



Position and Evidence of Predicate Crime in the Crime of Money Laundering

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Abstract. The development of crime is strongly influenced by the social development of society. The higher the human civilization, the more complex the crimes that occur. The Crime of Money Laundering is one example of a crime that occurred during the era of higher human civilization. Law enforcement in the context of eradicating and preventing money laundering is faced with many problems, such as the difficulty of proving related to predicate crimes. The study discusses how the position and proof of the predicate crime in the crime of money laundering.

This research is a type of normative research using a law approach. Sources of data used are secondary data sources. The data analysis technique in this study is qualitative analysis, namely by analyzing, describing and explaining the data obtained in a systematic, logical and detailed manner, then interpreting it to draw a deductive conclusion.

The results of this study indicate that predicate offenses are an important element and must exist in money laundering crimes because without predicate crimes, money laundering crimes will not occur. Proof of predicate offenses must be proven to reveal money laundering. The many types of predicate crimes that are elements of the crime of money laundering have an impact on the number of institutions authorized to carry out investigations, as well as affecting which judicial institutions are authorized to adjudicate.

Keywords: predicate crime · proof · money laundering

1 Introduction

According to R. Soesilo, crime consists of two points of view, namely the juridical point of view and the sociological point of view. Juridically, crime is an act or behavior that is contrary to the law. Sociologically, crime is an act or behavior that in addition to harming the sufferer, is also very detrimental to society in the form of loss of balance, peace and order [1].

In Indonesia, the crime of money laundering has been regulated since the promulgation of Law Number 15 of 2002 concerning the Crime of Money Laundering which has been amended by Law no. 25 of 2003 and again amended by Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. Article 1 paragraph (1) of Law Number 8 of 2010 provides the definition of a money laundering crime as an act that fulfills the elements of a criminal act in accordance with the

provisions of this law. In principle, there are three forms of action in money laundering offenses, namely:

1. Placement, placing the proceeds of crime into the financial system,
2. Layering, transferring or changing the form of funds through complex financial transactions in order to make it difficult to trace the origin of funds,
3. Integration, returning funds that have looked legitimate to their owners so that these funds can be used safely [2, pp. 33–34].

An important element in the crime of money laundering is regulated in Law Number 8 of 2010 namely the existence of a predicate crime. Article 2 of this Law mentions the categories of predicate crime, namely corruption, bribery, narcotics, psychotropic substances, labor smuggling, migrant smuggling, crimes in the banking sector, capital market, insurance, customs, excise, trafficking in persons, trafficking in illicit weapons, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting money, gambling, prostitution, in the taxation sector, in the forestry sector, in the environment, in the marine and fishery sector, as well as other crimes punishable by imprisonment of 4 years or more.

The provisions of Article 69 of Law Number 8 of 2010 states that in order to be able to carry out investigations, prosecutions, and examinations of court proceedings against the crime of money laundering, it is not necessary to first prove the original crime. This shows that there is a conflict with the understanding of the crime of money laundering, in which the crime of money laundering is a further criminal act of a crime. Based on this background, the researcher is interested in studying how the position and proof of Predicate Crime in the Crime of Money Laundering.

2 Literature Review

Several studies related to money laundering are journals written by Hibnu Nugroho, Budiyo, Pranoto with the title Investigating the Crime of Money Laundering in an Effort of Withdrawal of Assets which discusses the investigation model for the Crime of Money Laundering which is able to seize the assets of the perpetrators of the Crime of Money Laundering in corruption cases [3]. Ahmad Dwi Nuryanto's journal with the title Problem of Investigation of Money Laundering Derived from Banking Predicate Crime with the result that money laundering can also have an impact on the loss of state revenue from the tax sector, market and international distrust of the Indonesian state, the climate for investors to be unwilling to invest capital in Indonesia [4]. A journal written by Edi Waluyo with the title Efforts to Combat Money Laundering in Indonesia which discusses several problems that arise in relation to money laundering, namely the reasons why money laundering practices need to be fought and Indonesia's efforts to combat money laundering practices [5].

3 Methods

This research is a type of normative research or library research using a statute approach. The research data sources are secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection technique in this research is literature study. The data analysis technique in this study is qualitative analysis, namely analyzing, describing and explaining the data obtained in a systematic, logical and detailed manner, then interpreting the data to draw a deductive conclusion to get answers to the formulation of the problem in this study.

