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COMBINED INVESTIGATIONS ON CORRUPTION AND MONEY LAUNDERING CRIMINAL ACTIONS

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Abstract

The existence of a link between the crime of corruption and the crime of money laundering opens the possibility for a merger in the investigation and prosecution of the two crimes, namely if there is an allegation that the proceeds of the criminal act of corruption (wealth) in the form of money have been processed in the money laundering stage (money laundering). *Laundering)* through *placement*, *layering,* or *integration*. The research method used is normative research with statutory and conceptual approaches. Merging investigations into corruption and money laundering crimes in the perspective of *content justitia* is essential both in efforts to carry out efficiency and effectiveness of investigations related to the following matters, in terms of time and costs.

Keywords: Investigation; Corruption Crime; Money Laundering Crime

INTRODUCTION

In Indonesia, corruption has been around for a long time, although it has only become a concern of the government and society since the 1950s. Factors that influence the growth of corruption are caused by greed, opportunity, and need. Greed is triggered by feeling dissatisfied with what you already have. Opportunities often occur in workplaces or institutions where circumstances allow someone to commit fraud easily. [1]Various circles consider corruption to have become part of life, a system, and integrated with the administration of the state government. In Indonesia, the eradication of criminal acts of corruption began with the issuance of Regulation Number PRT/PM 06/1957 concerning Eradication of Corruption and PRT/PERPU/013/1958 concerning Investigation, Prosecution and Examination of Corruption Acts and Ownership of Property from the Army Chief of Staff as warlord center of the Army, followed by the issuance of Government Regulation instead of Law (PERPU) Number 24 of 1960 concerning the Investigation, Prosecution and Examination of Corruption Crimes which changed to Law Number 1 of 1961. Subsequently, the government issued Law Number 3 of 1961. 1971 concerning the Eradication of Corruption Crimes, which was later replaced by Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, which was then amended through Law Number 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.

In subsequent developments, corruption and several other crimes are predicate crimes of a crime called money laundering. Corruption is recognized as having triggered the emergence of money laundering crimes.

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The crime of money laundering is a particular crime. Specific criminal acts can be interpreted as legislation in a special section with criminal sanctions, in this case, regulated in special legislation outside (the Criminal Code), both criminal and non-criminal legislation, but with criminal sanctions.[2]

An amendment to the law can eliminate the criminal nature of an act (decriminalization), reduce the criminal penalty, increase the prison sentence or make the prosecution dependent on a complaint.[3] *Money laundering* is carried out to hide the origin of money from corruption so that law enforcement officers cannot trace it. So that after the money laundering process is complete, the money resulting from corruption in formal juridical terms is money that comes from legal sources. Attempts by corruptors to launder money *(money laundering)* against the results of their corruption will complicate the disclosure of criminal acts of corruption by investigators.

Corruption (TPK) and Money Laundering (TPPU) are two criminal acts that are often interrelated even though corruption is one of the predicate crimes (predicate crime) *of* money laundering, as stated in Article 2 paragraph (1) Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

Money laundering is an attempt to process money from crime with a legitimate business so that the money is clean or appears to be money lawful. Thus, the origin of the money was covered .[4]

In the law, a term is known as "predicate crime" (*predicate crime*). Predicate crime (*predicate crime*) is defined as a crime that triggers (source) the occurrence of money laundering crimes. Proceeds of criminal acts are assets obtained from criminal acts: corruption, bribery, narcotics, psychotropics, labor smuggling, migrant smuggling in the banking sector, the capital market sector, the insurance sector, customs, excise, human trafficking, illegal arms trade, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting, gambling, prostitution, in the field of taxation, in the forestry sector, in the environmental sector, in the marine and fisheries sector, or any criminal act punishable by imprisonment for 4 (four) years or more, which is committed within the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and the crime is also a crime according to Indonesian law.

