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Optimization of the Pre-Prosecution Stage as an Effort to Confiscate Assets in Money Laundering Cases (Case Study of Manokwari District Court Decision Number: 28/Pid.B/2023/Pn Mnk)

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Abstract. *Money Laundering is an organized crime that attempts to conceal or eliminate the traces of criminal assets. Money Laundering is significantly regulated by Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering.This study uses a normative juridical method to analyze and explain how the efforts to confiscate assets in money laundering criminal cases are based on applicable laws and regulations; analyze and explain the weaknesses and challenges of confiscating assets in money laundering criminal cases; and analyze and explain the optimization of the Pre-Prosecution stage carried out by the Public Prosecutor in case Number 28 / Pid.B / 2023 / PN Mnk on behalf of the Convict Chandrawati Sutandang, SE The results of the study indicate that the Public Prosecutor in the a quo case has not optimized the pre-prosecution stage as an effort to confiscate assets owned by the defendant from the proceeds of his crime, by paying attention to the lack of supporting evidence that has a direct or indirect relationship to the assets or assets that have been confiscated as evidence, so that in this case it becomes a legal fact in the trial which the panel of judges uses as the Ratio Decidendi in making a decision regarding the return of all evidence belonging to the defendant.*

Keywords: *Confiscation; Laundering; Money; Prosecution.*

1. Introduction

The implementation of law enforcement that refers to the Criminal Procedure Code in this case is called the Criminal Procedure Code, known as the Integrated Criminal Justice System, which is implemented to achieve the objectives of the law itself in criminal proceedings, namely to seek material truth, achieve order, tranquility, peace, justice, and prosperity in society.[1]Referring to the Integrated

[1]Andi Hamzah, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, 2014, p. 9.

Criminal Justice System, the Attorney General's Office of the Republic of Indonesia through Article 13 of the Criminal Procedure Code and Law of the Republic of Indonesia Number 21 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia has the authority to carry out its duties and functions as a public prosecutor to carry out prosecutions and implement judges' decisions that have obtained permanent legal force (in kracht van gewijsde).

That as stipulated in Article 30 paragraph (1) letter a of the Republic of Indonesia Law Number 21 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, in the case before carrying out prosecution, the prosecutor can take initial action in the form of pre-prosecution. Pre-prosecution is the prosecutor's action to monitor the progress of the investigation after receiving notification of the start of the investigation from the investigator, studying and/or examining the completeness of the case files resulting from the investigation received from the investigator, and providing instructions to be completed by the investigator to be able to determine whether the case files can be transferred or not to the prosecution stage. That the pre-prosecution action carried out by the Public Prosecutor at the practical level is known as the first stage where the investigator submits the case files in real and physical form to the Public Prosecutor appointed to follow the progress of the criminal case investigation.[2]

The actual and physical submission of case files in the first stage is not considered as a certainty of completion of the investigation examination, because it is very likely that the case files resulting from the investigation that have been submitted can be returned by the Public Prosecutor to the investigator because they are still considered incomplete.[3]In accordance with the provisions of Article 110 of the Criminal Procedure Code and Article 138 of the Criminal Procedure Code, the Public Prosecutor has the right to provide legal instructions to investigators after 7 (seven) days of studying and/or examining the completeness of the case files resulting from the investigation received from the investigator, if the case files are deemed incomplete by the Public Prosecutor and returned to the investigator, the investigator must immediately conduct additional investigations within 14 (fourteen) days as an action by the investigator to complete the case files in accordance with the legal instructions from the Public Prosecutor, then within 14 (fourteen) days of the instructions from the Public Prosecutor have been completed by the investigator, the investigator must send the case files back along with the results of the additional investigation to the Public Prosecutor.[4]That the legal instructions outlined by the Public Prosecutor must contain everything that

[2]M. Yahya Harahap, SH, Discussion of Problems in the Criminal Procedure Code, Investigation and Prosecution (Second Edition), Sinar Grafika, Jakarta, 2012, p. 357.
[3]M. Yahya Harahap, SH, Ibid, p. 358.
[4]M. Yahya Harahap, SH, Ibid, p. 359.

is a formal requirement and a material requirement that has the condition to strengthen initial evidence related to a Criminal Act that has been committed or a condition that has a direct or indirect relationship with the Criminal Act that has been committed, or in this case manifests the principle of Dominus Litis, where the Public Prosecutor is the controller of the case.