4 Results and Discussion

4.1 Position of Predicate Crime in Money Laundering

The term money laundering appears in the United Nations Convention against the trafficking of drugs and psychotropic substances (Vienna Convention 1998). This convention recommends parties to criminalize the practice of money laundering and drug trafficking. This convention is recognized as the most important step in internationalization and criminalization in response to money laundering activities. This convention has a significant role in introducing the concept of money laundering to the world [6, p. 3]. In Black's Law Dictionary, money laundering is Term used to describe investment or other transfer of money flowing from racketing, drug transaction, and other illegal sources into legitimate channels so that its original source cannot be traced [7, p. 25].

Sutan Remi Syahdeni, defines money laundering or money laundering as a series of activities carried out by a person or an organization against illicit money, namely money obtained from a crime with the intention of hiding or disguising the origin of the money from the government or the authorities authorized to take action. Against criminal acts by primarily entering the money into the financial system so that the money can then be removed from the financial system as lawful money [8, p. 5]. Money laundering or Money Laundering, in Harkristuti Harkrisnowo's view, is a crime that seeks to hide the origin of money so that it can be used as legally obtained money [9, p. 143]. The crime of money laundering is an act or act in the form of hiding or disguising the origin of money or assets from the proceeds of a criminal act so that the assets appear to originate from legal acts or deeds.

Money laundering can simply be interpreted as a process of making the proceeds of crime or referred to as dirty money, for example the proceeds from drugs, corruption, tax evasion, gambling, smuggling and others that are converted or changed into a form that appears legal so that it can be used safely [10, p. 15]. In the general provisions of Article one point one of Law Number 8 of 2010 provides limitations on the definition of money laundering as all acts that meet the elements of a criminal act in accordance with the provisions of this law. In Law Number 8 of 2010, the formulation of the crime of money laundering is contained in the provisions of Articles 3, 4 and 5.

Article 3 of Law Number 8 of 2010:

“Every person who places, transfers, transfers, spends, pays, grants, entrusts, takes abroad, changes the form, exchanges for currency or letters or other actions on assets which he knows or reasonably suspects is the result of a criminal act as intended in

Article 2 paragraph (1) with the aim of concealing or disguising the origin of assets shall be punished for the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000 (ten billion rupiah).

Article 4 of Law no. 8 of 2010:

“Everyone who hides, disguises the origin, source of location, designation, transfer of rights, or actual ownership of assets that is known or reasonably suspected to be the result of a criminal act as referred to in Article 2 paragraph (1) shall be punished for money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah)”

Article 5 paragraph (1)

“Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or using assets which he knows or reasonably suspects is the result of a criminal act as regulated in Article 2 paragraph (1) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of 1,000,000,000 (one billion rupiah).

Based on the formulations of Articles 3, 4 and 5 above, money laundering crimes are divided into two, namely active money laundering crimes contained in the formulations of Articles 3 and 4. Active money laundering crimes are committed:

1. money laundering and predicate offenses
2. money laundering actors, who know or are reasonably suspected that their assets originate from criminal acts [11].

The crime of passive money laundering can be seen in the formulation of Article 5 paragraph (1), the formulation of this article shows that there is no active act to hide and disguise assets resulting from criminal acts. The formulation of Article 5 paragraph (1) emphasizes the perpetrators who only enjoy the benefits of the proceeds of crime and the perpetrators participate in hiding or disguising the origin of wealth. Referring to the provisions of Articles 3, 4 and 5, there are three forms of action in the crime of money laundering, namely [7, p. 26].

1. Placement of proceeds of crime into the financial system (Placement)
2. Transferring or changing the form of funds through complex financial transactions in order to complicate the tracking (audittrail) of the origin of funds (layering)
3. Returning funds that have looked legitimate to their owners so that they can be used safely (integration).

Based on the provisions in Law no. 8 of 2010, that there are two elements of the crime of money laundering, namely the subjective element (*mens rea*) and the objective element (*actus reus*). The subjective elements in money laundering are:

1. The perpetrator, in this case the actor can be an individual or a corporation;
2. The perpetrator’s intention to intentionally disguise or hide his wealth which is suspected to be the result of a crime.

