the elements of money laundering crimes through Law Number 8 of 2010 which regulates the forms of money laundering crimes along with the weight of the punishments determined, including:

1) Article 3 states that anyone who places, transfers, diverts, spends, pays, grants, deposits, takes abroad, changes the form, exchanges for currency or securities or other actions regarding Assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) (types of crimes which are the source of disguised assets) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

2) Article 4 states that any person who hides or disguises the origin, source, location, designation, transfer of rights or actual ownership of Assets which he knows or reasonably suspects are the result of a criminal act as referred to in Article 2 paragraph (1) (types of crimes which are the source of the disguised assets) shall be punished for the crime of Money Laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

[7]Sri Endah Wahyuningsih, Rismanto. Criminal Law Enforcement Policy for Combating Money Laundering in the Context of Criminal Law Reform in Indonesia, Journal of Legal Reform, II (1) January - April 2015, page 49

3) Article 5 states that any person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange or use of Assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) (types of crimes which are the source of disguised assets) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

4) Article 6 that in the case of the crime of Money Laundering as referred to in Article 3, Article 4, and Article 5 is committed by a Corporation, criminal penalties shall be imposed on the Corporation and/or the Corporation's Controlling Personnel. Criminal penalties shall be imposed on a Corporation if the crime of Money Laundering:

a. carried out or ordered by Corporate Control Personnel;

b. carried out in order to fulfill the aims and objectives of the Corporation;

c. carried out in accordance with the duties and functions of the perpetrator or person giving the order; and

d. carried out with the intention of providing benefits to the Corporation.

From the provisions of the TPPU, it can be seen that Indonesia still defines it only by referring to the description of the forms of the crime. This is because, by not clearly defining the crime of money laundering on the ease of accommodating

The focus of TPPU in prosecuting assets other than people makes it necessary to have new instruments that can be used to handle these assets. Because the Criminal Procedure Code has not yet maximally accommodated the actions required to handle assets, the TPPU Law regulates a new mechanism that can be used to handle assets, namely Article 26 concerning the postponement of transactions carried out by financial service providers. Article 26 of the TPPU Law stipulates that financial service providers can postpone transactions for a maximum of 5 (five) working days from the date the transaction postponement is carried out.

The conditions for postponing a transaction, as regulated in Article 26 paragraph (2), are:

a) Carrying out transactions that are suspected of using assets originating from criminal acts;

b) Having an account to hold assets derived from criminal acts; or

c) Known and/or suspected of using fake documents.

In addition to Financial Service Providers, the Financial Transaction Reports and Analysis Center (PPATK) can also request a temporary suspension of transactions

from Financial Service Providers, which request must be followed up immediately as regulated in Article 44 letter i.[8]If previously the Financial Services Provider could only carry out the temporary suspension process for 5 (five) days, then the PPATK can extend the suspension period for a maximum of 15 (fifteen) days.

In addition to having the authority to request a temporary suspension of financial transactions to Financial Service Providers, Investigators, Public Prosecutors, and Judges can also order the reporting party to block the assets as stipulated in Article 71 of the TPPU Law. The blocking order can be made for a maximum of 30 working days in written form and clearly stating, namely (a) the name and position of the investigator, public prosecutor, or judge; (b) the identity of each person who has been reported by the PPATK to the investigator, suspect, or defendant; (c) the reason for the blocking; (d) the crime suspected or charged, and (e) the location of the assets. If the 30-day period has passed, the reporting party is obliged to end the blocking period by law. The difference between blocking efforts and confiscation is that the existence of the blocked assets remains in the hands of the reporter.

The TPPU Law legislation in Indonesia, as in other countries, is evidence of the great concern of the Indonesian government towards money laundering as a transnational crime. The presence of the TPPU Law provides a solid legal basis in efforts to prevent and eradicate the crime of money laundering, as well as real evidence of the government's commitment together with the international community to work together to prevent every form of money laundering crime in various dimensions. The great attention of the Indonesian government towards this crime is due to the great impact it causes. Among other things, in the form of economic instability, economic distortion, and the possibility of disruption to the control of the amount of money in circulation. In practice, TPPU charges are always formulated cumulatively; the charges are not wrong either. However, considering the history of the criminalization of money laundering from organized crime which aims to eradicate zero tolerance for the proceeds of wealth from crime, it is clear that there is a close relationship between the act of "money laundering" and the criminal act (predicate crime).