The published results of the Index research stated that Public Perceptions of Money Laundering Crimes (TPPU) and Terrorism Funding (IPP APU-PPT 2017) were based on a survey of 11,040 respondents spread across 34 provinces conducted by the Financial Transaction Reports and Analysis Center (PPATK) shows that corruption is still seen by society as a predicate crime committed by ML. "Public understanding regarding criminal acts as the source of money laundering offenses is from corruption (8.03), bribery (7.85), narcotics (7.28) and taxation (7.13)."[5]

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Based on Article 1 point (5) of the Criminal Procedure Code, what is meant by an investigation is:

A series of investigative actions to search for and find an event suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method stipulated in this law.

Meanwhile, Article 1 point (2) states that an investigation is:

A series of investigative actions in matters and according to the manner regulated in this law to seek and collect evidence with which evidence makes clear the crime that occurred and to find the suspect.

The existence of a link between the crime of corruption and the crime of money laundering opens the possibility for a merger in the investigation and prosecution of the two crimes, namely if there is an allegation that the proceeds of the criminal act of corruption (wealth) in the form of money have been processed in the money laundering stage (money laundering). *Laundering),* through *placement* , *layering* or *integration*. Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, in the investigation section of Article 75, opens up the possibility to combine investigations between money laundering crimes and predicate crimes. It is emphasized in Article 75 that "In the event that an investigator finds sufficient preliminary evidence of the occurrence of a crime of money laundering and predicate crime, the investigator combines the investigation of the predicate crime with the investigation of the crime of money laundering and informs PPATK ". This means that in the event of a criminal act of corruption and there are allegations related to money laundering, investigators can carry out a combined investigation from the start.

Simultaneous investigations in the event that there is an allegation that proceeds (money) which are the proceeds of corruption are laundered to disguise the money as if it were money not proceeds of crime, in terms of the principles of criminal justice, namely, carried out quickly, simply and at low cost as contained in the General Explanation of Law No. 8 of 1981 concerning the Law on Criminal Procedure is very appropriate, but this effort is also related to actions to trace the flow of money resulting from corruption so that in the end it can be confiscated to be returned to the state. Another very important matter is related to evidence, namely by combining investigations between corruption crimes and money laundering crimes, the confiscation of evidence related to the two crimes can be carried out efficiently in facilitating evidence at trial and recovering state losses.

The high cost of investigations required to disclose criminal acts of corruption and money laundering is an issue that, if viewed from the aspect of cost efficiency, is worthy of study. Kabareskrim Komjen Pol. Ari Dono, who is now the Deputy Chief of Police in the Signing of the Collaboration between the Regional Government Internal Supervisory Apparatus (APIP) and Law Enforcement Officials at Grand Sahid Jaya, Jakarta, 28-2-2018, revealed that the budget for handling corruption (per case) at the Police is Rp. 208 million, if corruption is only Rp. 100 million, then the state is overdrawn, and the prosecution still needs to reach sentencing.[6]

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The legal norms regarding the combination of investigations into corruption and laundering crimes are not found in the Law on Corruption Eradication (UU No. 31 of 1999 in conjunction with Law No. 20 of 2001). Still, they are instead implied in Law Number 8 of 2010 regarding the Crime of Money Laundering, Article 75, which states that:

Suppose the investigator finds sufficient preliminary evidence of the crime of money laundering and predicate crime. In that case, the investigator combines the predicate crime investigation with the money laundering crime investigation and notifies the PPATK.

Provisions regarding the merger of predicate crime investigations with money laundering investigations, as stipulated in Article 75, become the legal basis for combining investigations into corruption as a predicate crime of money laundering. It is interesting to examine the practice of implementing these two crimes so far, including knowing the obstacles investigators face and their impact on eradicating corruption and money laundering, especially in optimizing asset recovery.

This research aims to find out how the combined investigation of Corruption Crimes and Money Laundering Crimes?

