

Obstacles in Proving the Crime of Money Laundering by Law Enforcement in Indonesia

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Abstract

This research aims to determine the obstacles to proving criminal acts of money laundering by law enforcement in Indonesia. The legal view regarding the crime of money laundering in Indonesia is that as long as there is no guilty verdict against the perpetrator of the predicate crime, then anything related to assets cannot be carried out. In practice, law enforcement still uses follow-up measures for money laundering suspects who prioritize punishment over asset recovery. This research focuses on proving the obstacles to the implementation of the Money Laundering Crime Law in the Police, Prosecutor's Office, and Corruption Eradication Commission. The research method in this writing uses doctrinal methods (juridical-normative) and non-doctrinal methods (juridical-empirical or socio-legal). The research results show that there still needs to be more conflict between the interests of law enforcement and the police, especially in terms of proving and recovering state losses. Obstacles to asset recovery that prosecutors can carry out are obstacles for prosecutors who are not given the authority to investigate criminal acts of money laundering that occurred before the 2010 Law on Money Laundering because the old law did not regulate the prosecutors' authority regarding this matter. Affairs. Criminal investigation. Money laundering. Likewise with the Corruption Eradication Commission, regarding the provisions of Article 69 concerning predicate crimes, they do not have to be proven first. Obstacles to Proving the Crime of Money Laundering by Law Enforcement in Indonesia.

Keywords: Evidence; Law Enforcement: Money Laundering Crime; Obstacles

1. INTRODUCTION

This crime of laundering arises in response to the act of changing and hiding cash or assets obtained from a crime, which appears to come from a legitimate source. Illicit funds can damage the market, harm legitimate market participants, and never contribute to long-term economic development and market stability in the place where these funds are hidden. This criminal process often uses financial institutions, where a process of laundering money obtained from crime and laundered through a financial institution (bank) or financial service provider so that, in the end, the illicit money acquires the appearance of legitimate money.¹

The problem of models of proof of money laundering crimes has experienced pros and cons in various scientific and practical studies. Whereas in the evidence, the logical consequence of the crime of money laundering and the predicate crime, which stands alone, is that TPPU does not depend on the original crime.² Then, it is

¹ Fransiska Novita Eleanora, "Tindak Pidana Pencucian Uang," *Jurnal Hukum* XXVI, no. 2 (2011): 640–53.

² Muh. Afdal Yanuar, "Diskursus Antara Kedudukan Delik Pencucian Uang sebagai Independent Crime dengan sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUUXIII/2015," *Jurnal Konstitusi* 16, no. 4 (2019): 721–39, <https://doi.org/https://doi.org/10.31078/jk1643>.

essential to determine the articles charged in the preparation of the indictment for the crime of money laundering, both the article on the crime of money laundering together with the article on the predicate crime or only the article on the crime of money laundering, because the determination of the article -This article has an impact on the form of proof that the judge then carries out regarding the elements of the crime of money laundering. That proof of the elements of a money laundering crime, especially elements of wealth which are known or reasonably suspected to have originated from a criminal act as intended in Article 2 paragraph (1) of the Money Laundering Crime Law cannot be proven, if the original criminal act is not proven first. In this case, the predicate crime will only be proven by the judge if the predicate crime is charged simultaneously with the crime of money laundering.³ This provision is in conflict with what is intended in Article 69 of the Law on the crime of money laundering, which states that: "To be able to carry out investigations, prosecutions and examinations in court regarding the crime of money laundering, it is not necessary to first prove the original crime."

The investigative orientation, which still focuses on the concept of following the suspect, namely the search for "people" who are suspected of committing criminal acts, is also influenced by the view of the purpose of punishment in the Indonesian legal system,⁴ in this case, the criminal procedural code which still adheres to retributive understanding, where The purpose of imposing a crime is to retaliate for the wrong committed. By using an understanding like this, it is difficult to take action against assets that are known to be related to crime, as well as assets that cause economic losses to the state.

Law enforcement officials must understand again that searching for the proceeds of criminal acts in money laundering crimes in the form of money or assets is a crucial element in money laundering offenses. It could be said that without any assets resulting from criminal acts, the crime of money laundering is considered to have never occurred. Money laundering has many detrimental impacts on the economy, finance, society, and security. It does not allocate and distribute income, distorts asset and commodity prices, and gives rise to social ills, crime, and corruption. Because its modus operandi is generally cross-border, money laundering has been considered an international crime and has become a world phenomenon and an international challenge.⁵

The Prosecutor's Office also feels the difficulty of investigators carrying out asset

³ Halif, "Pembuktian Tindak Pidana Pencucian Uang Tanpa Dakwaan Tindak Pidana Asal: Kajian Putusan Nomor 57/PID.SUS/2014/PN.SLR," *Jurnal Yudisial* 10, no. 2 (2017): 191.

⁴ Rika Kurniasari Abdulgani, "Urgensi Pengesahan Undang-Undang Perampasan Aset Tindak Pidana Dalam Mencegah Dan Memberantas Tindak Pidana Pencucian Uang," *Jurnal Litigasi* 24, no. 1 (2023): 68-84, <https://doi.org/http://dx.doi.org/10.23969/litigasi.v24i1.7129>.