In the Indonesian criminal law system based on the Criminal Code on Concurrent Criminal Acts (Chapter VI), there are provisions regarding lex specialis derogat lege generali (Article 63 paragraph (2); provisions regarding continuing acts (vorgezettehandeling) - Article 64, and provisions regarding stand-alone acts (Article 65 and Article 66). The practice of prosecuting TPPU, money laundering and predicate crimes has been viewed as stand-alone acts (Article 65 and/or Article 66)), not continuing acts (Article 64). This practice has been justified in

[8]Samuel Williams Roeroe, Marthin Doodoh, Rony Sepang. Law Enforcement Against Money Laundering Crimes in Financial Institutions, Lex Administratum, 10 (5) 2022, p. 7

136 court decisions that have obtained permanent legal force.[9], however, it is still necessary to question from a legal theoretical perspective the intent and purpose of the 2010 TPPU Law regarding the position of the provisions of Article 2 of the 2010 TPPU Law which confirms 26 (twenty-six) types of predicate crimes.

3.2. Prosecutors Play a Role in the Implementation of Court Decisions in the Form of Confiscation of Money Laundering Assets

Money laundering is simply an attempt to hide or disguise money/funds resulting from a crime or proceeds of a crime as stated in Article 2 of Law No. 8 of 2010 concerning the Crime of Money Laundering with the intention of hiding or disguising the origin of the assets so that they appear to be legitimate assets. The perfect money laundering mechanism is carried out in 3 (three) stages. The stages of money laundering are as follows:[10]

1) Placement

It is an effort to place money originating from criminal acts into the financial system or institutions related to finance. The placement stage is the first stage in the process of separating criminal assets from the source of the crime.

2) Separation/layering

It is an effort to separate the proceeds of crime from their source through several stages of financial transactions to hide or disguise the origin of the funds. In this activity there is a process of transferring funds from several accounts or certain locations to other places through a series of complex transactions designed to disguise and eliminate traces of the source of the funds.

3) Integration

It is an effort to use criminal assets that have been placed and/or layered to appear as legitimate assets, for legitimate business activities or to refinance criminal activities. This integration stage is the final stage of a complete money laundering operation because it re-introduces the proceeds of crime into legitimate economic activities. Thus, perpetrators of criminal acts can freely use the proceeds of their crimes without arousing suspicion from law enforcement to conduct investigations and pursuits.

[9]Pardosi Donnia, et al. Effectiveness of Law Enforcement in Criminal Acts of Money Laundering Proceeds from Corruption, INNOVATIVE: Journal Of Social Science Research, 3 (5), 2023, p. 6
[10]PPATK Research Team, Typology of Money Laundering Based on Court Decisions on Money Laundering Crimes, PPATK Indonesia: Financial Transaction Reports and Analysis Center, 2018, page 6

However, in practice, money laundering does not have to consist of these three stages. Because it is possible that the perpetrators of the crime do not place the proceeds of their crimes into the formal financial system (placement) in order to avoid detection by the relevant authorities so that they choose to directly use their money to purchase assets (integration) in the name of others.

In general, perpetrators of money laundering crimes try to hide or disguise the origin of the assets that are the result of criminal acts in various ways so that they are difficult to trace by Law Enforcement Officers. Based on the relationship between the perpetrators of the original crime and the crime of money laundering, including:

1) Self Laundering

It is money laundering carried out by people involved in the predicate crime.

2) Third Party Money Laundering

It is money laundering carried out by people who are not involved in the original crime.

Meanwhile, according to the place of occurrence, namely Foreign Money Laundering, is money laundering carried out outside the jurisdiction where the original crime occurred. This is done to make it difficult for law enforcement officers to trace the proceeds of the crime.