RESEARCH METHODS

Irwansyah [7]in his book Legal Research Choice of Methods and Practice of Writing Articles, argues that a legal research ultimately lies in the choice of method to be applied, whether the type of normative legal research or empirical legal research, or a combination of both, then everything returns to what is the subject matter. and the purpose of a study. Based on this description and referring to the problems and objectives of this research, this research is a normative legal research combined with empirical legal research

RESEARCH RESULTS AND DISCUSSION

Widespread and systematic corruption is also a violation of the social and economic rights of the community, therefore corruption can no longer be classified as an ordinary crime but has become an extraordinary crime . [8]In the settlement of criminal acts of corruption accompanied by criminal acts of money laundering, the principles of fast, simple and low-cost justice at the investigation stage are normalized in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes Article 75 which stipulates that: In the case of investigators finds sufficient initial evidence of the occurrence of the crime of money laundering and predicate crime, the investigator combines the predicate crime investigation with the investigation of the crime of money laundering and informs the PPATK. In interpreting Article 75 of the Money Laundering Law, it cannot be separated from the provisions of Article 74 of the Money Laundering Law which emphasizes that: Investigations into criminal acts of money laundering are carried out by investigators of predicate crimes by procedural law provisions and provisions of laws and regulations, unless otherwise stipulated by law. This. The problems that arise are, first of all related to the application of Article 74 of the Money Laundering Law in eradicating money laundering crimes. Two things need to be explained

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regarding the application of Article 74 of the Money Laundering Law about predicate crime investigations, namely the first regarding the authority to investigate money laundering by predicate crime investigators needs to be emphasized, who are predicate crime investigators authorized to investigate laundering offences? money, what is the authority of other investigators to investigate money laundering crimes whose predicate crimes are investigated by investigators of other predicate crimes.

To explain the two issues above, we need to look again at the sound of one of the elements in Article 3, Article 4 and Article 5 of the Money Laundering Law, namely the element "results of a crime as referred to in Article 2 paragraph (1)." The sentence "results of crime as referred to in Article 2 paragraph (1)" means that the criminal act whose proceeds were laundered has been determined by the legislator whose details are contained in Article 2 paragraph (1) which are criminal acts which in the TPPU Law are referred to as the term predicate crime (*predicate crime or predicate offense*). This element has to do with the authority possessed by investigators for predicate crimes and money laundering crimes, because when the public prosecutor proves this element in a trial based on the indictment directed at the defendant, the indictment must be based on the results of an investigation carried out by an investigator who has the authority to Investigate cases or cases brought before the court. Suppose the investigator is not authorized to investigate a criminal act that is being submitted to trial. In that case, the investigation results are considered invalid, so the indictment will be rejected by the panel of judges who examined and tried the case.

An illustration of the case, for example, the Attorney General's Office investigated allegations of corruption and money laundering, then the results of the investigation were deemed complete and the public prosecutor submitted them to trial with the first charge of corruption and the second charge of money laundering. During the trial, it turned out that the judge thought that the defendant's actions were not a criminal act of corruption but rather an act of embezzlement in office. The judge then in his interlocutory decision stated that the Attorney General's Office investigators did not have the authority to investigate cases of embezzlement so that the prosecution could not be accepted because the indictment was based on the results of an investigation that were illegal or did not comply with the provisions of the law.

As described above, the elements of proceeds of crime as referred to in Article 2 paragraph (1) of the Money Laundering Law are related to the authority to investigate predicate and money laundering crimes. Article 2, paragraph (1) of the Money Laundering Law states that the proceeds of criminal acts are assets obtained from criminal acts: corruption; b. bribery; c. narcotics; d. psychotropics; e. labor smuggling; f. migrant smuggling; g. in banking; h. in the capital market sector; i. in the insurance field; j. customs; k. excise; l. human trafficking; m. illegal arms trade; n. terrorism; o. kidnapping; p.s. theft; q. embezzlement; r. fraud; s. counterfeiting money; t. gambling; you. Prostitution; v. in taxation; w. in the forestry sector; x. in the environmental field; y. in the marine and fishery sector; or z. other criminal acts punishable by imprisonment of 4 (four) years or more.