⁵ Sutan Remy Sjahdeini, "Pencucian Uang: Pengertian, Sejarah, Faktor-Faktor Penyebab, dan Dampaknya Bagi Masyarakat," *Jurnal Hukum Bisnis* 22, no. 3 (2003): 5.

recovery because there is still a conflict between the interests of law enforcement both in terms of evidence and for recovering state losses.⁶ Juridical problems re-emerged when the prosecutor's office or attorney had no authority to investigate money laundering crimes before the 2010 money laundering crime law was issued. The old law did not regulate the prosecutor's authority regarding these investigations. The authority of the Corruption Eradication Commission as an investigator and public prosecutor has yet to be regulated explicitly in the Money Laundering Crime Law or the Corruption Eradication Commission Law 30 of 2002. This is one of the obstacles or obstacles to the Corruption Eradication Commission in eradicating the crime of money laundering. Stems from corruption. In this case, the Corruption Eradication Commission's authority is in the gray area; it is then emphasized that the provisions of Article 69 regarding the predicate crime not being required to be proven first indicate that the existence of the Corruption Eradication Commission is minimal in cases of money laundering crimes where the predicate crime is a corruption case.

In a previous study by Utami (2021)⁷ studied the crime of money laundering. The difference is that this research focuses on the crime of virtual money laundering through online gaming sites. Instead, the research in this article focuses more on dealing with money-laundering crimes committed by law enforcement agencies, including police, prosecutors, and the Corruption Elimination Commission. The advantage of this research is that it discusses, in general, the obstacles encountered by law enforcement, including police, prosecutors, and the Corruption Elimination Commission.

Furthermore, research conducted by Laowo (2022),⁸ the difference is that the research studied focuses on dealing with money-laundering crimes using a follow-the-money approach. Instead, the research in this article focuses more on the obstacles in tackling the money laundering crime experienced by police, prosecutors, and the Corruption Elimination Commission. The advantage of this study is that it deals with obstacles to handling criminal cases of money-Laundering by the police, the prosecutor's office, and corruption elimination commission, which also uses the follow- the-many approach.

⁶ Anak Agung Gede Janaindra dan I Gusti Agung Ayu Dike Widhiyaastuti, "Peran Kejaksaan Dalam Upaya Asset Recovery Akibat Tindak Pidana Korupsi (Studi Kasus Di Kejaksaan Tinggi Bali)," *Kertha Wicara* 9, no. 8 (2020): 1–13.

⁷ Suci Utami, "Tindak Pidana Pencucian Terhadap Uang Virtual," *Al'adl: Jurnal Hukum* 13, no. 1 (2021): 1–27, <https://doi.org/http://dx.doi.org/10.31602/al-adl.v13i1.4224>.

⁸ Yonathan Sebastian Laowo, "Kajian Hukum Tindak Pidana Pencucian Uang (Money Loundring)," *Jurnal Panah Keadilan* 1, no. 1 (2022): 70–87, <https://doi.org/https://doi.org/10.57094/jpk.v1i1.447>.

Meanwhile, other research conducted by Berutu (2019),⁹ the similarity between the research studied, and the research in this article is that both discuss handling money laundering crimes according to the criminal code. The difference is that the research studied focuses on the crime of money laundering using a criminal code approach and Islamic criminal law. In contrast, the research in this article focuses more on the obstacles in handling money laundering crimes experienced by the police and prosecutors, and the Corruption Eradication Commission. The advantage of this research is that it not only discusses the crime of money laundering in the criminal code but also, more specifically, the handling regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering.

The variations and priorities in resolving cases related to the crime of money laundering mentioned above are more concerned with proving the predicate crime if it is connected to the nature of the proof of the crime of money laundering, namely more on controlling the money or assets resulting from the crime, losses will arise in efforts to recover the money or assets. Proceeds of crime because the nature of money laundering is to disassociate the proceeds of crime from the original crime in various complicated ways. Therefore, it is necessary to research "barriers to proving criminal acts of money laundering by law enforcement in Indonesia". This research aims to determine the efforts to enforce the law on money laundering by the Police, Prosecutor's Office and Corruption Eradication Commission and the obstacles to money laundering experienced by the Police, Prosecutor's Office and Corruption Eradication Commission.

2. METHOD

The legal study method in this writing uses the doctrinal method (juridical-normative)¹⁰ and the non-doctrinal method (juridical-empirical or socio-legal). Juridical-empirical or socio-legal methods are specifically used to connect field phenomena with the law needed to map problems and formulate solutions to these problems. The juridical-empirical method with a socio-legal approach in this research is intended to examine and analyze the current model of the proof process for the crime of money laundering and build a model of a fair proof process. The primary data sources in this research are interviews with the Republic of Indonesia Police, the Republic of Indonesia Prosecutor's Office, and the Corruption Eradication Commission of the Republic of Indonesia. Meanwhile, secondary data is books and journals related to research. The data analysis method

⁹ Ali Geno Berutu, "Tindak Pidana Kejahatan Pencucian Uang (Money Laundering) dalam Pandangan KUHP dan Hukum Pidana Islam," *Tawazun: Journal of Sharia Economic Law* 2, no. 1 (2019): 1–18, <https://doi.org/10.21043/tawazun.v2i1.5288>.

