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Legal Implications of the Concealment of the Origin of Assets in Money Laundering Criminal Offences (Case Study: Supreme Court Decision Number 2011 K/Pid.Sus/2021)

Angga Aidry Ghifari[1)] & Bambang Tri Bawono[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: anggaaidryghifari.std@unissula.ac.id
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: bambangtribawono@unissula.ac.id

Abstract. *One of the crimes that often occurs in Indonesia is money laundering, the problem that often occurs with of money laundering is that money launderers try to hide or disguise their assets which are the result of criminal acts in various ways so that they are difficult to trace by law enforcement officers. This is further supported by the globalization in the banking sector, causing many banks to become targets for money laundering crimes. a case, namely based on the Supreme Court Decision which has permanent legal force, namely the Supreme Court Decision Number 2011 K/ Pid.Sus/2021 So that based on this case the defendant has carried out a concealment of the origin of his assets in this case there needs to be a legal review in terms of "hiding" the origin of his assets in the implementation of the crime of money laundering related to proof of the act of hiding or disguising the origin of assets. The results of the study show that the regulation of norms on concealment or disguising the origin of assets in money laundering crimes in Indonesian legal provisions has not regulated further in the formulation of how to determine whether someone can be said to have concealed the origin of their assets in committing money laundering crimes, only to the extent of regulating that if someone hides the origin of assets there will be a legal consequence, so it is necessary to make a regulation that can accommodate the vacuum of the legal norm in order to achieve legal certainty, one of which is by using the follow the money approach to try to find money/property/other assets that can be used as evidence of the object of the crime.*

Keywords: *Assets; Concealment; Laundering; Money.*

1. Introduction

Indonesia is a country of law, which adheres to the principles of law in everyday life, this is also shown in the formulation of the 1945 Constitution of the Republic of Indonesia as a form of philosophical foundation for everyday life. A country of law means that all government policies in carrying out its power must be based on law. State institutions, both legislative, judicial, and executive, are all based on law. The law becomes the commander or is known as the supremacy of law.[1]So that all daily life activities must be based on a law, by achieving the goals of the law itself, namely certainty, justice and benefit. The affirmation of the Republic of Indonesia as a country of law in the amendment to the 1945 Constitution at the fourth stage, namely as stated in Article 1 paragraph (3).

Establishment of the Financial Transaction Reports and Analysis Center or abbreviated as PPATK, which is an independent institution that is given the task and authority to eradicate money laundering crimes in Indonesia. PPATK is authorized to request information and analyze financial transactions that are considered suspicious. PPATK itself is regulated in the Regulation of the Financial Transaction Reports and Analysis Center Number 1 of 2021 concerning Procedures for Submitting Reports of Suspicious Financial Transactions, Cash Financial Transactions, and Financial Transactions of Fund Transfers From and to Abroad Through the Goaml Application for Financial Service Providers in the provisions of Article 1 number 1 stipulates that:

"The Financial Transaction Reports and Analysis Center, hereinafter abbreviated as PPATK, is an independent institution established in order to prevent and eradicate the crime of money laundering."

The main task of PPATK is to detect the occurrence of money laundering crimes and assist in law enforcement related to money laundering and predicate crimes. In its procedures, PPATK analyzes financial transactions and then makes a report of suspected money laundering to the police.

The act of hiding illegal money sources is very common in Indonesia, this is what causes money laundering crimes to increase, this is in line with what was conveyed by the Chairman of PPATK Ivan Yustiavandana on Tuesday, February 14, 2023 that "throughout 2022 there were 1,290 reports of analysis results related to 1,722 suspicious transaction reports with a nominal value suspected of being a crime reaching IDR 183.88 trillion, of which corruption crimes amounted to IDR 81.3 trillion, gambling crimes worth IDR 81 trillion, green financial crime or crimes related to natural resources amounting to IDR 4.8 trillion, narcotics crimes of IDR 3.4 trillion, and embezzlement of foundation funds of IDR 1.7 trillion."

[1]Siallagan, H., (2016). Implementation of the Principles of the Legal State in Indonesia. Sociohumaniora, 18(2), Pp.122-128.