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This means that assets where money laundering perpetrators commit acts so that their circumstances are hidden or disguised must originate from criminal acts, as mentioned in letters a to Z. Criminal acts from a to z in the TPPU Law are referred to as predicate crimes. Consequently, investigators who will conduct investigations into money laundering crimes must be investigators who have the authority to investigate crimes from letter a to Z or also known as predicate crime investigators. Therefore, the makers of the TPPU Law included this provision in Article 74 of the TPPU Law which states that investigations into the crime of money laundering are carried out by investigators of predicate crimes by procedural law provisions and statutory provisions, unless otherwise stipulated by this law. TPPU Law). In the elucidation of Article 74 of the TPPU Law, predicate crime investigators are limited to only 6 (six) investigators, namely the Indonesian National Police, the Attorney General's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), as well as the Directorate General of Taxes and the Directorate General of Customs and Excise. and Excise Ministry of Finance of the Republic of Indonesia.[9]

Laws and regulations are formed to provide certainty for every bearer of rights and obligations to achieve order in a country based on the principle of legal certainty. Legal certainty cannot be separated from written legal norms and is used as a guideline for everyone. [10]The evidentiary technique in investigating cases at court is divided into a system of preparing indictments by the Public Prosecutor. therefore regarding technical proof the public prosecutor proved the former. [11]If we examine the types of predicate crimes listed in Article 2 paragraph (1) of the TPPU Law from letters a to z, then the investigation of these crimes does not only fall under the authority of 6 (six) investigators as mentioned in the Explanation of Article 74 of the TPPU Law. Whereas in the process of handling the ML case, several other investigators conducted investigations of ML cases other than those mentioned in the elucidation of Article 74 of the TPPU Law. This is because if it is interpreted grammatically based on the provisions of Article 74 and Article 2 paragraph (1) of the Money Laundering Law, investigators of predicate crimes are all investigators authorized to conduct investigations of predicate crimes as the crimes mentioned in Article 2 paragraph (1) of the TPPU Law.[12]

In addition to the predicate crime investigators referred to in the Elucidation of Article 74 of the Money Laundering Law, there are predicate crime investigators who are given investigative authority based on statutory regulations, namely civil servant investigators (PPNS) based on sectoral laws, for example Law Number 18 Year 2013 concerning Prevention and Eradication of Forest Destruction which gives investigatory authority to PPNS in the field of Forestry and Conservation of Biological Natural Resources and their Ecosystems in addition to Polri investigators, PPNS in the field of fisheries based on Law Number 31 of 2004 concerning Fisheries in conjunction with Law Number 45 of 2009 regarding Amendments to Law Number 31 of 2004 concerning Fisheries which gives investigative authority to Fisheries PPNS, Navy Officer Investigators, and Indonesian National Police Investigators, and others.

Look at and interpret Article 74 of the ML Law grammatically. As described above, civil servant investigators (PPNS) and TNI investigators should have the authority to conduct ML investigations. However, the elucidation of Article 74 of the ML Law prevented them from

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carrying out ML investigations so that these investigators only conducted investigations of predicate crimes according to their authority.

Therefore, on April 14 2021 PPNS from the Ministry of Environment and Forestry together with PPNS from the Ministry of Maritime Affairs and Fisheries submitted a request for a Judicial Review of the sound of Elucidation 74 of the TPPU Law which substantially contradicts the provisions of Article 74 of the TPPU Law. Based on this request, the Constitutional Court decided to accept the PPNS Judicial Review request as outlined in the Constitutional Court Decision Number 15/PUU-XIX/2021 dated 29 June 2021.