¹⁰ Muhammad Dzikirullah H. Noho et al., "Analisis Perbandingan Pengaturan Hukum Build Operate Transfer (BOT) Di Indonesia Dengan Negara-Negara ASEAN," *Jurnal USM Law Review* 4, no. 2 (24 November 2021): 728, <https://doi.org/10.26623/julr.v4i2.4282>.

in this research uses descriptive analysis, which analyzes the interview results in depth and describes them.

3. RESULTS AND DISCUSSION

3.1 Efforts to prove criminal acts of money laundering by the Police, Prosecutor's Office, and Corruption Eradication Commission

3.1.1 The Role of the Police in Proving the Crime of Money Laundering in Indonesia

The criminal nature of money laundering, as it is generally known, is related to obtaining amounts of money that are illegal, haram, or dirty. This dirty money is managed with specific activities such as forming a business, transferring or converting it to a bank, or foreign exchange as a step. To remove the background of these dirty funds. Law enforcement of evidence, which still uses the follow the suspect concept, is oriented that law enforcement officials are currently only fixated on the juridical evidence system for the reason that the view of Indonesian money laundering law is that as long as there has been no conviction of criminals in predicate crimes, then everything is related to assets cannot be carried out. Regarding the study in this research, the handling of money laundering criminal cases carried out by the Police is still oriented towards imprisoning people, not recovering losses arising from criminal acts. This is proven by the handling of cases that are based on interpreting the crime of money laundering as a follow-up crime, which has the impact of having to prove or try the original crime (the core crime) first. "This kind of money makes it difficult for investigators to carry out asset tracing and recover assets that are the result of losses due to criminal acts. This does not reflect justice because the convict is only punished physically, and the proceeds of his crime are not confiscated.

In the Criminal Procedure Code, the National Police of the Republic of Indonesia has the authority to carry out inquiries and investigations. Apart from the Criminal Procedure Code, the authority of the police as investigators to uncover criminal acts is reaffirmed in Law no. 2 of 2002 concerning the State Police of the Republic of Indonesia Article 1 numbers 8 and 10, and Article 14 paragraph (1) letter g concerning the State Police of the Republic of Indonesia which states "conduct inquiries and investigations into all criminal acts in accordance with criminal procedural law and statutory regulations other." The authority of the police as investigators and investigators is a manifestation of the primary duties of the police as stated in Article 13 of Law no. 2 of 2002, namely to maintain security and public order, enforce the law, and provide protection, guidance, and service to the community.

Investigations into criminal acts of money laundering can be carried out based on Information Reports sourced from the Analysis Results of the Financial Transaction Reports and Analysis Center and the development of handling predicate crimes.¹¹ If based on the Information Report sourced from the Analysis Results of the Financial Transaction Reports and Analysis Center, the focus of the investigation is to find or determine the origin of the criminal act. Meanwhile, if it is based on the development of handling predicate crimes, the focus of the investigation is to determine the outcome of the crime and how to hide or disguise its origin. In principle, investigating criminal acts of money laundering is a series of actions to collect information that is carried out to identify people or related parties and assets using investigative techniques and strategies.

The investigation stage is an integral part of a series of stages that must be passed in a case to reveal whether or not the alleged crime has occurred. Therefore, the investigation stage cannot be separated from the existence of statutory provisions that regulate criminal acts. In the Law on Money Laundering Crimes in Chapter VIII section Investigation, Prosecution and Examination in Court Sessions, especially in the second part regarding Investigations, Article 74 gives authority to predicate crime investigators to carry out investigations into money laundering crimes, as outlined in Article 74: "Investigations of money laundering crimes are carried out by predicate crime investigators by the provisions of statutory regulations unless otherwise determined according to this law.

The duties of the police, especially in the crime of money laundering, can refer to Article 16 Paragraph (1) of the Republic of Indonesia State Police Law, in order to carry out the duties as intended in Articles 13 and 14 in the field of criminal proceedings, the Republic of Indonesia State Police has the authority to: (a) carrying out arrests, detention, searches and confiscations; (b) prohibit anyone from leaving or entering the crime scene for investigation purposes; (c) bringing and presenting people to investigators in the context of an investigation; (d) instruct suspected people to stop and ask and check personal identification; (e) carrying out inspection and confiscation of letters; (f) summoning people to be heard and examined as suspects or witnesses; (g) bringing in the necessary experts in connection with the case examination; (h) holding an end to the investigation; (i) submit case files to the public prosecutor; (j) submit a request directly to the authorized immigration official at the immigration checkpoint in an urgent or sudden situation to prevent or deter a person suspected of committing a criminal act; (k) and providing guidance and investigative assistance to civil servant investigators and receiving the results of investigations by civil servant

¹¹ Taufan Setia Prawira, "Pemanfaatan Laporan Hasil Analisis (LHA) PPAK dalam Penyidikan Tindak Pidana Pencucian Uang Oleh Penyidik Polri," *Syntax Literate* 7, no. 5 (2022): 6250–62, <https://doi.org/https://doi.org/10.36418/syntax-literate.v7i5.7142>.