One of the cases that occurred and is not unfamiliar is the case of money laundering committed by IK as an affiliate of the binomo application, a fraudulent investment that does not have a permit from the Commodity Futures Trading Supervisory Agency (Bappebti). On November 15, 2022, the Judge read out his verdict and sentenced him to 10 years in prison and a fine of IDR 5 billion which if not paid would be replaced with a prison sentence of 10 months. The panel of judges also stated that the evidence of the proceeds of the crime in this case was confiscated for the state. IK has been legally and convincingly proven guilty of committing the crime of spreading false and misleading news that resulted in consumer losses in Electronic Transactions and Money Laundering as regulated in Article 45A paragraph (1) Jo Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Article 3 of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering. IK was proven to have hidden his wealth in the form of digital crypto assets worth IDR 38 billion. The crypto assets were then frozen by the Financial Transaction Reports and Analysis Center (PPATK).

Apart from the above case, there is also a case, namely based on the Supreme Court Decision which has permanent legal force, namely the Supreme Court Decision Number 2011 K/Pid.Sus/2021, the name of the defendant, namely Budhi, was proven guilty of committing the crime of "Having participated in a series of lies and participated in assisting in the transfer of assets which he knew or should have suspected were the proceeds of a crime as referred to in Article 2 Paragraph (1) the origin of the assets".

The defendant as the main director (PT. GEC) and as the director and shareholder (PT. TPSF, Tbk), submitted an application for a deposit of financing funds to be used as working capital (PT. GEC) which is engaged in property and building rental. The defendant with the intention of benefiting himself or others unlawfully using false circumstances, that the disbursement of funds made in the name of PT GEC was used to disguise the origin of the disbursement of financing facilities transferred to another bank and some were used to purchase office units in South Jakarta.

2. Research Method

Legal research methods are a way or procedure used to resolve a problem related to legal issues in a society as part of a legal phenomenon resulting from the occurrence of a legal problem and the form of resolving the legal problem.[2] The research methods used in this study are as follows: The approach is one of the methods used to resolve legal problems that are used as legal issues.

[2]Rahayu, DP, SH, M. and Ke, S., (2020). Legal Research Methods. Yogyakarta: Thafa Media. P.30

3. Results And Discussion

3.1. Regulations on Concealment of Origin of Assets in Money Laundering Crimes

Furthermore, E. Utrecht formulated strafbaar feit with the term criminal event which he often also called a crime, because the event is an act of handelen or doen positive or a negligent negligence, as well as its consequences (conditions caused by the act or negligence).[3]

Criminal acts basically tend to look at behavior or actions (which result in) which

In essence, every criminal act must be from the elements of the external (facts) by the act, containing behavior and the consequences caused by it. Both give rise to events in the external (world). The elements of a criminal act are:

a. Objective Elements

Elements that exist outside the elements that are related to the circumstances, namely the circumstances in which the actions were only carried out consist of:

a) Illegitimacy.

b) The quality

c) Causality

b. Subjective Elements

Elements that exist or are attached or that are connected and include everything that is contained in his heart. This element consists of:

1) Intention or unintentional (dolus or culpa)

2) of an attempt, as determined in Article 53 paragraph (1) of the Criminal Code.

3) Various intentions such as those found in crimes of theft, fraud, extortion, and so on.

4) Planning in advance, as stated in Article 340 of the Criminal Code, namely murder that was planned in advance.

5) Feelings of fear as contained in Article 308 of the Criminal Code

In the dynamics of modern crime, of criminal acts do not only stop at obtaining the proceeds of crime, but also try to hide or disguise the origin of the assets they obtain. This activity is known as money laundering. The crime of money

[3]Amir Ilyas, 2012, Principles of Criminal Law, Rangkang Education Yogyakarta & PuKAPIndonesia, Yogyakarta, p. 38.

laundering (TPPU) was born as a response to the need to prosecute further crimes aimed at legalizing the proceeds of the predicate crime.

In general, criminals try to hide or disguise the origin of wealth that is the result of criminal acts in various ways so that the wealth from their crimes is difficult to trace by law enforcement officers. So that they can freely use the wealth for both legitimate and illegitimate activities.[4]Therefore, the Crime of Money Laundering (TPPU) not only threatens the stability and integrity of the economic system and financial system, but can also endanger the foundations of social, national and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Concealment of the origin of assets in money laundering crimes has been regulated in Article 3 of the TPPU Law, which regulates the following:

"Any person 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) 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)."