The objective element in the money laundering crime is the act of the perpetrator and the element of the predicate crime. The actions of the perpetrators in the crime of money laundering, namely:

1. Placing, is the act of entering assets into a financial institution in the form of savings, deposits and others.
2. Transferring is the act of transferring assets from one financial institution to another, both at home and abroad, or transferring from one account to another, either in the same or different financial institutions.
3. Spending is handing over wealth to others for the purchase of an item
4. To pay, is to hand over wealth to others
5. Donating, is transferring ownership rights to their assets to other parties for free with a grant system
6. Entrusting, is handing over control of assets to other parties to be managed with an agreement that they will be asked to return
7. Taking them abroad is taking their assets directly outside the Indonesian customs area
8. Changing the form, exchanging it with currency or securities is an act of exchanging assets in the form of currency exchange or exchanged for securities.
9. Other actions on his assets which are reasonably suspected to have been obtained from the proceeds of crime. In simple terms, there are three elements of the crime of money laundering, namely, the perpetrator, the act against the law and the predicate crime.
10. Concealing or disguising: In this case, it is the act of concealing and disguising the origin, designation, transfer of rights and ownership of his assets.
11. Receiving or controlling the placement, transfer, payment, grant, donation, safe-keeping, exchange, or use of assets that are known or reasonably suspected to be the proceeds of a criminal act.

The second objective element is the existence of a predicate offense that precedes the crime of money laundering. In the provisions of Article 2 paragraph (1) of Law Number 8 of 2010, predicate crimes are Corruption, Bribery, Narcotics, Psychotropics, Labor smuggling, Migrant smuggling, Banking sector, Capital market sector, Insurance sector, Customs, Excise, Trade people, trafficking in illicit weapons, terrorism, kidnapping, embezzlement, fraud, money counterfeiting, gambling, prostitution, taxation, forestry, environment, marine and fisheries, other crimes punishable by imprisonment of 4 (four years) or more, which is committed in the territory of the Unitary State of the Republic of Indonesia or outside the Unitary State of the Republic of Indonesia and such acts are also criminal acts according to Indonesian law.

The provisions of Article 2 paragraph (2) state that assets that will be disguised in the crime of money laundering are assets that are known or reasonably suspected to be used directly or indirectly for terrorist activities, terrorist organizations, or individual terrorists, equated with the proceeds of criminal acts. in the provisions of Article 2 paragraph (1). Referring to the general provisions of Article one point one of Law Number 8 of 2010 providing limits on the definition of money laundering as all acts that meet the elements of a criminal act in accordance with the provisions of this law. In

Law no. 8 of 2010, the formulation of the crime of money laundering is contained in the provisions of articles 3, 4 and 5, in the provisions of these articles clearly mentioning the subjective and objective elements of the crime of money laundering.

The subjective elements inherent in the perpetrators of the crime of money laundering are the perpetrators and intentions. The perpetrator in this case can be an individual or a corporation. Meanwhile, the intention of the perpetrator is the intention of the perpetrator to carry out the act of disguising or hiding the origin of his assets. Disguising and hiding the origin of the property is intended so that the assets owned are not known that the property was obtained from a criminal act. The objective element of the crime of money laundering is the objective element in the crime of money laundering, namely the act of the perpetrator and the element of the predicate crime. The act of the perpetrator is an act that is prohibited in Law Number 8 of 2010. The provisions of Articles 3, 4 and 5 indicate that the act in question is either a positive act (doing something) or a negative act (not doing something).

Doing something or in this case can be said as an active money laundering crime, where the perpetrator of the money laundering crime actively commits the actions of any person who places, transfers, transfers, spends, pays, grants, entrusts, takes abroad, changes form, exchanging with currency or letters or other actions and committing acts of hiding, disguising the origin, source of location, designation, transfer of rights, or actual ownership of assets which are known or reasonably suspected to be the proceeds of criminal acts. Whereas in passive money laundering, in this case the perpetrator does not commit the acts as stated in the provisions of Article 3 but enjoys assets that are suspected to be the result of a criminal act. Where the passive form of action is accepting or controlling the placement, transfer, payment, grant, donation, safekeeping, exchange, or using assets that are suspected or known to be the result of a criminal act.