In terms of the predicate crime as stipulated in Article 2 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which has an instrument as a Predicate Crime of Money Laundering Crimes, the criminal act has the characteristics of several elements, including the element of concealing the origin of assets originating from the proceeds of crime, which can be interpreted as the act of storing or covering up so that the origin of the assets does not appear to originate from criminal acts.[5]Then there is the element of disguising the origin of assets which are the result of a criminal act, which can be interpreted as an act of causing the origin of assets to be obscured, confused, misled or hidden, so that it is not apparent that the origin of the assets is from a criminal act.[6]which is known in its development to facilitate actions in this element always involves parties who are considered legal subjects who can help intellectual legal subjects in carrying out their criminal acts or are interpreted as double crimes.

As per these characteristics, based on the Attorney General's Guidelines Number 24 of 2021 Concerning Handling of General Criminal Cases, the Public Prosecutor at the pre-prosecution stage when studying and/or examining the completeness of the case files or providing legal instructions to investigators to complete the case files, it is appropriate for the Public Prosecutor to position his/her position as an implementer of vital authority in searching for or finding and confiscating assets or assets owned by perpetrators of Money Laundering Crimes that have a direct or indirect relationship with the Crime committed, so that in this case follow-up action can be taken in the form of confiscation of assets using criminal mechanisms (Criminal forfeiture),[7]as stipulated in CHAPTER IV Asset Maintenance and CHAPTER V Asset Confiscation of the Republic of Indonesia Attorney General's Regulation Number 7 of 2020 concerning the Second Amendment to the Attorney General's Regulation Number Per-027/A/Ja/10/2014 concerning Guidelines for Asset Recovery.

As in the verdict of the Manokwari District Court judge stated in his consideration, that in the criminal case process PT. Fulica Land Manokwari in this case is called the applicant, the applicant requested the Panel of Judges to merge the civil case

[5]Dr. Yudi Kristiana, SH, M.Hum, Eradication of Money Laundering Crimes: A Progressive Legal Perspective, Yogyakarta: Thafa Media, 2015, p. 53.
[6]Dr. Yudi Kristiana, SH, M. Hum, Ibid, p. 53.
[7]Legal Directorate of the Financial Transaction Reports and Analysis Center, Legal Issues Regarding Asset Confiscation in Law Number 8 of 2010 Concerning the Prevention and Eradication of Money Laundering Crimes and Efforts to Optimize Them, Jakarta: Financial Transaction Reports and Analysis Center (PPATK), 2021, p. 1.

related to the compensation claim case with the criminal case Number 28/Pid.B/2023/PN Mnk, as outlined in the applicant's lawsuit letter dated March 13, 2023, in which case the request was rejected by the panel of judges and further stated in the judge's verdict, so in this case the verdict is interesting to highlight.

That if referring to the judge's decision, the judge decided that Chandrawati Sutandang, SE was legally proven to have violated Article 374 of the Criminal Code in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code in conjunction with Article 64 of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, in which case the decision conforms to the indictment made by the Public Prosecutor, namely the First Alternative Charge in the Combined Indictment and the Primary Indictment in the Combined Indictment of the Public Prosecutor, as in the Indictment has a legal construction, that the actions of the Convict Chandrawati Sutandang, SE contain elements of causing harm to the state, in which the Convict Chandrawati Sutandang, SE, who is known as the Finance Manager at PT. Fulica Land Manokwari, has made fictitious evidence of payment of the Fee for Collection of Land and/or Building Rights (BPHTB) from the Manokwari Regency Regional Revenue Service, which was assisted by financial staff at PT. Fulica Land Manokwari, namely LUKAS LOSONG (DPO) for approximately 2 (two) years, with total arrearsin2021: IDR 265,970,000,000 (Two Hundred Million Sixty Five Ninety Seven Million Rupiah) and 2022: IDR 774,002,000,000 (Seven Hundred Million Seventy Four Million Two Thousand Rupiah) based on a notification letter from the Manokwari Regency Regional Revenue Service addressed to PT. Fulica Land Manokwari, which is known to the Convict Chandrawati Sutandang, SE used the money for personal needs, one of which was to purchase 1 (One) Building Unit l House No. C. No.15 type 3X6 with an area of 82 m2 located at Inggramui Block B No. 15, Manokwari Regency, 1 (One) Building Unit 2 (two) storey Shophouse Building B.16 with an area of 86 m2 located at Inggramui housing complex, Manokwari Regency, 1 (One) Building Unit House No. C. No.08 type 4X5 with an area of 84 m2 located at Inggramui Housing Block C, Manokwari Regency using the services of a third party in this case PT. BPR Bank Sinar Mulia Papua Manokwari.