Furthermore, Article 4 of the TPPU Law stipulates 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 proceeds of a crime as referred to in Article 2 paragraph (1) 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)."

a. The existence of assets known or reasonably suspected to originate from criminal acts

The assets in question do not need to originate from a criminal act that has been legally decided. It is sufficient to prove that the assets are reasonably suspected of originating from the original crime.

b. Acts of Hiding or Concealing Origin Included in this definition are placing, transferring, spending, donating, depositing, changing the form, exchanging, or other acts that disguise the origin of assets.

c. The presence of an element of intent

[4] Haris, BS (2016). Strengthening Evidence of Money Laundering in Corruption Cases in Indonesia. Integritas: Journal of Anti-Corruption, 2(1), 91-112.

The limitation of the PP TPPU Law on money laundering stems from the fact that the activity is closely related to the use of very large amounts of money. Meanwhile, money obtained through money laundering operations is often disguised, with the source of the money hidden through the use of services such as banking, insurance, capital markets, and financial instruments. Because of the potential losses caused by increased money laundering activities to society and the state, such actions must be prohibited. In other words, the stability of the national economy can be harmed or affected by money laundering practices.

The act was done intentionally (dolus), namely with the intention to benefit oneself using a series of lies and tricks to move the victim to hand over a sum of money to him. Furthermore, intentionally spending the proceeds of the fraudulent crime to meet his needs as an element of intent (dolus) is a form of error that is the basis for criminal responsibility. The defendant's actions have fulfilled the elements of a crime as regulated in Article 378 in conjunction with Article 55 paragraph (1) 1 of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. This Supreme Court decision is in accordance with the provisions regulated in the Criminal Code and the TPPU Law. The TPPU Law does not regulate a minimum limit for imprisonment and fines. In this case, the shortest time limit for imprisonment is one day, as regulated in Article 12 paragraph (2) of the Criminal Code. Therefore, the amount of imprisonment and fines imposed on the defendant reflects the discretion of the Panel of Judges in this case, taking into account the facts and evidence revealed at trial.

3.2. Legal Implications of Concealing the Origin of Assets in Money Laundering Crimes

1) Proving the Act of Concealing or Disguising the Origin of Assets

For example, based on the case of BUDHI ISTANTO SUWINTO, he was proven guilty of committing the crime of "Having participated in a series of lies and assisted in the transfer of assets of which he was aware."is the result of a money laundering crime" as referred to in Article 2 Paragraph (1) of the origin of the assets". Where in this case the confiscated evidence is in the form of:

a. (one) Original Sheet of BUDHI ISTANTO SUWITO's Guarantee Statement Letter made in Sragen on 10 November 2018

b. (one) Original Sheet of BRI Syariah Bank Financing Settlement Certificate Number: B.1548/BRIS_Yogyakarta/X/2018 dated 31 October 2018 addressed to Budhi Istanto Suwito, SE signed by the head of the Yogyakarta BRI Syariah KC branch KURNIAWAN with a copy to the Director of PT. Putra Taro Paloma

c. Original Bank Statement of PT. Putra Taro Paloma with Account No. 6000-430-771 for the period of September 30, 2018 to October 31, 2018 and Original

Bank Statement of PT. Putra Taro Paloma with Account No. 6000-430-771 for the period of January 31, 2019 to February 28, 2019

d. Print Out Email dated October 1, 2012 with attachment of Money Transfer Application dated October 1, 2012 worth IDR 10,004,248,973.00 and Process Testkey dated October 1, 2012 worth IDR 5,000,015,000.00

e. Print Out Email dated May 17, 2013 with attachments Bilye Deposito No. MM1313500154 worth IDR 1,000,000,000.00, No. MM 1313500157 worth IDR 1,000,000,000.00

f. Print Out Email dated September 27, 2016 along with attachments in the form of a BRI Syariah Bank deposit slip in the name of PT. PUTRA TARO PALOMA with Number MM1526100218 worth IDR 5,000,000,000.00, Number MM1526000171 worth IDR 5,000,000,000.00, Number MM1526000172 worth IDR 5,000,000.000.00 and Number MM1625700212 worth IDR 5,000,000,000.00

g. Photocopy stamped by PT. PTP Office Rental Agreement at Lat 16 Plaza Mutiara between PT. PUTRA TARO PALOMA and PT. GREAT EGRET CAPITAL for the period July 2018 to September

h. Photocopy stamped by PT. PTP Letter from PT. PTP to the Head of BCA Soepomo Branch, No. 01/FA-PTP/II/19, dated February 4, 2019, regarding Information for cash deposit of branch code 0327, along with Print Out Email from BCA Soepomo on the 7th, 15th and 2019, as a response to the letter in question.