The money laundering process always has a connection with financial service providers. Money laundering is a crime that harms the interests of society, and can cause economic instability in a country and is economically disadvantageous to the country.[11]The act of seizing assets in handling money laundering is very important because the law enforcement perspective uses an approach known as "follow the money" to find the circulation of money related to crimes or violations of the law. This paradigm considers assets and money as the lifeblood of crime. In addition, they are considered the weak point of the crime chain.[12]Confiscating the instruments and proceeds of criminal acts of criminals is not only about transferring their wealth, but also an effort to achieve the common goal of justice and prosperity for all.[13]

[11]Purwoto. Efforts to Prevent Criminal Acts of Money Laundering Using Penal Policy Measures. Indian Journal of Forensic Medicine & Toxicology, 14(4), 2020, pp. 3053-3057
[12]Legal Directorate of Financial Transaction Reports and Analysis Center. Legal Study: Legal Issues Surrounding Asset Confiscation in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes and Efforts to Optimize Them. Jakarta: Financial Transaction Reports and Analysis Center (PPATK). 2021
[13]Beni Kurnia Illahi & Muhammad Ikhsan Alia. Arrangement of Confiscation of Assets of Money Laundering Criminals in Indonesia. University of Bengkulu Law Journal, 2 (2) 2019, page 187

Article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law. Meanwhile, Article 28H (4) states that everyone has the right to have personal property rights and such property rights may not be taken over arbitrarily by anyone.

As is known, several criminal provisions in Indonesia have regulated the possibility to confiscate and seize the proceeds and instruments of criminal acts such as in the Criminal Code, Criminal Procedure Code, and several other provisions of laws and regulations. However, based on these provisions, confiscation of assets (wealth) can only be carried out after the perpetrator of the crime has been proven in court legally and convincingly to have committed the crime. While in practice there are various possibilities that can hinder the completion of such a mechanism of action, for example the absence or death or the existence of other obstacles that result in the perpetrator of the crime not being able to undergo examination in court, or the absence of sufficient evidence to file a lawsuit in court and also for other reasons.

However, it must be acknowledged that simply imposing a corporal punishment has proven to be insufficient create a deterrent effect for perpetrators of criminal acts. The construction of the criminal law system that has been developed recently in Indonesia still aims to uncover criminal acts that have occurred, find the perpetrators and punish the perpetrators of criminal acts with criminal sanctions, especially "corporal punishment" both imprisonment and detention. Meanwhile, the issue of legal development in the international scope such as the problem of confiscation and seizure of proceeds of crime and instruments of crime has not become an important part of the criminal law system in Indonesia.

The history of the independence of the Indonesian nation and state records that the independence achieved by the Indonesian people was the result of the struggle of all components of the nation and was not at all a gift from other parties. The people's struggle was an effort with invaluable sacrifices with one ideal to be able to together become a free and independent nation from the colonization of other nations. With the provision of independence that has been obtained, as stated in the opening of the 1945 Constitution of the Republic of Indonesia, an Indonesian state government was formed, one of the aims of which is to advance general welfare based on social justice for all Indonesian people.

However, the noble ideals of independence can be hampered or even threatened by various forms of crime such as Money Laundering. Every form of crime, either directly or indirectly, will affect the welfare and values of justice in society. Therefore, it is very necessary to seize assets against the Assets of Money Laundering Perpetrators (TPPU) in Indonesia at this time.

The Criminal Procedure Code in its regulation does not state assets in its regulation, but the Criminal Procedure Code provides a definition that is the same as the understanding of assets with the term "objects". This is formulated in Article 1 number 16, namely that confiscation is a series of investigator actions to take over and/or store under the control of movable or immovable, tangible or intangible objects for the purpose of evidence in investigations, prosecutions and trials.

Terminologically, plundering comes from the word "rampas", which means to take/get by force (violence). By getting the prefix "pe" and the suffix "an", it means the process or way to carry out the action/deed of taking/obtaining/seizing by force (violence).