investigators to be submitted to the public prosecutor; and carrying out other legally responsible actions. The role of Police Investigators in the Criminal Justice system is at the forefront. It is the initial stage of the criminal justice process mechanism, namely during the preliminary examination, investigative tasks related to arrest, detention, search, confiscation, examination of documents, examination of witnesses or suspects, and assistance from experts.¹²

In principle, investigations into criminal acts of money laundering are no different from investigations into other general criminal acts, namely that they are carried out by the provisions of procedural law as regulated in the criminal procedural law book and standard operational procedures for investigations as regulated in the National Police Chief's Regulations on investigations. The things that differentiate are the special provisions regulated in Law No. 8 of 2010. Based on the results of interviews with the National Police, in its implementation, the Indonesian National Police has a strategy for investigators to use in uncovering the crime of money laundering, namely: (a) investigators can carry out investigations into criminal acts of money laundering; (b) tracing related financial transactions, both through statements from witnesses, suspects, and documentary evidence (bank statements, etc.); (c) investigation using information technology (subject profile info, criminal record info, financial transaction info, communications info); (d) manual investigations (on people: surveillance, undercover, interviews; transactions: information/inquiry, Financial Transaction Reports and Analysis Center, wealth information, financial reports; tools/items: National Land Agency, One-Stop Single Administration System, Indonesian Credit Card Association, Bank accounts); and (e) Expert testimony on the crime of money laundering.

For an investigation strategy to be effective, it is necessary to collaborate with various parties directly or indirectly related to evidence so that proof of the crime of money laundering can provide justice for all injured parties and the community. Coordinating between the police and the prosecutor's office is necessary to avoid overlapping cases. This is the case when handling money laundering crimes in illegal investment cases, where the crazy rich are suspected of carrying out transactions to purchase luxury goods. This handling is carried out jointly based on the results of the Financial Transaction Reports and Analysis Center's analysis of fraudulent investments using Ponzi schemes; the investment results are used to buy vehicles, houses, jewelry, and other assets that providers of goods and services must report to the Financial Transaction Reports and Analysis Center. On that basis, the suspicion of fraud that they committed is increasingly strengthened.

¹² Armunanto Hutahaean dan Erlin Indarti, "Lembaga Penyidik Dalam Sistem Peradilan Pidana Terpadu Di Indonesia," *Jurnal Legislasi Indonesia* 16, no. 1 (2019): 27–41.

Apart from the strategies above, the police also need to increase the capacity of investigators in handling money laundering cases. This needs to be done so that investigators dare take strategic and quick steps and that the assets of the crime of laundering are not immediately lost or obscured by the suspect or defendant.

3.1.2 The Role of the Prosecutor's Office in Proving the Crime of Money Laundering in Indonesia

Law Number 11 of 2021, concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, explains in Article 2 that the prosecutor's office, in carrying out its functions related to judicial power, is exercised independently. This power is exercised independently, meaning it is one and inseparable. In Article 30 of the Prosecutor's Law, the prosecutor's authority in the criminal field has the following duties and powers: (a) carrying out prosecution; (b) carry out the judge's determinations and court decisions that have obtained permanent legal force. In carrying out the judge's determination and court decisions that have obtained permanent legal force, the prosecutor's office pays attention to the legal values in society and humanity based on Pancasila without neglecting firmness in attitudes and actions. Then, in supervising the implementation of conditional criminal decisions, supervised criminal decisions and conditional release decisions; (c) supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions. A *conditional release decision* is issued by the Minister whose duties and responsibilities are in the field of corrections; (d) carrying out investigations into certain criminal acts based on the Law; and (e) complete specific case files and, for this reason, can carry out additional examinations before being handed over to court, the implementation of which is coordinated with investigators.

For investigations into general crimes, the police have full investigative authority, while the prosecutor has no authority. However, in Article 30 paragraph (1) letter e, the Prosecutor's Law recognizes that the prosecutor's office has the authority to complete specific case files and, therefore, can carry out additional examinations. Prosecutors have new authority after the birth of the money laundering crime law, which is explained in Article 74 that "investigators of money laundering crimes are carried out by predicate crime investigators in accordance with the provisions of procedural law and provisions of statutory regulations, unless otherwise determined according to this law." The explanation of Article 74 confirms that predicate criminal investigators are officials or agencies who are authorized by law to carry out investigations, namely the National Police of the Republic of Indonesia, the Prosecutor's Office, the Corruption Eradication Commission, the National Narcotics Agency, and the Directorate General of Customs and Excise. Ministry of Finance of the Republic of Indonesia. Predicate crime investigators can carry out investigations into money laundering crimes if they find sufficient

preliminary evidence of the occurrence of money laundering crimes when conducting predicate crime investigations by their authority.