The defendant was proven legally and convincingly to have committed the acts charged by the Public Prosecutor, as considered in the court decision. Based on the legal facts revealed in the trial, the Defendant who served as the President Director of PT. Great Egret Capital (PT. GEC) as well as the Director and shareholder of PT. Tiga Pilar Sejahtera Food, Tbk (PT. TPSF, Tbk), is known to have submitted an application for a deposit of financing funds to a financial institution. The funds were claimed to be used as working capital for PT. GEC, which is engaged in property and building rentals. However, in reality, the application for financing was made by the Defendant with dishonest intentions and accompanied by elements of deception. The Defendant deliberately used false circumstances, either through document engineering, misleading information delivery, or fabricated lies in order to create trust from the financing provider. The goal is none other than to benefit himself or another party unlawfully, especially by creating fictitious conditions that appear to be legally valid, even though they are contrary to the actual facts. The Defendant's actions fulfill the elements of an unlawful act that can be qualified as a criminal act, and then become a predicate crime in the context of money laundering, if it is proven that the proceeds of the crime were used to disguise the origin of the assets obtained.

In the criminal verdict on behalf of the Defendant Budhi Istanto Suwito, the panel of judges stated that the Defendant was proven legally and convincingly guilty of two crimes, namely Fraud as regulated in Article 378 of the Criminal Code, by unlawfully benefiting oneself or others through trickery or lies. Participating in a conspiracy to commit the crime of money laundering, by hiding or disguising the origin of assets derived from crime. For his actions, the Defendant was sentenced to 3 years in prison and a fine of IDR 200,000,000, which if not paid will be replaced with 2 months in prison. The Defendant is also required to pay court costs at the cassation level of IDR 2,500.

The Defendant and Witness Ir. Stefanus Joko Mogoginta managed to persuade Witness Yuniati Solih and Witness Ir. Ninik Dewi Vidiana Suwito to agree to use four deposits owned by PT. Putra Taro Paloma as collateral for financing at BRI Syariah Yogyakarta Branch. The approval was given without a written agreement, only verbally. As a result, financing funds amounting to IDR 20 billion were disbursed to PT. Great Egret Capital (PT. GEC). To disguise the origin of the funds, the Defendant and Witness Stefanus transferred the funds in stages via RTGS to a BCA account in the name of the Defendant and PT. Semar Pelita Sejati, and used it to purchase a building. However, until the due date on October 13, 2018, the Defendant and Witness Stefanus did not repay the principal of the financing.

It is stated that the defendant was proven legally and convincingly guilty of committing the crime of transferring and spending assets with the aim of disguising the origin of the assets (the second alternative in the indictment), based on the chronology that the author read, the defendant did indeed commit an act in the form of sending and transferring a sum of money. Based on this, the author is of the opinion that the act committed by the defendant should be associated with the type of crime in the form of Concursus or concurrency. The crime committed by the defendant which has a predicate crime (original crime) namely the crime of fraud, then the punishment for this act concerns the crime of concurrency (concursus) which is regulated in the Criminal Code in Article 63 which is called Concursus idealis and Article 65 which is called concursus realis. As in Article 63 paragraph (1) it is regulated that:

"If an act falls under more than one criminal regulation, then only one of those regulations will be imposed, if they differ, the one that contains the most severe principal criminal threat will be imposed."

Based on the article, the panel of judges should have linked the defendant's actions with the Concursus in accordance with Article 65 of the Criminal Code, namely concursus realis because there are acts that stand alone and are combined into several crimes, namely as in the public prosecutor's indictment in the form of an alternative subsidiary charge, namely an act based on proceeds from a criminal act of fraud and subject to the same principal penalty in the form of imprisonment, then the panel of judges imposed the heaviest principal

penalty, namely the principal penalty originating from Article 3 of the TPPU Law. In the case that the act that has been committed is an act of money laundering. The defendant made a mistake, namely by receiving, sending, transferring, and spending assets with the aim of disguising the origin of the assets. Therefore, the defendant is able to be responsible for the mistakes that have been made and is able to carry out the punishment for his actions in accordance with the principle of no punishment without fault.