Asset forfeiture is the forced seizure of assets or property that the government believes is closely related to a crime. There are three methods of asset forfeiture that have developed in common law countries, especially the United States, namely criminal forfeiture, administrative forfeiture, and civil forfeiture. Criminal forfeiture is the seizure of assets carried out through criminal justice so that the seizure of assets is carried out simultaneously with proof of whether the defendant actually committed a crime. While administrative forfeiture is an asset seizure mechanism that allows the state to seize assets without involving judicial institutions. Meanwhile, civil forfeiture is an asset seizure that places a lawsuit against the asset rather than against the perpetrator of the crime, so that the assets can be seized even though the criminal justice process against the perpetrator has not been completed. Civil forfeiture, when compared to criminal forfeiture, does not require many requirements and is therefore more attractive to apply and beneficial to the state.

The difference between confiscation and seizure is that confiscation only transfers control of goods and there is no transfer of ownership, while confiscation revokes the right of ownership of a person to an object. In the Draft Law on Asset Confiscation of 2008, confiscation is defined in Article 1 number 7, namely the forced attempt to take over the rights to wealth or profits that have been obtained or may have been processed by a person from a crime committed in Indonesia or in a foreign country.

The definition of confiscation of criminal assets or return of criminal assets according to Matthew H. Fleming in the international world, there is no mutually agreed definition of asset return. However, he explained that asset return is the process of perpetrators of crimes being deprived, seized, and deprived of their rights from the proceeds of criminal acts and/or from the means of criminal acts.[14]

[14]Matthew H. Fleming in Purwaning M. Yanuar, Return on Assets … Op.Cit, 2007, p. 103

Criminal confiscation is a punishment for a criminal that is decided in a binding manner by the court. As stated in the court decision executed by the prosecutor, the panel of judges asks the convict to pay compensation or confiscate the convict's assets as a replacement.[15]Criminal confiscation is an action that is oriented towards the individual personally. The action is carried out based on the decision of the panel of judges who are trying the criminal case because it is part of the criminal sanction. In this case, the prosecutor is convinced that the assets to be confiscated are products or tools of criminal acts. The public prosecutor must file an application for confiscation of assets along with the prosecution file.

The implementation of the verdict (execution) by the prosecutor is carried out using assets that have previously been confiscated and based on a judge's decision that has permanent legal force. There are 3 (three) regulations used for the confiscation of assets for money laundering crimes by the Prosecutor's Office, namely Law Number 8 of 2010 concerning the Eradication and Prevention of Money Laundering Crimes (TPPU Law) and Regulation of the Prosecutor's Office of the Republic of Indonesia Number 7 of 2020 concerning the Second Amendment to the Regulation of the Attorney General Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery where the scope of the Regulation only applies to the Prosecutor's Office of the Republic of Indonesia.

When it is relevant to the efforts to seize assets against existing legal legitimacy, several legal products provide guidelines as legal substance in implementing efforts to seize assets, including:

1) Asset Confiscation in the Criminal Code (KUHP)

Asset confiscation has been regulated in Article 10 letter b number 2 of the Criminal Code (KUHP) which is called "confiscation of certain goods" which is classified as an additional crime. The location of "confiscation of certain goods", which is in the regulation of additional crimes, gives rise to different characteristics and consequences compared to the main crime itself. According to PAF Lamintang and Theo Lamintang, the difference between the main crime and the additional crime is:

a. Additional punishment can only be imposed on a defendant accompanied by a principal punishment, meaning that additional punishment cannot be given separately, but must always be imposed together with a principal punishment. There is an exception in Article 40 of the Criminal Code where in that Article the judge may impose confiscation of goods without a principal punishment in the

[15]Mariano Adhyka Susetyo & Supanto, Confiscation of Assets in the Criminal Act of Money Laundering Proceeds of Corruption. Recidive: Journal of Criminal Law and Crime Prevention, 12 (1) 2023, page 86

case of a minor's crime who is subject to a verdict returned to his parents, guardian or caretaker.

b. The additional punishment is optional, so the judge is free to use or not use this option, meaning it can be imposed, but it is not necessary.[16]

In the imposition of additional penalties in the form of confiscation of certain goods, only certain goods can be confiscated, because criminal law no longer recognizes the confiscation of all the assets of the convict, which was previously referred to as general confiscation.[17] Article 39 of the Criminal Code determines in what cases confiscation can be carried out, there are two types of goods that can be confiscated, namely:

a. Goods belonging to the convict obtained through crime, such as counterfeit money obtained from the crime of counterfeiting money, money obtained from the crime of bribery, and so on. These goods are referred to as corpora delicti and can always be confiscated as long as they belong to the convict and originate from the crime;

b. Items belonging to the convict that are intentionally used to commit a crime. These items are called instruments of delicti.