However, with the decision of the Manokwari District Court which has permanent legal force (in kracht van gewijsde), it is interesting to study, especially as a lesson in the Pre-Prosecution Stage as a legal anatomy in the process of implementing the Prosecution which is the Authority of the Public Prosecutor, and in this case, the Pre-Prosecution Stage can be used as a strength in responding to the formation of a new body at the Attorney General's Office of the Republic of Indonesia, namely the Asset Confiscation Agency as an acceleration of law enforcement, especially in terms of efforts to confiscate assets in Money Laundering Crime cases.

2. Research Methods

This research is a normative legal research, in order to find the truth of coherence, namely examining whether a legal rule is in accordance with legal norms or with legal principles, principles and theories, in this case the object of the study is the Decision of the Manokwari District Court Number 28 / Pid.B / 2023 / PN Mnk on behalf of the convict Chandrawati Sutandang, SE Therefore, this research is a case analysis, so the approach used in this research is a case approach which is strengthened by a statutory regulatory approach in this case the regulations related to the Pre-Prosecution stage carried out by the Public Prosecutor as an Effort to Confiscate Assets in Money Laundering Crimes which is also strengthened by a conceptual approach, namely legal theories and opinions of legal experts who can be analytical tools in this research

The type of research used is descriptive, that is, explanatory research that aims to provide a comprehensive overview of the prevailing legal situation, legal phenomena, and specific legal practices. Using the descriptive method, this research seeks to systematically describe and explain the legal provisions relating to the crime of drug abuse, both from a normative perspective and their application in judicial practice.

The data sources used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and official documents that have direct binding force, such as the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 8 of 2010 concerning the Crime of Money Laundering, Law of the Republic of Indonesia Number 21 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, andManokwari District Court Decision Number 28/Pid.B/2023/PN MnkSecondary legal materials include various legal literature such as books, scientific journals, and research findings that provide explanations or interpretations of primary legal materials. Tertiary legal materials include legal dictionaries, legal encyclopedias, and legislative directories, which serve as support for finding and understanding primary and secondary legal materials in greater depth.

Data collection in this study was conducted through two main methods: literature review and document review. Literature review was conducted by reviewing various scientific sources, such as books, legal journals, and laws and regulations relevant to the research topic. Meanwhile, document review was conducted by collecting and analyzing case documents, including indictments, prosecutors' demands, and judges' decisions related to the crime of money laundering. Both methods were used to obtain accurate and relevant data as a basis for legal analysis.

The collected data was then analyzed using a juridical qualitative analysis method. This analysis was conducted by describing, interpreting, and connecting data from various legal materials to then compile them into argumentative conclusions. The results of the analysis were not presented numerically, but rather in a logical and systematic descriptive description. This study also used a case approach, namely by examining court decisions related to the crime of money laundering to see the application of the law in judicial practice. In addition, a statute approach was also used to examine the harmony between the judge's decision and the provisions contained in Law Number 8 of 2010 concerning the Crime of Money Laundering, the Criminal Code (KUHP), and other related legal regulations.

As a complement, this research also applies a conceptual approach based on legal theories, including the theory of legal certainty, the theory of authority, the theory of legal systems, and the theory of criminal forfeiture. This approach is intended so that the analysis is not only descriptive of the applicable regulations, but also able to provide a new legal thinking construction in the form of ideas for reconstructing criminal law policies regarding money laundering crimes in the future. Thus, this research method is not only oriented towards discovering the applicable rules (law on the books), but also examines their application in judicial practice (law in action) and their relevance to the objectives of national law.

Overall, this research method is aimed at identifying the relationship between written legal norms, judicial decisions as concrete practices, and relevant legal doctrines and theories. The results of the analysis are expected to yield conclusions that not only answer the research questions but also provide recommendations for reforming criminal law policy in handling money laundering crimes fairly, while providing legal certainty and usefulness.

3. Results and Discussion

3.1. Asset Confiscation Mechanism in Money Laundering Cases

In the Indonesian legal system, asset confiscation is a form of additional punishment, involving the confiscation of certain goods resulting from a crime, as described above. This generally applies to all crimes occurring within the Indonesian criminal law system, with the aim of harming the convict, who is proven by a binding court decision to have committed the crime, thereby depriving them of the proceeds of the crime.