The prosecution stage is the stage in the area of the prosecutor's office by giving full authority to the Public Prosecutor to carry out prosecutions: (a) Pre-Prosecution Stage; (1) receipt of Notice of Commencement of Investigation; (2) request for Progress on Investigation Results (P-17); (3) first Stage File Reception; expert Examination, Legal Investigation Actions such as confiscation, search, detention, etc.) along with administrative files; (4) notification of Incomplete Investigation Results (P-18); (5) instructions regarding incomplete investigation results (P-19); (6) notification that the Investigation Results are Complete (P-21); (7) handing Over Responsibility for Suspects and Evidence; (8) pay attention to the Attorney General's provisions in pre-prosecution activities; and (9) classification of Submission of Case Handling. (b) Prosecution Stage; (1) preparation of the Indictment Letter and (2) court trial examination includes examination of witnesses, examination of experts, testimony of the defendant, control of criminal prosecution guidelines

The strategy for handling money laundering crimes carried out by the Prosecutor's Office is currently considered quite good; this can be seen by the large number of cases involving laundering crimes that combine follow the suspect and follow the money. For example, when handling the Jiwasraya corruption case, where the President Director of PT Hanson International Tbk, Benny Tjokrosaputro, was charged with committing the crime of money laundering in the case of corruption in financial management and investment funds at PT Asuransi Jiwasraya which cost the state IDR 16.8 trillion. Benny on behalf of several nominees. On 26 November-22 December 2015, Benny received payment for the sale of Medium Term Notes from PT Armidian Karyatama and PT Hanson International Tbk for IDR 880 billion. Then, he hid or disguised the proceeds of the wealth by buying land in Maja, Lebak Banten Regency, paying interest on Mayapada, buying shares, and making payments to Defendant Benny's nominee in the name of PO Saleh. For his actions, Benny was threatened with a criminal offense under Article 3 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

3.1.3 The Role of the Corruption Eradication Commission in Proving the Crime of Money Laundering in Indonesia

The Corruption Eradication Committee has the authority to coordinate the investigation, inquiry, and prosecution of criminal acts of corruption as the initial criminal act in money laundering cases. In carrying out inquiries and investigations, the Corruption Eradication Committee coordinates with the Prosecutor and the Police in order to reveal and, at the same time, eradicate criminal acts of corruption in carrying out coordination tasks as intended in

Article 6 letter a and Article 7 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Article 6 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission regulates the authority of the Corruption Eradication Committee clearly, namely as follows:
a. Coordination with agencies authorized to eradicate criminal acts
b. Supervision agencies authorized to eradicate criminal acts of corruption
c. Carrying out investigations, investigators, and prosecutions of criminal acts of corruption
d. Carry out measures to prevent criminal acts of corruption and monitor the administration of state government.¹³

The authority of the Corruption Eradication Commission to prosecute money laundering criminal cases will be related to Article 6 letter of Law Number 46 of 2009 concerning the Corruption Crime Court, which reads: "The Corruption Crime Court as intended in Article 5 has the authority to examine, try, and decide on money laundering criminal cases originating from criminal acts of corruption."

By accepting demands from the Corruption Eradication Commission Prosecutor regarding cases of corruption and money laundering, even though the Corruption Eradication Commission's authority to sue is not explicitly regulated, the Corruption Crime Court is prohibited from rejecting the case as regulated in Article 10 paragraph (1) of Law Number 48 2009 concerning Judicial Power that: "Courts are prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it."

Strategies that can be carried out by investigators in the process of investigating predicate crimes followed by money laundering crimes include: (a) investigation Plan: The investigation plan functions as a guide for investigators so that investigation activities can run according to the target; (b) the investigation warrant includes additional notes from investigators for investigators and public prosecutors regarding criminal incidents. For example, the names of the parties involved, potential evidence, and assets owned and controlled; (c) evidence: investigators must collect as much data and information as possible in this phase. As much as possible, the data and information lead to the evidence qualifications regulated in Article 184 paragraph (1) of the Criminal Procedure Code. Especially for the Corruption Eradication Commission in the investigation stage, investigators must find at least 2 sufficient initial pieces of evidence (Article 44

¹³ I Made Artha Rimbawa, "Kewenangan KPK Dalam Memberantas Tindak Pidana Korupsi," *Yustitia* 15, no. 2 (2021): 87–93.

of the Corruption Eradication Commission Law), Electronic Evidence (Electronic Information and Transaction Law Number 19 of 2016); (d) strategy for Rotating the Financial Transaction Analysis Reporting Center. After the Financial Transaction Analysis Reporting Center obtains the data, Article 26, Article 44 letter e, and Article 90 of the Money Laundering Crime Law authorize the Financial Transaction Analysis Reporting Center to forward the data or information that has been obtained to law enforcers, one of which is investigators from the Corruption Eradication Commission; and (e) strategy for Turning Through Invest: gators, Investigators can also request information, data, and information on behalf of the investigator, especially if previously or at the same time the predicate crime investigator is also conducting an investigation.

Apart from that, there are: (a) increasing both formal and informal cooperation between related institutions to obtain information; (b) asset Identification: investigators must start sorting assets (asset tracing) related to criminal acts to simplify the process of delaying transactions, b, locking, and confiscation at the investigation stage; (c) preliminary criminal investigation; (d) development of investigations into predicate crimes into investigations into money laundering crimes; and (e) prosecution, in the Constitutional Court decision Number 77/PUU-XII/2014, it is emphasized that the authority of public prosecutors, both those serving in the Indonesian Prosecutor's Office and the Corruption Eradication Commission, is the same, including in prosecuting criminal acts of money laundering

In addition to the strategies above, the Corruption Eradication Commission must also be responsive and fast in supervising and coordinating with the Prosecutor's Office if, during case development, it is discovered that there is a crime of laundering whose original crime was not corruption. This effort is necessary so that the assets of money laundering crimes are immediately handled before the suspect or defendant removes their traces.