2) Asset Confiscation in the Criminal Procedure Code (KUHAP)

The Criminal Procedure Code (KUHAP) also regulates provisions regarding the confiscation and seizure of assets resulting from criminal acts. The provisions of criminal procedure law outline that before legal action in the form of confiscation is carried out, the object or goods to be confiscated must first be confiscated by investigators. Legal action in the form of confiscation related to assets resulting from criminal acts in the KUHAP is regulated in Articles 38, 39, 42, 44, and 45. Meanwhile, regarding the confiscation of assets, it is regulated in Article 46 paragraph (2).[18]Court decisions regarding evidence can be found in Article 46 paragraph (2) and may contain the following determination:

1) If the case has been decided, the objects that have been confiscated and used as evidence will be returned to those most entitled to receive them according to the judge's decision.

[16]PAF Lamintang and Theo Larnintang, Indonesian Penitentiary Law, Second Edition, Jakarta: Sinar Grafika, 2010, page 83
[17]Jan Remmelink, Criminal Law, Commentary on the Most Important Articles of the Dutch Criminal Code and its Criminal Provisions in the Indonesian Criminal Code, Jakarta: Gramedia Pustaka Utama, 2003, p. 499.
[18]Arizon Mega Jaya, Implementation of Asset Deprivation of Suspect of Corruption, Cepalo, 1 (1) July-December 2017, page 22

2) There is a decision that states that evidence will be confiscated for the benefit of the state, this decision can be found in economic crimes, smuggling, narcotics and others, while the evidence that is confiscated to be destroyed if the evidence is considered dangerous, and auctioned if the goods are not dangerous, where the proceeds of the auction will become the property of the state.

1) Asset Confiscation in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption

Asset confiscation in corruption cases is focused on Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Confiscation of assets obtained or derived from criminal acts of corruption is an additional punishment and part of efforts to return state financial losses which are expressly stated in Article 18 Paragraphs (1), (2) and (3) of Law Number 31

1999 concerning the Eradication of Criminal Acts of Corruption which reads:

1) In addition to additional penalties in the Criminal Code (KUHP), the following additional penalties may be imposed:

a. Confiscation of tangible or intangible movable property or immovable property, which is used and obtained from the proceeds of corruption, including the company owned by the convict where the crime of corruption was committed, as well as the price of the goods replacing the goods;

b. Payment of compensation in an amount equal to the assets obtained from the proceeds of corruption;

c. Closure of a business or part of a company for a maximum period of 1 (one) year;

d. Revocation of all or part of certain rights or the elimination of some or all of certain benefits, which have been or may be granted by the government to the convict.

2) If the convict is unable to pay the replacement money, as referred to in paragraph (1) letter b within a maximum of 1 (one) month, then against the court decision which has permanent legal force, his property can be confiscated by the prosecutor and auctioned to cover the replacement money.

3) If the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, then he shall be punished with a prison sentence of a term not exceeding the maximum threat of the principal sentence, in accordance with the provisions of the law and the length of the sentence shall be determined in the court decision.

Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999, has also regulated the method of asset return through a civil lawsuit mechanism. The mechanism for asset return by filing a civil lawsuit against the perpetrator or his heirs is carried out when the investigator finds and is of the opinion that if in a corruption case there is sufficient evidence of real state financial losses. Then, the investigator can submit the case files resulting from the investigation to the State Attorney or the injured agency to file a civil lawsuit. The court's decision to confiscate confiscated assets against a deceased defendant cannot be appealed.