Regarding the regulation of asset recovery, if we look at the approach model used based on the provisions of the Criminal Code (KUHP) and the Criminal Procedure Code, there are provisions in Article 10 of the Criminal Code concerning the confiscation of certain goods as one type of additional punishment, including: revocation of certain rights, confiscation of certain goods and announcement of the judge's decision. This means that the confiscation of tangible or intangible movable goods or immovable goods (asset confiscation) is an additional

punishment that can be imposed together with the main sentence in the form of imprisonment/or fines. The confiscation of assets in the Criminal Code and the Criminal Procedure Code is the basis for the formation of asset confiscation using the Money Laundering Law and the Republic of Indonesia Prosecutor's Office Regulation Number 7 of 2020.

Asset confiscation is also regulated in the regulations of the Prosecutor's Office Regulation Number 7 of 2020 concerning Guidelines for Asset Recovery. The Prosecutor's Office as a law enforcement agency, is universally the 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 decision of a judge who has permanent legal force and has responsibility and authority over all evidence confiscated both during the prosecution stage for the purpose of proving the case, as well as for the purpose 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 (then currently PERJA 7 of 2020), the Asset Recovery Agency has been formed as a prosecutor's work unit responsible for ensuring the optimal implementation of asset recovery in Indonesia with an integrated asset recovery system pattern that is effective, efficient, transparent, accountable and integrated.

That when talking about the pre-prosecution stage in handling money laundering criminal cases to maximize the confiscation of assets from the proceeds of money laundering criminal acts, the Public Prosecutor receives a Notice of Commencement of Investigation (SPDP) from the Investigator and then issues a Letter of Appointment of a Public Prosecutor to follow the progress of the investigation (P-16), in which case the Public Prosecutor must be proactively implied to the investigator in order to build a correspondence in order to be able to explore or link an event carried out by the perpetrator which has characteristics as a Money Laundering Criminal Act, in order to be able to search for or find evidence related to the Money Laundering Criminal Act.

In this case, the evidence is in accordance with the provisions of Article 184 paragraph (1) and paragraph (2) of the Criminal Procedure Code and electronic evidence as an extension of Article 184 (1) of the Criminal Procedure Code. The evidence must be directed as an instrument of the results of the criminal act or crime committed by the perpetrator, so that it will be very efficient and effective if in the initial stage of receiving the Notice of Commencement of Investigation (SPDP) the Public Prosecutor has acted proactively or positioned himself as an implementer of vital authority in searching, finding, and providing discretion to investigators to be able to confiscate evidence that has a relationship with wealth or assets that are reasonably suspected of being the result of crimes owned by the

perpetrators of the Crime of Money Laundering. Considering that when the case files have not been transferred to the Prosecutor's Office, the Public Prosecutor and Investigators have relatively sufficient time to carry out pre-prosecution. Discretion to apply regulations or authority in concrete situations[8], ideally accompanied by tiered reporting to the User vertically, Considering that there is a large possibility of disruption and obstacles in the form of perpetrators who try to disguise, obscure, or even eliminate the origin of assets during the investigation process, or in this case to close the gap for perpetrators or anyone to act to disguise, obscure, or even eliminate the origin of assets during the investigation process, because the way of thinking of perpetrators of Money Laundering Crimes is identical to the materialistic concept, so it is considered that everything related to handling Money Laundering Crimes that are AGHT in nature has the potential to occur.

Furthermore, the actions of the Public Prosecutor as explained above, are actions that can support the optimization of the authority of the Public Prosecutor in the case of case files being transferred to the Public Prosecutor by the Investigator or known in practice as stage 1 (one), considering that the Public Prosecutor according to Article 138 paragraph (1) of the Criminal Procedure Code only has a relatively short time, namely 7 (seven) days to study and/or examine the completeness of the case files resulting from the investigation in order to determine whether the case files are complete (P-21) or the case files are incomplete or do not meet the formal and material requirements. If the case files are incomplete, the Public Prosecutor can provide written legal instructions which are set out in the Letter of Notification of Incomplete Investigation Results (P-18) and the Letter of Return of Case Files for Completion (P-19) which contain the formal and material requirements. So that the provision of legal guidance in handling Money Laundering Crime cases has led to strengthening the substance of evidence in prosecution in proceedings, so that the Public Prosecutor can utilize the evidentiary space in handling Money Laundering Crime cases, namely the reversal of the burden of proof (Shifting Burden Of Proof) as a means to optimize the confiscation of assets from the proceeds of crime that have been committed by the perpetrator, as stipulated in Article 77 and Article 78 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. In this case, the defendant is asked to prove that the assets that have been confiscated by investigators or presented by the public prosecutor in the case file, are not derived from or related to the crime as charged by the public prosecutor by submitting sufficient evidence regarding the assets.