The ratio decidendi of the Constitutional Court Judges is described as follows:

[3.12] Considering whereas with regard to the arguments of the Petitioners' petition, the Court considers that the main issue in reviewing the constitutionality of the Elucidation of Article 74 of Law 8/2010 is that there is an inconsistency between the phrase "predicate crime investigator" contained in the norm of Article 74 of Law 8/2010 which is essentially without any restrictions regarding the criteria for legal subjects who are said to be predicate crime investigators, meanwhile the essence of predicate crime investigators referred to in the Elucidation of Article 74 of Law 8/2010 has limitations with predetermined legal subjects called predicate crime investigators, namely there are only 6 (six) predicate crime investigators.

Whereas with regard to the arguments of the Petitioners, according to the Court, the phrase "predicate crime investigators" in Article 74 of Law 8/2010 gives the meaning of predicate crime investigators as officials from agencies that are authorized by law to carry out investigations in accordance with procedural law provisions and provisions statutory regulations in this case are all investigators who carry out investigations of predicate crimes or criminal acts which later give birth to money laundering crimes. In other words, a predicate crime investigator is any official who by law is authorized to investigate a crime, which then results from the criminal act carried out by the investigation, giving rise to the crime of money laundering as stipulated in Article 2 paragraph (1) of Law 8 /2010. Thus, clearly and unequivocally (expressis verbis), there is no exception for any officials who carry out investigations of criminal acts because of statutory orders which then give birth to money laundering crimes are investigators of predicate crimes. Therefore, there is no legal reason whatsoever that can be justified if later the affirmation of the norms of Article 74 of Law 8/2010 can be interpreted to mean that not all officials who are authorized by law to carry out criminal investigations that give birth to criminal acts of money laundering do not necessarily may conduct investigations of criminal acts related to predicate crimes, in this case, money laundering crimes.

There is a fundamental reason: the separation between the predicate crime investigation and the money laundering crime investigation is irrelevant. Namely, the unification of authority will facilitate proof and gain efficiency in handling a case because there is no longer a need for the delegation of stages to other investigators (State Police of the Republic of Indonesia) by splitting, which of course will go through a process that takes time and it may be necessary to

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carry out an investigation process from the start of the crime of money laundering, except for coordination when the case file will be transferred to the public prosecutor as stipulated in Article 7 paragraph (2) of the Criminal Procedure Code. Therefore, the repeated stages will not be in line with the principles of a simple, fast and low-cost trial (vide Article 2 paragraph (4) of Law 48/2009). Moreover, investigators of predicate crimes actually understand more about the character of the cases they are handling. With the above legal considerations, the Elucidation of Article 74 of Law 8/2010, which cannot justify the existence of predicate crime investigators who are not necessarily attached to their authority to carry out investigations of money laundering crimes as long as the predicate crime is included in the crime as stipulated in Article 2 paragraph (1) of Law 8/2010 in addition to 6 (six) investigative institutions, as stated in the Explanation of Article 74 of Law 8/2010 is an unjustifiable limitation. Moreover, because Law 8/2010 stipulates, if during an investigative action a predicate crime and a money laundering crime are found, the investigator combines the investigation of the predicate crime with the crime of money laundering by notifying PPATK (vide Article 75 of Law 8/2010). This is in line with the message of the essence of efficiency and the framework of realizing a simple, fast and low-cost trial, as previously considered.

In addition to these reasons, the Court is also of the opinion that in the system for forming statutory regulations, explanations function as the official interpretation for forming statutory regulations on certain norms in the body. However, the explanation formulation may not conflict with the articles regulated in the body; does not broaden, narrow or add to the understanding of norms that exist in the body; not repeating the primary material regulated in the body; does not repeat descriptions of words, terms, phrases, or definitions contained in the general provisions; and/or does not contain the delegation formula [vide Appendix II of Law Number 12 of 2011 concerning Formation of Legislation Numbers 176 and 186].