3.2 Obstacles in Proving the Crime of Money Laundering by Law Enforcement

The problem with proving money laundering crimes in Indonesia is that the doctrine that money laundering crimes must be proven at the same time as predicate crimes, it can be said that money laundering crimes and predicate crimes have a close relationship. How could a crime of money laundering occur if it was not preceded by a predicate crime first, while the object of the crime of money laundering is assets resulting from a predicate crime? However, Article 69 of the Money Laundering Crime Law provides the answer that proof of a money laundering crime does not require proof of the original crime. The obstacle that occurs in the application of the legal system in proving money laundering crimes is that in investigating money laundering crimes, the process of collecting

evidence to follow up on evidence and assembling legal facts at the investigative level is not as simple as ordinary criminal cases, especially in mastering knowledge of information technology, financial systems, theories of corporate criminal responsibility, and international law.

Case handling is based on interpreting the crime of money laundering as a follow-up crime, which has the effect of having to prove or try the original crime first. The consequences resulting from the implementation of this model of the process of proving money laundering crimes are that investigators find it difficult to carry out asset tracing and recover assets, which are the result of losses from criminal acts. This does not reflect justice because the convict is only sentenced without confiscation of the proceeds of his crime for asset recovery.

Lawrence M. Friedman's theory of the legal system states that the effectiveness and success of law enforcement depends on three elements of the legal system, namely legal structure, legal substance, and legal culture. The obstacles that occur in proving money laundering crimes can be reviewed based on the legal system to assess whether or not the normativeness of law enforcement for money laundering crimes in Indonesia is effective.

Asset recovery is a process that includes tracing, securing, maintaining, confiscating, returning, and releasing criminal assets or state property controlled by other parties to victims or those entitled to them at every stage of law enforcement. In Article 1 number 1, Attorney General Regulation no. PER-013/A/JA/06/2014 concerning Asset Recovery. The assets referred to include all objects, both material and non-material, movable or immovable, tangible or intangible, and documents or legal instruments that have economic value.

At the investigation stage, asset tracing is aimed at collecting as much information and data as possible, including assets, in order to find criminal incidents, perpetrators, and potential money laundering crimes. At the investigation stage, asset tracing can be developed if new information is found regarding assets belonging to the suspect and related parties related to the criminal act that has not been discovered at the investigation stage.

3.2.1 Police Obstacles in Proving Money Laundering Crimes

Investigations into criminal acts of money laundering sourced from the Analysis Result Reports of the Center for Financial Transaction Reports and Analysis, as well as public reports, aim to find incidents of money laundering. Guidelines for investigating money laundering crimes have been regulated in the Criminal Procedure Code, the Money Laundering Crime Law, and National Police Chief Regulation Number 14 of 2012 concerning the Management of Criminal Investigations within the National Police.

The General Evidence System that follows the suspect pattern is still more dominantly used by law enforcement officers, especially the National Police, because law enforcement officers are only focused on the juridical evidence system, which is focused on evidence that relies on testimony from the perpetrator or other people involved so that sociologically the public views Law enforcement officials provide a loophole for money laundering crimes, especially towards the object of the proceeds of the crime, even though philosophically, an approach using the follow the money model will make it easier for law enforcement officials to reach subjects as accurate and factual wrongdoers of money laundering crimes and reach a broader range of object acquisition assets suspected of originating from crime.

Based on the results of an interview with the Assistant Commissioner of Police, Mr. Subianto, an investigator at the Criminal Investigation Agency of the Republic of Indonesia Police, there were obstacles in finding evidence until determining the suspect: (a) the proceeds of criminal acts no longer exist or have been exhausted; (b) using family or relatives to open an account or being used as an asset owner; (c) there were no witnesses who saw or knew; (d) assets located abroad; (e) transferred or used to buy virtual money (bitcoins, etc.); (f) using a company account or mixed with a legitimate business; (g) using a nominee account (owned by someone else, whether known, unknown, or fictitious); (h) cash Basis: Withdraw cash, deposit cash, disguise identity; (i) transactions are as reasonable as possible to avoid suspicion; (j) underlying is increasingly difficult to track; (k) protected by bonds or civil law: debts, fiduciaries, guarantees, installments, etc.; and (l) protection from other legal aspects: bankruptcy or suspension of debt payment obligations, commercial courts, etc.

Weaknesses in the proof of the crime of money laundering based on the results of interviews with Dzulkipli in the field of Corruption Crimes and money laundering crimes of the Republic of Indonesia Prosecutor's Office occurred when the investigation process was interrupted in terms of evidence where the chain of evidence was interrupted, from the proceeds of a crime to the proceeds of a predicate crime to the proceeds of a money laundering crime. Talking about the results of the crime of money laundering, if the ideal thing is to be able to outline the series of processes so that the nexus or link between the proceeds of the crime then changes into one result of the crime of money laundering, that is more difficult to explain in the indictment if the chain is broken. For example, if you receive a bribe of 10 million for a predicate crime (crime of bribery) and then this 10 million is traced, it is proven that the structure was made. The 10 million can be converted into land and then confiscated as the proceeds of money laundering. According to investigators, that is where the difficulty lies, which could be one of the obstacles.