So that in accordance with Article 138 paragraph (2) of the Criminal Procedure Code, investigators within a period of 14 (fourteen) days have completed the case files in order to be declared complete files (P-21). The pre-prosecution stage

[8]Ridwan. Government Discretion & Responsibility. Yogyakarta: FH UII Press, 2014, p. 128

strategy as explained above can be used by the Public Prosecutor to represent his authority in the pre-prosecution stage as mandated in Article 13 of the Criminal Procedure Code and Article 14 letter b of the Criminal Procedure Code and Article 30 paragraph (1) letter a and letter e of the Prosecutor's Office Law, which is also in line with the meaning of the spirit of the Dominus Litis Principle held by the Public Prosecutor.

That in this way, the effort to confiscate confiscated assets by optimizing the pre-prosecution stage as the authority of the Public Prosecutor will be able to support the implementation of other authorities held by the Public Prosecutor as stipulated in Article 1 number 10 of the Regulation of the Attorney General of the Republic of Indonesia Number PER-027/A/JA/10/2014 concerning Asset Recovery, which states that 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 at every stage of law enforcement. That asset recovery which has the anatomy of asset confiscation activities, based on Article 1 number 18 of the Regulation of the Attorney General of the Republic of Indonesia Number PER-027/A/JA/10/2014 concerning Asset Recovery, that asset confiscation is a coercive action carried out by the state to separate rights to assets based on a court decision.

Such a thing should ideally be done by the Public Prosecutor in order to optimize the pre-prosecution stage in handling Money Laundering Crime cases so that it can be categorized as a variant of the Criminal Forfeiture Theory and the application of the in personam asset confiscation mechanism in the Indonesian legal system which is in line with the application of Article 10 Letter b number 2 of the Criminal Procedure Code and Article 39 paragraph (1) and paragraph (3) of the Criminal Code, which can be applied as additional punishment in the Crime of Money Laundering which in fact the object of the offense contains assets resulting from crime (Proceed of Crime). Ideally, during the pre-prosecution stage, the Public Prosecutor must have a creative mindset with a broad reach with the spirit of legal objectives in the application of the Integrated Criminal Justice System, so that he can discard the mindset that the pre-prosecution stage is the stage of idealizing the arrangement of case files administratively.

3.2. Weaknesses and Challenges to Asset Confiscation in Money Laundering Cases

The Money Laundering Law states that if the alleged perpetrator of a crime is not found within 30 (thirty) days, investigators may submit a request to the district court to decide that the assets are state assets or returned to the rightful party. In fact, this provision is an implicit adoption of the concept of non-conviction-based asset forfeiture (NCB), which allows for the confiscation of assets resulting from criminal acts without requiring a criminal verdict against the perpetrator. In the context of confiscating assets spread across various regions, this concept is very

useful because it allows for the confiscation of assets even if the perpetrator of the crime is not found; focuses on assets resulting from criminal acts (follow the money), not on the perpetrator (follow the suspect); and allows for the confiscation of assets spread across various regions through a single court process.

However, the application of NCB Asset Forfeiture in the Indonesian legal system remains limited. Article 67 of the Money Laundering Law and Supreme Court Regulation No. 1 of 2013 only regulate the confiscation of assets held in user accounts with financial service providers. Non-account assets, whether in the form of movable assets such as vehicles, shares, and others, or immovable assets such as land, buildings, etc., are not regulated in the Supreme Court Regulation, limiting the court's ability to access assets resulting from money laundering in these forms.[9]A similar point was made by Muhammad Yusuf, former Head of PPATK, who explained that the limited scope of PERMA 1/2013, which only covers accounts but does not cover other assets such as property, vehicles and other forms of investment, is one of the fundamental weaknesses that needs to be addressed through a revision of PERMA or more comprehensive regulations.[10]In practice, this creates difficulties in handling money laundering cases, especially if the assets resulting from the crime have been converted into another form or transferred to a third party. The limited scope of PERMA No. 1 of 2013 creates a legal loophole that money laundering perpetrators can exploit to avoid asset confiscation, because perpetrators generally already know that bank accounts are the objects most likely to be monitored, so they tend to divert the proceeds of crime to other forms of assets. Regarding the implementation of the execution of cross-territorial asset confiscation decisions, the role of the Prosecutor as executor is very crucial. However, when dealing with assets spread across various regions, especially those located abroad, the Prosecutor's authority requires support from international cooperation mechanisms such as Mutual Legal Assistance.[11]