[3.13] Considering whereas based on the description of the legal considerations mentioned above, because substantively or procedurally there is no relevance for the separation of investigative authority by predicate crime investigators with criminal act investigators who were born or who followed, namely money laundering crimes, then as The juridical consequences of the existence of Civil Servant Investigators who are recognized and regulated in the provisions of Article 1 number 1 juncto Article 6 paragraph (1) of the Criminal Procedure Code cannot be excluded and include part of the investigators who have the authority to carry out investigations into money laundering crimes. It is also essential to emphasize further because civil servant investigators are found in several ministries, whose scope of duties and responsibilities is in accordance with the authority granted by the respective agencies to carry out investigations in accordance with the provisions of laws and regulations, so, for civil servant investigators in ministries who are not included in the Elucidation of Article 74 of Law 8/2010 and cannot carry out investigations of money laundering crimes if they find sufficient initial evidence that money laundering crimes have occurred while conducting predicate crime investigations, cannot be excluded and must be given the authority to carry out investigations into money laundering crimes as long as the predicate crime is included in the crime outlined in Article 2 paragraph (1) of Law 8/2010.

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[3.14] Considering whereas based on the entire description of the legal considerations mentioned above, the Elucidation of Article 74 of Law 8/2010 has clearly narrowed the definition of "predicate crime investigator" as contained in the provisions of Article 74 of Law 8/2010 by providing limitations on legal subjects entitled to become predicate criminal investigator. In addition to narrowing the definition of "predicate crime investigator", the Elucidation of Article 74 of Law 8/2010 shows that there is discrimination in the handling of money laundering crimes, especially for civil servants. This is because, as has been considered above, both technically and substantially, if an investigation into the crime of money laundering is carried out by predicate crime investigators, this will speed up the handling of the alleged crime of money laundering as well as the predicate crime. Therefore, predicate crime investigators who find money laundering crimes must be given authority and therefore the Elucidation of Article 74 Law 8/2010 must be declared unconstitutional as long as it is not interpreted as fully contained in the ruling on the a quo case. [3.15] Considering whereas based on all of the above legal considerations, the Court is of the opinion of the Petitioners' petition with legal grounds in its entirety. *constitutional* interpretation has been obtained regarding the meaning of predicate investigators as set forth in Article 74 of the TPPU Law, namely investigators who are given special authority based on statutory regulations to carry out criminal investigations as referred to in Article 2 paragraph (1) of the TPPU Law. In eradicating criminal acts of corruption accompanied by criminal acts of money laundering, the authority of investigators is not a problem, because based on the interpretation of the constitution, investigators authorized to investigate criminal acts of corruption are also investigators authorized to commit criminal acts of money laundering. Therefore, in terms of the authority to implement Article 75 of the Money Laundering Law, namely combining investigations of predicate crimes (corruption) with money laundering crimes, both Polri investigators, Prosecutors' Investigators and Corruption Eradication Commission investigators, the three of them have the authority to investigate corruption crimes and money laundering crime.

CONCLUSION

The combination of investigations into corruption and money laundering in the perspective *of contant justitia* is important both in an effort to make the efficiency and effectiveness of the investigation, related to the following matters, in terms of time, the time needed to carry out examinations and collect evidence is considered more efficient , both for investigators and for suspects including the witnesses being examined. In terms of costs, the cost of investigation for one corruption case or one activity in the DIPA at the Regional Police (Polda) is budgeted at Rp. 208,000,000. - (two hundred and eight million rupiah) the same budget for the Attorney General's Office, namely Rp. 208,000,000. - (two hundred and eight million rupiah). The amount of costs required can still increase, depending on the severity of the corruption case being investigated. The amount of the budget mentioned above applies equally if a combination of investigations into corruption and money laundering is carried out, but if the investigations are not combined, two Investigation Orders (Sprindik) will be issued with a cost of Rp. 208,000,000. - (two hundred and eight million rupiah), and can be increased according to need.

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