According to the author, the application of material criminal law applied in this case is Article 378 of the Criminal Code in conjunction with Article 3 of Law Number 3 of 2010 in conjunction with Article 55 paragraph (1) of the Criminal Code. The elements of this article, if related to the facts that occurred in the trial, are described by the author as follows:

1) The element of "every person", above is an individual who is a legal subject, whose actions can be legally accounted for, whose identity is listed in the indictment which is confirmed by the defendant. So the element of "every person" has been fulfilled and convincingly guilty according to law.

2) The elements of “placing, transferring. Diverting, spending, paying. Granting, depositing, taking abroad, changing the form, exchanging with currency or securities or other acts or assets that are known or reasonably suspected to be the result of crime.

3) The elements of "Those who committed the crime, those who ordered it to be committed and those who participated in committing the crime" are the existence of a criminal act, witnesses and evidence that show that the defendants were proven to have committed it.

Comparison of laws in various countries in determining the concealment of the origin of wealth (money laundering) shows variations, but all countries aim to eradicate this crime. Some countries apply a more severe approach with a focus on revealing the origin of wealth and a strict evidentiary process, while others emphasize more on preventing and disclosing illegal cash flows. The birth of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, is seen as the last effort of international efforts to establish the International Anti Money Laundering Legal Regime. This regime was essentially formed to combat drug trafficking and encourage countries to immediately criminalize money laundering. In addition, this regime also seeks to monitor and regulate certain international activities and relations, establish norms, regulations and procedures agreed upon in order to regulate anti-money laundering provisions, in addition this regime also bridges and reduces disparities between the differences in legal systems that exist between countries.[5]The

[5] Tornado, AS (2023). Determination of Suspects in Fraudulent Investments (Binary Options) from the Perspective of Money Laundering Crimes. Sagacious Journal, 10(1).

following are arrangements made by other countries in implementing a more stringent approach with a focus on disclosing the origin of wealth:

1. United States of America

The United States Congress in 1986 enacted the Money Laundering Control Act of 1986 (MLCA), which for the first time attempted to define and criminalize various money laundering activities. Article 1956 defines several crimes/crimes related to money laundering, including:

B. Article 1956 (a) (1) (B) (ii) - Avoidance of reporting requirements in this case means carrying out a financial transaction with the aim of avoiding the obligation to report the transaction in accordance with applicable federal laws and regulations.

C. Article 1956 (a) (3) allows law enforcement to conduct undercover "stings" operations in order to find out whether there is any hidden property. According to this article, it is against the law to be involved in a financial transaction involving property represented to be proceeds of specified unlawful activity. The penalty for violating Article 1956 is a minimum of 20 years' imprisonment or a maximum fine of US$500,000 or twice the value of the goods involved in the transaction, whichever is greater, or both.

In general, the United States uses the provisions of the Sting Provision of Section 1956 (a) (c), which was created because of the provisions of Section 1956 (a) (1) which uses entrapment operations in disclosing money laundering. In the United States, in order to combat money laundering, the United States government also formed the Government Organization Framework for Combatting Money Laundering and Prosecuting based on the MLCA Statutes.

2. English

English law establishes that concealing or disguising the origin of wealth is at the heart of the crime of money laundering. There is no need to prove the predicate crime in full, there is only a reasonable suspicion that the property is derived from crime. The UK is renowned for its Unexplained Wealth Order and Civil Recovery mechanisms which allow the state to seize wealth without waiting for a criminal conviction, making it one of the most aggressive anti-money laundering (AML) systems in the world. One of these is set out in the Concealing provisions (Section 327 POCA) relating to concealing, disguising, exchanging or transferring criminal property. Section 327 explicitly states:

“person commits an offense if he conceals, disguises, converts, transfers or removes criminal property from the jurisdiction

Indonesia itself has not fully regulated how to determine the origin of assets in money laundering, only focusing on the legal consequences of committing the

crime of money laundering, where other countries focus more on where the assets come from and whether there are assets that are still hidden in order to reduce losses or reduce the penalties imposed.