As a legal basis that should be used as a guideline, there is a lack of synchronicity in Article 2 and Article 69 of the Money Laundering Law, where Article 2 mentions a list of predicate crimes of Money Laundering, but Article 69 states that in essence, proof of Money Laundering does not need to wait for proof of the predicate crime, so that in handling cases there is doubt and results in confusion in the court's competence in determining the position of Money Laundering. Although in its development, the Constitutional Court Decision Number 77/PUU-

[9]Gumilang Fuadi, Windy Virdinia Putri, and Trisno Raharjo, "A Review of Asset Confiscation in Money Laundering Crimes from a Justice Perspective," Journal of Law Enforcement and Justice, Vol. 5, No. 1, (2024), p. 58

[10]Muhammad Yusuf, "Strengthening the Anti-Money Laundering Regime in Indonesia: Tackling Money Laundering and Terrorist Financing Crimes," Paper presented at the National Anti-Money Laundering Seminar, Jakarta, 2020, p. 15.

[11]Khayrunaas Adhyaksa Mulyana, "A Legal Analysis of the Court's Competence Regarding the Confiscation of Cross-Territorial Assets Proceedings of Money Laundering Crimes," Padjajaran Law Review, Vol. 13, No. 1 (2025). p. 64https://doi.org/10.56895/plr.v13i1.2211

XII/2014 dated February 12, 2014 was born, which stipulates that in order to prove Money Laundering cases, it is not necessary to first prove the predicate crime. This also has implications for the branch of absolute competence in Money Laundering cases, where Money Laundering can be viewed cumulatively or separately from a Predicate Crime.[12]

3.3. Optimization of the Pre-Prosecution Stage Carried Out by the Public Prosecutor as an Effort to Confiscate Assets in Money Laundering Cases Through Manokwari District Court Decision Number 28/Pid.B/2023/PN Mnk

That the decision of the Manokwari District Court number 28/Pid.B/2023/PN Mnk Defendant Chandrawati Sutandang, SE has legally violated Article 374 of the Criminal Code in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code in conjunction with Article 64 of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, in which case the decision is in accordance with the letter of indictment made by the Public Prosecutor, namely as in the First Alternative Charge in the Combined Charge and the Primary Charge in the Combined Charge of the Public Prosecutor.

However, the decision of the Manokwari District Court Number 28/Pid.B/2023/PN Mnk has raised problems in the process, in this case related to the judge's decision to return evidence of 1 (one) unit of Black XPander Car with registration number PB 1973 MJ, 1 (one) sheet of STNK and Tax Note (original) Black XPander Car with registration number PB 1973 MJ an. Chandrawati Sutandang with Frame Number MK2NCLHANMJOOO559, Engine Number 4A9IH7260 (original), 1 (one) unit of 3x6 House Building with an area of 82 m2 located at Inggramui Housing Block B No. 15, Manokwari Regency, 1 (one) unit of 2 (two) floor shophouse building B.16 with an area of 86 m2 located at Inggramui Housing Complex, Manokwari Regency, 1 (one) unit of 4x5 house building with an area of 84 m2 located at Inggramui Housing Complex Block C 08, Manokwari Regency, which has been confiscated to the defendant who has been confiscated from the defendant and returned evidence of 1 (one) Land Certificate and House Building (Original) with an area of 86 m2 with Ownership Number: 00472 An. Chandrawati Sutandang whose address is at Jalan Kompleks Perumahan Inggramui Recidance Block B.15 Manokwari Regency, 1 (one) Land Certificate and House Building (Original) with an area of 86 m2 with Building Use Rights Number: 00027 An. Chandrawati Sutandang, whose address is at Jalan Kompleks Perumahan Inggramui Recidance Block C8, Manokwari Regency, 1 (one) certificate of land and building for a second-floor shophouse (original) with an area of 84 m2 with Building Use Rights Number:

[12]Arifin Zulkarnain, Anatomy Muliawan, "Legal Analysis of the Implementation of Corruption Crimes and Money Laundering in the Context of Optimizing the Recovery of State Losses Based on Court Decision Number 130/PID.SUS/TPK/2017/PN.JKT.PST.," JCA of LAW, Vol. 2, No. 1, (2021), p. 17

00053 An. Chandrawati Sutandang whose address is at Jalan Complex Perumahan Inggramui Recidance Block B.16, Manokwari Regency to PT. BPR Bank Sinar Mulia Papua Manokwari as collateral for the defendant.