3.2.2 Obstacles for the Prosecutor's Office in Proving the Crime of Money Laundering

Article 95 states that "Money Laundering Crimes committed before the enactment of this Law shall be examined and decided by Law Number 15 of 2002 concerning Money Laundering Crimes as amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering." In its application, Article 95 of the Money Laundering Crime Law gives rise to multiple interpretations, which creates legal uncertainty. Based on an interview with Dzulkifli:

"That one of the obstacles or obstacles in proving is when, for example, formulating an indictment. Often, a result of a money laundering crime emerges, which is obtained before the original crime is prosecuted. Several obstacles arise there. When an example like that occurs. Firstly, the difficulty is determining the tempus because if we determine the tempus, it says January 2023, while the delivery of the assets will be obtained in 2022 from that perspective. "So the problem is accommodating the proceeds of money laundering in an indictment where the confiscation occurred when the goods were obtained before the laundering crime was completed."

The fundamental essence as a basis for implementing "confiscation" or "confiscation," which needs to be taken into account is at least two actions, namely "exceptional legal action"¹⁴ and "expropriation action." If "confiscation" is an "exceptional legal action," confiscation is a legal action taken by the court prior to the examination of the main case or before the court decision. The primary purpose of the confiscation action is to prevent the defendant from transferring or encumbering assets to third parties—legal consequences from a criminal perspective.

Then, there is still conflict among law enforcement officials regarding proof of the crime of money laundering; based on the results of interviews with Dzulkifli in the field of Corruption Crimes and money laundering crimes of the Republic of Indonesia Prosecutor's Office, there is still a conflict between the interests of law enforcement both in terms of evidence and recovery—state losses with the interests of third parties in good faith. Investigators confiscated the proceeds of crime from a company that was later declared bankrupt. However, the importance of implementing the bankruptcy decision on the original assets was also an issue that was decided in the bankruptcy decision. Which legal interests need to take precedence? Which legal interests will be ignored? In practice, this still needs to be

¹⁴ Soeparmono, *Masalah Sita Jaminan (CB) Dalam Hukum Acara Pidana* (Bandung: Mandar Maju, 1997).

solved by implementing fair evidence.

Investigators in predicate crimes can conduct investigations into money laundering crimes if they find sufficient preliminary evidence of their occurrence when carrying out investigations into predicate crimes by their authority. Juridical problems arise again when the prosecutor or attorney investigates a corporate criminal act in which sufficient evidence of a money laundering crime is found. However, the time when the money laundering crime (*Tempus delict*) occurred was before the enactment of the money laundering crime law, because in Chapter Number 15 of 2002 as amended by Law Number 25 of 2003 concerning amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering, the phrase "examined and decided" in the transitional provisions, contains good intentions regarding substantive law, as well as formal law. Therefore, from this point of view, it can be said that the prosecutor's office or prosecutor has no authority to carry out investigations into criminal acts of money laundering that occurred before the enactment of the 2010 Money Laundering Crime Law because the old law did not regulate the authority of the prosecutor's office regarding such investigations.

This normative view is based solely on the text written in the law formulation, which suspects or defendants usually use to stop efforts to eradicate money laundering crimes carried out by the prosecutor's office. However, in several decisions on laundering criminal cases, for example the criminal case in the name of Bahasyim Gayus HP Tambunan and most recently the case in the name of Dhana Widyamika, it still states that the prosecutor or attorney still has the authority to investigate laundering criminal cases that occurred before the enactment of the Money Laundering Crime Law, by using the argument of the concept of *voortdurende delicten* because money laundering crimes occur continuously and are still ongoing at the time the money laundering crime law comes into force. The legal argument is based on material law because what is being discussed is the type of offense that has practically been used as the basis for the prosecutor's authority to carry out investigations into money laundering crimes that occurred before the birth of the money laundering crime law.

If we review again, the prosecutor's investigative authority regarding money laundering crimes that occurred before the birth of the money laundering crime law in 2010 should have been based on the legal conception of formal criminal law, which has stricter principles of legality, namely the criminal procedural law which at the time This involves carrying out a procedural legal action, while the criminal act itself is punished based on the material law at the time the criminal act was committed. *Tempus delict* in money laundering criminal charges, especially in confiscation, can also refer to the articles regulated in the Criminal Procedure Code. Considering the confiscation regulations, the law has distinguished several forms

and procedures for confiscation.¹⁵

3.2.3 Obstacles for the Corruption Eradication Commission in Proving Money Laundering Crimes

In the process of investigating and prosecuting the Corruption Eradication Commission, it found several obstacles that hampered the investigation process, namely the provisions regarding the authority of the Corruption Eradication Commission as a public investigator and prosecutor, which have not been regulated explicitly in the Law on Money Laundering Crimes or in Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.¹⁶ This is one of the obstacles to the Corruption Eradication Commission in eradicating money laundering crimes from corruption. In this case, the authority of the Corruption Eradication Commission is in the gray area. The money laundering crime law gives investigative authority to the Corruption Eradication Commission but does not regulate the Corruption Eradication Commission's authority to prosecute money laundering crimes. And then there needs to be clarity regarding the issue of proving predicate crimes about money laundering crimes.