2) Asset Confiscation in Law Number 8 of 2010 Concerning the Prevention and Eradication of Money Laundering Crimes

Referring to Article 67 of the Money Laundering Law, we can see the asset confiscation model adopted by the Money Laundering Law. Article 67 of the Money Laundering Law states: (1) In the event that no person and/or third party submits an objection within 20 (twenty) days from the date of the temporary suspension of the Transaction, the PPATK will hand over the handling of Assets known or reasonably suspected to be the proceeds of the crime to investigators for investigation. (2) In the event that the alleged perpetrator of the crime is not found within 30 (thirty) days, investigators may submit an application to the district court to decide that the Assets are state assets or returned to those entitled to them. (3) The court as referred to in paragraph (2) must make a decision within a maximum of 7 (seven) days.

The Prosecutor's Office is the same as other law enforcement officers, both in terms of quality as an object of development and as a subject whose work and description of the results of its practice in the field of legal practice, which is carried out in accordance with the main duties of the Prosecutor's Office based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which in the criminal field includes:

a. Conducting prosecution.

b. Implementing judges' decisions and court decisions that have obtained permanent legal force.

c. Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions.

d. Conducting investigations into certain criminal acts based on the law.

e. Complete certain case files and for that purpose can carry out additional examinations before being transferred to the court, the implementation of which is coordinated with the investigator.

The explanation of Article 74 provides an affirmation, with the meaning of "predicate crime investigator" namely: Predicate crime investigator is an official or agency that is given the authority by law to conduct investigations, namely the Republic of Indonesia National Police, the Prosecutor's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and the Directorate General of Taxes and the Directorate General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia.[19]

Prosecutors have the authority to seize the assets of perpetrators of money laundering crimes. This authority is regulated in Law Number 8 of 2010 concerning the Eradication of Money Laundering Crimes (TPPU) and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. The function of the Prosecutor is as the executor of court decisions, including decisions related to asset confiscation. This means that the prosecutor is responsible for implementing court decisions ordering asset confiscation.[20]

The Prosecutor's Office must also be consistent with the principles contained in the Regulation of the Attorney General of the Republic of Indonesia Number: PER-013/A/JA/06/2014 in conjunction with the Regulation of the Attorney General of the Republic of Indonesia No. 9 of 2019 that the implementation of asset recovery activities related to criminal acts (criminal violations), and/or other assets for the benefit of the state/victims/those entitled must be carried out based on the following principles:

1) To be effective, asset recovery must be implemented successfully, on target, and according to desired needs.

2) Efficient, asset recovery activities must be carried out quickly, without delay, at the lowest possible cost, and with maximum results.

3) Transparent, data on state confiscated assets must be able to be monitored by related parties and the public according to their needs.

4) Accountable, can be held responsible in accordance with applicable laws and regulations.

[19]Nur Atika, Prosecutor's Authority in Money Laundering Cases, Jurnal Cakrawala Ilmiah, 2 (7), March 2023, p. 3054
[20]Ibid, p. 3827

5) Integrated, asset recovery activities are a single unit that is interrelated with each other in one system, not separated partially.[21]

The Prosecutor's Office as a law enforcement institution, is universally a central institution in the criminal law enforcement system (center of criminal justice system), which has the task and responsibility to coordinate/control investigations, prosecute and implement the determination/decision of the judge that has permanent legal force (inkracht van gewijsde), and has the responsibility and authority over all evidence confiscated both in the prosecution stage for the benefit of proving the case, and for the benefit of execution. That the enforcement of criminal law, in essence, is not only aimed at punishing the perpetrators of criminal acts (crimes/violations) so that they become deterred and do not repeat their actions, but also aims to recover the losses suffered by the victim financially as a result of the perpetrator's actions, all of which according to the principle of dominus litis are the duties and responsibilities of the Prosecutor's Office as a public prosecutor institution that functions not only as a prosecutor but also as an executor of the decision (executor).