Referring to the judge's Ratio Decidendi in the a quo case, it can be said that the Public Prosecutor during the examination of the case did not present any evidence in accordance with Article 184 Paragraph (1) of the Criminal Procedure Code as expanded, which is evidence that is corroborating or has a relationship with sufficient initial evidence that has been confiscated which is considered to be the result of the Money Laundering Crime committed by the defendant.

That referring to this matter, ideally the Public Prosecutor when he has received the Letter of Notification of Commencement of Investigation (SPDP) from the Investigator then issued a Letter of Order for Appointment of the Public Prosecutor to follow the progress of the investigation (P-16), in relation to this it is considered that the pre-prosecution stage has begun, in which case the Public Prosecutor after knowing that the defendant Chandrawati Sutandang, SE committed the Crime of Money Laundering with the evidence that has been confiscated, then in this case the Public Prosecutor can use his discretion to the investigator to search for and find evidence that has a relationship with the evidence that has been confiscated. Considering that the evidence confiscated from the defendant Chandrawati Sutandang, SE is in the form of 1 (one) unit of Xpander car vehicle, and 1 (one) unit of type 3x6 house building with an area of 86 m2 located at Inggramui Block B No. 15 Kab. Manokwari; 1 (one) unit of 2 (two) storey shophouse building with an area of 86 m2 located at Inggramui Housing Block B No. 16, Manokwari Regency; 1 (one) type 4x5 house building with an area of 84 m2 located at Inggramui Housing Block C No. 08, Manokwari Regency;, as in the legal facts at the trial which were used as Ratio Decidendi, all of the evidence is still attached to the defendant's Mortgage Rights at PT. Adira Finance andPT. BPR Bank Sinar Mulia Papua Manokwari.

Ideally, the Public Prosecutor will confiscate a number of pieces of evidence related to the defendant's financial profile data, taxpayers, the defendant's bank statements and all transaction evidence that can describe suspicious financial transactions and transactions that do not match the defendant's financial profile.[13], or in this case the evidence that can inform that the defendant in his real condition according to his pure income is not able to buy such assets if he does not carry out prohibited activities or crimes. That related to the supporting evidence must be linked to each other, especially the Tempus transaction instrument with the Tempus of the act carried out, if they are related then they should be confiscated. Related to the evidence that still has a mortgage right, then the evidence of letters, authentic documents and all transaction documents that show the defendant carried out the mortgage right process from the contract to the next

[13]Dr. Yudi Kristiana, SH, M. Hum, Op. Cit, p. 268.

process can be confiscated, in order to be connected with the Tempus of the defendant's actions, so that it can strengthen the evidence that has been confiscated previously and can strengthen the fulfillment of the element "with the aim of hiding or disguising the origin of assets".

As per the judge's Ratio Decidendi in the a quo case, the judge has believed that the defendant Chandrawati Sutandang, SE has committed such an act by involving third parties in this case PT. Bank BPR Bank Sinar Mulia Papua Manokwari and PT. ADIRA Finance tohiding or disguising the origin of wealth.

It is very unfortunate, even though the panel of judges in the a quo case it has the belief thatThe defendant Chandrawati Sutandang, SE has legally committed the Crime of Money Laundering as stated in the decision of the Manokwari District Court number 28/Pid.B/2023/PN, the panel of judges was so convinced that they rejected the petition of the applicant PT. Fulica Land Manokwari as the victim of the defendant by way of Civil Forfeiture, regarding the request to merge the civil case related to the compensation claim case with the criminal case Number 28/Pid.B/2023/PN Mnk.

However, this belief is limited to the imposition of a corporal punishment and not to additional punishment in the form of confiscating the defendant's assets. It should be noted that the Panel of Judges' belief is not supported byThe Public Prosecutor is unable to present supporting evidence to strengthen the evidence that has been confiscated, which results in the evidence of the crime being returned or failing to be confiscated by the state.evidencesupporting evidence that strengthens the confiscated evidence, not only focusing on witness statements or not only relying on the KettingBewijs technique, but more than KettingBewijs which must increase the number of written evidence, including documents in the form of authentic deeds, and no less important is evidence based on electronic data containing the defendant's financial transactions.[14]which are related to the results of the criminal act committed by the defendant or assets owned by the defendant or it can be said that the evidence is in the form of data that can refute verbal testimony that is intended to cover up the origin of the acquisition of the assets or the assets owned by the defendant.