The predicate offense in the crime of money laundering is an element that must exist. Without the predicate crime, the money laundering crime will not occur, because the object of the money laundering crime is the assets produced by the predicate crime. In Indonesia, predicate crimes that are ranked highest to trigger the emergence of money laundering crimes are corruption, drug trafficking, criminal acts of trafficking in persons and criminal acts in the field of taxes. This is evidenced by the 2015 National Risk Assessment (NRA) compiled by the Indonesian Inter Agency Working group (NRA), showing corruption, drug crimes, and taxation being the three highest ranks as predicate crimes in money laundering.

4.2 Proof of Predicate Crime in Money Laundering

Proof is a very important thing in a trial, to determine whether someone is guilty or not guilty of committing the crime he is accused of. Proof in a criminal case is to get the material truth, namely the real truth. If the evidence and evidence as stipulated in the law are insufficient, it will allow the defendant to be released from legal charges, and vice versa if the evidence and evidence are sufficient, the defendant can be declared guilty of committing a crime and imposed a criminal sanction.

M. Yahya Harahap, providing limits on the definition of proof is a provision that regulates evidence that is justified by law that may be used by judges to prove the guilt that has been charged [12, p. 273]. The law of evidence is part of the criminal

procedural law which regulates (i) the types of evidence that are legal according to law; (ii) the system adopted in the evidence; (iii) the terms and conditions and procedures for submitting such evidence and; (iv) the judge's authority to accept, reject and evaluate an evidence [13, p. 10]. The judge in searching for and placing the truth to be handed down in the decision must be based on the evidence stipulated by law, as stipulated in Article 184 of the Criminal Procedure Code.

The provisions of Article 69 of Law Number 10 of 2010, stipulates that in order to be able to carry out investigations, prosecutions, and examinations in court against the crime of money laundering, it is not necessary to first prove the crime of origin. This provision is reinforced by the decision of the Constitutional Court Number 77/PUU-XII/2014, that it is not necessary to prove the crime of money laundering before it is proven. Not required to be proven is not required to be proven by a court decision that already has permanent legal force. Therefore, in order to carry out investigations, prosecutions and examinations in court proceedings for the crime of money laundering, there is no need for a court decision that already has permanent legal force on the predicate crime [14, p. 194].

Article 75 of Law Number 10 of 2010, investigations for predicate crimes and money laundering can be carried out if investigators find sufficient preliminary evidence. The investigation process can be carried out by combining the investigation of money laundering and predicate crimes by notifying the PPATK. The Law on Prevention and Eradication of criminal acts of corruption stipulates the existence of reverse evidence, as stated in the provisions of Article 77: for the purpose of examination in court, the defendant is obliged to prove that his assets are not the proceeds of a crime. Article 78 paragraph (1) states that in the examination at trial the judge may order the defendant to prove that the assets related to the case do not originate or are related to the crime of money laundering. Evidence related to the origin of the defendant's assets can be proven by submitting sufficient evidence, this is regulated in the provisions of Article 78 paragraph (2).

Money laundering is a crime that is different from other crimes in general. The hallmark of the crime of money laundering is the existence of an element of predicate crime, which is a distinguishing element from other criminal acts. Money laundering crimes including *concursum realis* or concurrent actions occur if a person commits two or more crimes so that he is legally deemed to have violated two or more criminal rules, or in other words a person commits several acts that have nothing to do with each other and each of these acts is an independent crime. Although a criminal act is a requirement and an element for the occurrence of a criminal act of money laundering, the predicate crime and the crime of money laundering are each stand-alone.

5 Conclusions and Policy Recommendations

5.1 Conclusions

1. The position of the predicate crime in the crime of money laundering is one of the elements that must exist. Without the predicate crime, the crime of money laundering will not exist, so the predicate crime must be proven even though the money laundering crime can be processed without having to first prove the original crime.

2. The evidence used in the investigation of the crime of money laundering is negative evidence, or reverse evidence in order to find the origin of assets can still be done. The many forms of predicate crimes have an impact on differences in the authority of the investigation and the authority of the judiciary that will examine, try and decide on the crime of money laundering, so it really depends on the type of crime of origin.

5.2 Policy Recommendations

1. Handling the crime of money laundering in principle is no different from the handling of ordinary crimes, it is necessary to increase the ability of law enforcement in the field of technology, financial transactions, increase knowledge and understanding of business in the financial or non-financial sector and other capabilities.
2. Handling cases of money laundering crimes can be carried out together without having to separate the word files of money laundering crimes with predicate crimes, this is for effectiveness and time efficiency.

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