The relationship between the theory of legal certainty and the vacuum of norms (rechtsvacuum) is a contradictory but closely interrelated relationship. On the one hand, legal certainty demands clear and applicable rules, while the vacuum of norms actually indicates the absence of rules that directly regulate a legal condition or event. So that in order to realize legal certainty, further regulations are needed, especially regarding the discovery of the element of hiding in the crime of money laundering.

Concealment of assets in the context of money laundering is an attempt to disguise or hide the identity, origin, or ownership of assets obtained from criminal proceeds, so that they appear legal and cannot be traced by law enforcement. Concealment of assets in money laundering includes:

a. Account in the name of another person (nominee)

b. Using a fictitious company (shell company)

c. Purchasing assets such as a house or car

d. Offshore transfer

In this case, Financial Service Providers must be aware that various provisions in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering with reporting obligations and existing prohibitions such as anti-tipping off. The defendant is given the opportunity to prove where his assets came from that did not come from a crime, that the assets he obtained were purely not the proceeds of a crime. Assessments regarding money laundering figures also emerged in the discussion of the draft Law on Proceeds of Crime (Proceeds of Crime Act 2002) in the British Parliament, among others, as follows:

One of these proofs is carried out by reverse proof and proof of the act carried out through the follow the money approach requires a source of financial information. Hiding this means hiding the origin or source of money or assets derived from criminal acts. The goal is so that the money or assets cannot be traced back to the original criminal act. Of course there is an element in Proving the Element of Hiding, namely as follows:[6]

a. Identify Sources of Money or Assets

[6] Mawardi, R., Robby Maulana, R., & Wijayanti, I. (2022). An Analysis Of The "Follow The Money": Investigative Audit Technique In Campaign Funds For The Election Of Regional Heads In Indonesia. Asia-Pacific Management Accounting Journal (APMAJ), 17(3), 269-288.

1. The prosecutor must prove that the money or assets in question came from a criminal act. This can be done by showing a connection between the predicate crime and the money or assets.

2. Evidence that can be used includes financial transaction reports, witness testimony, documents related to the predicate crime, and expert testimony.

b. Attempt to Hide

Indicates an attempt to hide the source of money or assets. For example, using a bank account in someone else's name, transferring money through multiple accounts. Evidence can include transaction records, communications between parties involved, and documentation of complex coIDR orate structures.

The follow the money approach is a very effective investigative method in proving the crime of money laundering, including in proving the act of hiding or disguising the origin of assets.[7]This approach focuses on tracking the flow of funds from the initial source (suspected proceeds of crime) to the hands of the or the final assets controlled. The portion of the the money approach is in the initial process when there are findings of indications of money laundering from PJK (Financial Services Providers) or from public reports reported to PPATK.

Although the follow the money approach has great potential in eradicating TPPU, its implementation in Indonesia faces various obstacles. Some of the main obstacles include weak coordination between agencies such as the National Police, the Prosecutor's Office, and the PPATK, the lack of experts who are able to analyze the flow of funds, and limited supporting facilities and infrastructure. In addition, the existence of overlapping authorities and less than optimal management of financial data often hinder the investigation and inquiry process. These obstacles are exacerbated by cash financial transactions that are difficult to trace and the lack of public understanding of the dangers of money laundering.[8]

The follow the money approach is an important strategy in uncovering money laundering (TPPU) in Indonesia. This method focuses on tracing the flow of funds to identify assets or wealth derived from criminal acts. In its implementation, this approach allows law enforcement officers to track suspicious financial transactions, whether in the form of money in accounts, property, or other movable assets. One of the challenges is separating legal assets from assets obtained illegally.

Proof of the origin of assets is a central element in TPPU, because what is criminalized is not only having assets, but also having or controlling assets

[7] Yanuar, MA (2023). Position of the Follow The Money Approach to the Role of the Election Supervisory Body in Enforcing Money Politics Practices. National Law Magazine, 53(1), 110-130.
[8] Riyadi, S. (2019). Law Enforcement against Illegal Drug Trafficking Through the Follow The Money Approach (Doctoral dissertation, University of North Sumatra).

derived from criminal acts and then hiding or disguising their origins. This approach utilizes financial transaction analysis to trace the source of the If a discrepancy is found between the two, this could be an indication that some of the assets owned by the come from illegal activities.