In proving the Crime of Money Laundering, the practice of shifting the burden of proof is known as the practice of shifting the burden of proof as stipulated in Article 77 and Article 78 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which states that "the defendant is asked to prove that the assets that have been confiscated by investigators or presented by the public prosecutor in the case file are not derived from or related to the crime as charged by the public prosecutor by submitting sufficient evidence regarding the assets", however, in the level of

[14]Dr. Yudi Kristiana, SH, M. Hum, Op. Cit, p. 271.

proving practice in the Crime of Money Laundering, by means of the Public Prosecutor proving first[15]or in this case submit all evidence related to the results of the criminal act committed by the defendant or assets owned by the defendant, then followed by proof provided by the defendant or in this case the defendant has the right to prove that the wealth or assets owned do not originate from a criminal act, more inclined to deny it.

Therefore, the right step for the Public Prosecutor in handling Money Laundering Crime cases must be based on the presence of as much evidence as possible in order to strengthen the argument or Legal Reasoning for the evidence that has been confiscated, in order to be able to become an effort to seize assets through the mechanism of asset confiscation in personam which is a variant of the Criminal Forfeiture Theory. The pre-prosecution stage is considered ideal in preparing the evidence in question, because it has a relatively long time, namely approximately 60 (sixty) days before the submission of the case file and after the case file has been studied for 7 (seven) days by the Public Prosecutor and 14 (fourteen) days to complete the instructions of the Public Prosecutor, so that it is more than enough to design a strategy in an effort to seize assets, including preparing a strategy in terms of proving the shifting burden of proof in Court.

4. Conclusion

Based on the research results and discussion above, the following conclusions can be drawn: That regarding the mechanism for confiscation of assets resulting from money laundering crimes in the Indonesian legal system, it is essentially in accordance with applicable legal provisions and theories, where the mechanism for confiscation of assets resulting from money laundering crimes uses an in personam asset confiscation approach or criminal forfeiture or conviction based, where legally the basis for law enforcement officers in this case the Prosecutor's Office has been regulated and contained in Law Number 8 of 2010 concerning the Eradication and Prevention of Money Laundering Crimes (TPPU Law), and the Indonesian Prosecutor's Office Regulation (PERJA) Number 7 of 2020 concerning Guidelines for Asset Recovery. In relation to this, the Constitutional Court Decision Number 77/PUU-XII/2014 dated February 12, 2014 stipulates that in order to prove a TPPU case, it is not necessary to first prove the original crime, so this has provided a bright spot for the Public Prosecutor to optimize the pre-prosecution stage in order to confiscate assets resulting from money laundering, while also confirming that the Constitutional Court Decision is in line with and provides clarity on the mechanism for confiscating assets resulting from money laundering in accordance with the Theory of Legal Certainty. Regarding the challenges and obstacles in the mechanism for confiscation of assets resulting from money laundering, at least related to confiscation with the criminal mechanism (in personam), there are many loopholes in it that can allow convicts to escape

[15]Dr. Yudi Kristiana, SH, M. Hum, Op. Cit, p. 272.

confiscation of assets because the long confiscation process where they have to wait for a final decision that the defendant is declared and proven guilty. This has the impact that the defendant has enough time to hide or launder assets obtained from criminal acts. Another loophole is also seen that confiscation of assets is a form of additional punishment that is optional and not a requirement whose decision is fully left to the judge. In addition, a very wide loophole is also seen when the perpetrator is not found, the perpetrator flees abroad, or dies, then confiscation of assets cannot be carried out, so that when linked to the theory of the legal system, it becomes a serious homework for regulators and the government related to improving the rules for the mechanism for confiscation of assets resulting from money laundering. That regarding the legal analysis related to the optimization of the role of the Public Prosecutor in the Pre-Prosecution Stage as an effort to confiscate assets resulting from Money Laundering Crimes, regarding the Manokwari District Court Decision Number 28/Pid.B/2023/PN Mnk on behalf of the Convict Chandrawati Sutandang, SE who was legally proven to have violated Article 374 of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code and Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, in which case the Public Prosecutor in this case*a quo*has not optimized the pre-prosecution stage as an effort to confiscate assets owned by the defendant from the proceeds of his crime, by taking into account the lack of supporting evidence that has a direct or indirect relationship to the assets or wealth that has been confiscated as evidence, so that in this case it becomes a legal fact in the trial which the panel of judges uses as*Ratio Decidendi*in issuing a decision regarding the return of all evidence belonging to the defendant.

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