The nature of Lex Specialis can be described in more detail as stated in PMK No. 13/PMK.06/2018 and its attachments, which state that auctions from the Prosecutor's Office can still be carried out even though there are certain special conditions that have been considered impossible by lay people to carry out auctions because they are in strange (odd) conditions, namely:

1) The execution auction of confiscated objects can still be carried out even if the verdict and case files are not known;

2) The execution auction of confiscated state goods can still be carried out even if the documents are incomplete;

3) The execution auction of state confiscated goods can still be carried out even if there are differences in the data, whether the data listed in the court decision, the data listed in the confiscation order, or the data listed in the confiscation report and/or physical identity;

4) The execution auction of state confiscated goods originating from confiscated objects or evidence whose decision has been returned to the ministry/institution can still be carried out even though there is no order stating that it has been "confiscated".[22]

3.3. Legal Problems of Prosecutors' Efforts to Implement Court Decisions in the Form of Confiscation of Money Laundering Crime Assets

[21]Cepy Indra Gunawan, Confiscation of Evidence of Money Laundering Crimes in the Context of Return of State Assets, Hangoluan Law Review, 1 (1) May 2022, p. 128
[22]Cepy Indra Gunawan, Confiscation of Goods … Op.Cit, 1 (1) May 2022, page 131

Philosophically and fundamentally, Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (PP TPPU) is very helpful in carrying out tasks related to criminal cases being handled, especially in investigations and prosecutions, in requesting bank information and tracing suspicious transactions, and in asset recovery. However, in practice there are weaknesses in the Law on the Prevention and Eradication of Money Laundering, namely:

1) The difficulty of revealing facts about the acquisition of assets and wealth of perpetrators of criminal acts except for corruption;

2) The difficulty of tracing the proceeds of crime is because investigators are still conceptual in providing financial data. For example, financial data is often only in the form of bank statements that do not explain the origin of the funds, and there is no global financial data, only in the form of transactions;

3) The lack of synchronization between Article 2 and Article 69 of the Law on the Prevention and Eradication of Money Laundering Crimes, where Article 2 mentions a list of predicate crimes for Money Laundering Crimes, but Article 69 states that in principle, proof of Money Laundering Crimes does not need to wait for proof of the predicate crimes, so that in investigations and prosecutions it raises doubts;

4) The difficulty of tracing assets and blocking assets of related parties, other than the suspect/defendant;

5) Investigators and public prosecutors cannot confiscate assets related to TPPU without permission; and

6) In the Money Laundering Crime Law, it is not explained that the Crime of Money Laundering is an independent crime.[23]

Socio-historically, the problem of legal certainty emerged along with the capitalist economic production system. Unlike the previous production system, the latter is based on efficiency calculations. Everything must be calculated clearly and definitely, how many goods are produced, how much is spent, and what is the selling price.[24]

Modern law follows the development of the times that greatly supports the needs of a new capitalist economic system. Because it is written and announced publicly, everything can be predicted and included in the production components. So that legal science is also called to provide theoretical legitimacy to these developments. This is where positivism and positivistic thinking emerge.

[23]PPATK Research Team, Money Laundering Typology …Op.Cit, 2018, page 31
[24]Ibid, page 290

According to Sudikno Mertukusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that the rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed.[25]The existence of legal certainty in a country also causes efforts to regulate its laws which are manifested in legislation made by the government. The legislation is a legal system that applies, namely one that is not based on momentary decisions. The principle of legal certainty is a concept to ensure that the law has been implemented properly so as not to cause any harm to anyone, the law must protect and protect society from various crimes or harassment of individuals or groups and must be used as a guideline for life for everyone.

4. Conclusion

Eradication of money laundering in Indonesia has begun with the enactment of Law No. 15 of 2002 concerning Money Laundering. The law has stated that money laundering is a criminal act. The new thing in the law is the birth of a new institution called the Financial Transaction Reports and Analysis Center (PPATK). The journey of Law No. 15 of 2002 was amended a year later by Law No. 25 of 2003 concerning the Prevention and Eradication of Money Laundering (PPTPPU). Eight years later, the DPR passed Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (PPTPPU). The reality of handling money laundering in Indonesia has its own law enforcement pattern in the judicial process carried out against money laundering crimes. There is a shift in the method of law enforcement, namely if in the criminal justice process the focus is generally on the "suspect" as an individual or corporation, then in the anti-money laundering regime the focus is on "money" or "assets". This shift is often termed "from follow the suspect to follow the money". In addition to specifically criminalizing the act of obscuring the origin of criminal assets, the follow the money approach is also equipped with a detection scheme involving the financial industry and supported by various legal breakthroughs that seek to overcome weaknesses in conventional law enforcement.

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