The following the money method is an asset-oriented method. So with this method, the disclosure of money laundering crimes does not have to start from the criminal event that occurred and then trace the assets resulting from the crime. But it can start from the assets found, to then be searched back whether the assets were obtained legally or not. In the concept of following the money or asset tracing, it is carried out with a financial analysis approach, which uses forensic accounting to find the flow of funds from the original crime.[9]

Indonesia has not implemented the following the money method in the process of proof, so that there are consequences for assets and criminal penalties in the prosecution and verdict of the case. When examined from the theory of law enforcement put forward by Soerjono Soekanto as described in the previous sub-chapter, it can be seen that the factors causing consequences for assets and other problems in proving money laundering are factors from law enforcers themselves who do not use the right method in the process of proving money laundering from the proceeds of embezzlement, and the factor of the law as a legal policy that does not regulate in detail the technicalities of proof that must be carried out by prosecutors in the process of proving money laundering from the proceeds of embezzlement.

2) Legal Implications for a Person Who Conceals the Origin of Assets in the Crime of Money Laundering

Legal implications, or often referred to as legal consequences, are legal consequences or impacts that arise from a legal event or legal act. This includes all forms of rights, obligations, or other legal consequences that arise from an action or legal event. Implications can be as the consequences that arise from the implementation of a program or policy. These implications can be good or bad for the parties who are the targets of the implementation of the program or policy. Implications have the meaning of the impact or conclusion that arises in the future that is felt when doing something, according to the legal dictionary, juridical has the meaning from a legal perspective.[10]

Legal consequences are consequences caused by law, regarding matters concerning an act committed by a legal subject. In addition, legal consequences are also consequences of actions taken with the aim of obtaining a result desired

[9]Op.Cit.,*Yofiza, Y.,*
[10]Isnaeni, D., (2018). Legal Implications of Regional Government Authority in Granting Mining Business Permits According to Law Number 23 of 2014. Jurispruden: Journal of the Faculty of Law, Islamic University of Malang, 1(1), pp.35-46.

by the legal subject. In this case, the consequences referred to are consequences regulated by law, while the actions taken are legal actions, namely actions that are in accordance with or not in accordance with applicable law, namely as follows:

a. The birth, change or disappearance of a particular legal situation. For example, the legal consequences of changing from being legally incompetent to being said to be legally competent when someone is 21 years old.

b. The birth, change or disappearance of a legal relationship between two or more legal subjects, then the rights and obligations of one party are confronted with the rights and obligations of the other party.

c. The birth of sanctions when an unlawful act is carried out. For example, a corruptor is given a punishment sanction as a form of legal consequence of the corrupt act that causes state losses.

Seeing this, it can be seen that legal consequences are events that arise due to a reason, namely acts committed by legal subjects or called legal acts, both acts that are in accordance with the law and acts that are against the law. This is regulated in the provisions of the UUTPPU Article which regulates as follows:

"Any person 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) 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 (ten billion rupiah)."

Furthermore, Article 4 of the UUTPPU stipulates 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 proceeds of a crime referred to in Article 2 paragraph (1) 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 (five billion rupiah)."

In money laundering cases, formal evidence is needed from certain officials or professions so that the transactions made appear reasonable or as if they were normal. In fact, the formal evidence is intended as a cover to hide or disguise the proceeds of crime. For example, in cases of bribery or gratification, sometimes the bribe money is deposited in a company account owned by the family, with a formal agreement first made between the bribe giver and the nephew of the bribe recipient so that it appears as if there is a reasonable business cooperation. However, this is a medium for money laundering.

The main difference between the element of concealment between Article 3 and Article 4 of the TPPU Law lies in the mental attitude and the objectives to be achieved, namely in Article 3 of the TPPU Law, indicating the presence of mens rea to conceal or disguise the proceeds of crime. This means that there is an element of intent and error in the While in Article 4 of the TPPU Law, the element of concealment or disguise refers to the participation or involvement of other parties as parties to facilitate the realization of the act (actus reus) of money laundering. In addition, the difference between Article 3 and Article 4 of the TPPU Law is regarding the threat of a fine, namely in Article 3 it is higher than in Article 4. The fine in Article 3 is IDR 10 billion while in Article 4 it is IDR 5 billion.