Whereas the money laundering crime law states that for a court hearing, the defendant is obliged to prove that the defendant's assets do not include proceeds from the original crime. What is meant by predicate crime in Article 69 is "predicate offense," namely offenses that produce "criminal proceeds" or "proceeds of crime," which are then laundered,¹⁷ as stated in Article 69 that "In order to carry out investigations, prosecutions, and examinations "In a court trial for the crime of money laundering, it is not necessary to prove the original crime first."

The provisions of Article 69 regarding the need not to prove a predicate crime beforehand imply that the target of the money laundering crime law is not the defendant's actions (mistakes) but rather the ownership of assets suspected to originate from or be related to the predicate crime.¹⁸ The interpretation of Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering has yet to go far beyond the intention of establishing the article. The meaning of the words "not required to be proven first" in Article 69 should be interpreted to mean that in order to carry out investigations, prosecutions,

¹⁵ Ukkap Marolop Aruan, "Tata Cara Penyitaan Barang Bukti Tindak Pidana Menurut KUHAP," *Lex Crimen* III, no. 2 (2014): 77–85.

¹⁶ Ayu Putriyana dan Nur Rochaei, "The Impact Of Enforcement Of Corruption Law By The Corruption Eradication Commission After The Ratification Of The Latest KPK Law," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 299–310, <https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.299-310>.

¹⁷ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, 1 ed. (Bandung: Citra Aditya Bakti, 2003).

¹⁸ Romli Atmasasmita, "Analisis Hukum UU RI Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang" (Surakarta, 10 September 2013).

and examinations before a court hearing, it is not mandatory first to prove "the existence of a court decision with permanent legal force" regarding the original criminal act.¹⁹ Thus, evidence at the investigation stage, prosecution, or examination before a court hearing must be carried out simultaneously with the original criminal act, such as a corruption case, as a cumulative indictment, or at least as one element of the crime of money laundering. In this way, there is a manifestation of the authority of the Corruption Eradication Commission to decide the chain of corruption cases, especially in money laundering cases.²⁰

In the context of money laundering, the failure to prove a predicate criminal act is very contrary to the concept of proof in the criminal justice system in Indonesia, namely: (a) contrary to the basic principles of evidence in Indonesia. This principle is *Actori Incumbit Onus Probandi*, meaning whoever preaches error must prove it. This means that the burden of proving the existence of a criminal act falls on the shoulders of the new public prosecutor, which is then terminated by the Defendant's statement.²¹ This principle was formed to ensure that investigators and public prosecutors can act professionally in the law enforcement process by prioritizing the presumption of innocence and protection of human rights and (b) the evidentiary system adopted in criminal justice in Indonesia is *Negatief Wettelijk Bewijs*theorie, where the basis for deciding whether a defendant is guilty or not is based on evidence that is determined imitatively by law accompanied by the judge's belief. Valid evidence, according to Article 184 of the Criminal Procedure Code, is witness statements, expert statements, letters, instructions, and defendant statements.²² Not proving a predicate crime can make it difficult for a judge to form a belief so that the judge's decision is very limited to the profile and position of the defendant. Decisions based solely on the judge's beliefs will create a vulnerability to arbitrary practices by law enforcement officials with the justification of the judge's beliefs.

4. CONCLUSION

The General Evidence System that follows the suspect pattern is still more dominantly used by law enforcement officers, causing law enforcement officers to currently only focus on the juridical evidence system because the view of Indonesian money laundering law is that if there has been no conviction of

¹⁹ Iwan Roy Charles, "Analysis of Article 69 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering in the Perspective of Legal Certainty," *Melayunesia Law* 6, no. 1 (2022): 59–84, <https://doi.org/http://dx.doi.org/10.30652/ml.v6i1.7811>.

²⁰ Artha Febriansyah et al., "Reversal Burden Of Proof In Process Of Proving Money Laundering Cases In Indonesia," *Indonesia Law Review* 13, no. 1 (2023): 17–35, <https://doi.org/https://doi.org/10.15742/ilrev.v13n1.5>.

²¹ Eddy O.S Hiariej, *Teori & Hukum Pembuktian* (Jakarta: Erlangga, 2012).

²² M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi dan Peninjauan Kembali*, 2 ed. (Jakarta: Sinar Grafika, 2002).

perpetrators of criminal acts in predicate crimes, then everything related to assets cannot be done. Therefore, there is still a conflict between the interests of law enforcement at the National Police, especially in terms of evidence and recovering state losses. Obstacles to the evidentiary process in money laundering crimes also occur when prosecutors are not given the authority to conduct investigations into money laundering crimes before the 2010 money laundering crime law is issued because the old law still needed to regulate the prosecutor's authority regarding investigations. The. This obstacle is proof of the crime of money laundering. They, namely, hampered the wealth period, the period (temporary) of the crime before the 2010 Money Laundering Crime Law was issued.

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- Wawancara dengan Dzulkifli aparat penegak hukum di kejaksaan dengan jabatan Kasi wilayah 1 Tindak Pidana Korupsi dan TPPU yang sementara ini ditugaskan di Otorita Ibu Kota Nusantara di bagian pengawasan dan auditor, pada tanggal 27 Januari 2023.