A person who conceals or disguises the origin of assets resulting from criminal acts will be subject to severe sanctions in the form of imprisonment, large fines, confiscation of assets, and other additional sanctions, in accordance with the provisions of the TPPU Law. In order for a person to be subject to sanctions, it must be proven that:[11]

1. Knowing or reasonably suspecting that the assets originate from criminal acts;

2. Carrying out active acts to conceal or disguise the origin of assets;

3. Have control or involvement in transactions over the property.

The relationship between the theory of law enforcement and legal consequences is very close, because both are integral parts of the legal system that aims to create justice, legal certainty, and benefits. In personam asset confiscation is an action directed at a person personally (individually), therefore requires proof of the defendant's guilt before confiscating the defendant's assets. The Public Prosecutor must first prove the criminal act committed by the defendant and the relationship between the criminal act committed by the defendant and the assets that are the result or instrument of a criminal act controlled by the defendant, if proven then the court decision that has permanent legal force is the legal basis for confiscating the defendant's assets. Law enforcement is a process, while legal consequences are the results. Without proper law enforcement, legal consequences can be invalid, unfair, or even violate human rights. The theory of money laundering law enforcement focuses on the principle of prevention and reversal, with an approach that emphasizes the proof and prosecution of assets suspected of being the result of crime, not just the original crime.

Asset confiscation currently in force in Indonesia can be implemented solely limitedly only if of the crime has been proven legally and convincingly guilty of committing a crime by a court decision that has permanent legal force (inckracht)

[11] Lasmadi, S., & Sudarti, E. (2021). Reverse Proof in Money Laundering Crimes. LEGAL REFLECTIONS Journal of Legal Studies, 5(2), 199-2018.

or in other words, asset confiscation is carried out with a criminal verdict, but criminal confiscation has many difficulties in its implementation. One of them is the ability of the divert or flee the proceeds of crime or the instruments of crime abroad and even can flee abroad and cannot be extradited back to Indonesia. Asset confiscation is quite controversial in Indonesia, especially in terms of law. Currently, the Indonesian government is drafting the Asset Confiscation Bill which will later discuss asset confiscation carried out by the state. This Asset Confiscation Bill has advantages and disadvantages, namely: The advantages include being able to strengthen the government's efforts to eradicate crime, being able to help recover state losses due to crime, and being able to provide a deterrent effect of crime.[12]

Asset confiscation is also regulated in the regulation of the Prosecutor's Office Regulation Number 7 of 2020 concerning Guidelines for Asset Recovery. The Prosecutor's Office as a law enforcement institution, is universally a central institution in the criminal law enforcement system, which has the duty and responsibility to coordinate, control investigations, carry out prosecutions and implement the determination or verdict of a judge who has permanent legal force and has responsibility and authority over all evidence confiscated both in the prosecution stage for the benefit of proving the case, as well as for the benefit of execution. The responsibility of the prosecutor's office in carrying out asset confiscation for asset recovery has been regulated by the mechanism in PERJA number 7 of 2020 and was initially carried out partially by each prosecutor's work unit, after being regulated in PER-006/A.JA/3/2014 dated March 20, 2014 (which is now PERJA 7 of 2020), the Asset Recovery Center has been formed as a prosecutor's work unit responsible for ensuring the implementation of asset recovery in Indonesia optimally with an integrated asset recovery system pattern that is effective, efficient, transparent, accountable and integrated.

4. Conclusion

The regulation of the norm of concealment or disguise of the origin of assets in money laundering crimes in Indonesian legal provisions has not regulated further in the formulation of how to determine whether a person can be said to have concealed the origin of his assets in committing money laundering crimes, only to the extent of regulating that if a person hides the origin of assets there will be a legal consequence, so it is necessary to make a regulation that can accommodate the absence of the legal norm in order to achieve legal certainty, one of which is by using the follow the money approach, trying to find money/property/other wealth that can be used as evidence of the object of the crime and of course after going through an analysis of financial transactions and it can be suspected

[12] Izazi, N., & Adiwinarto, S. (2024). Legal Consequences of Notarial Deeds Related to Money Laundering Crimes. Indonesian Journal of Law And Justice, 1(4), 5-5.

that the money is the result of a crime related to hiding or disguising the origin of assets carried out through a pattern of placement, layering, and integration through the follow the money approach requires a source of financial information.

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