Corruption, Asset Origini, and the Criminal Case of Money Laundering in Indonesian Law

by Mahrus Ali

Corruption, asset origin and the criminal case of money laundering in Indonesian law

Mahrus Ali and Syarif Nurhidayat
Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia
Muhammad Shidqon Prabowo
Faculty of Law, Universitas Wahid Hasyim, Semarang, Indonesia, and
Rusli Muhammad
Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia

Abstract

Purpose – This study aims to investigate Indonesian regulation of Article 69 of the Money Laundering Criminal Act (TPPU) related to proving predicate crimes, as it leaves a debate whether it must be proven beforehand or not.

Design/methodology/approach – This research is a normative juridical study, in addition to examining the views of criminal law experts on the formulation of Article 69 of the TPPU Law; it is also extended to the practice of prosecution and court decisions in TPPU cases.

Findings – The results of this study show that there are two views related to the obligation to not prove the corruption in the ML case. The first view states that the origin of corruption must be proven, especially because ML is a follow-up crime, so it is necessary to prove corrosive crime as one of the predicate offenses. The second view states that the predicate offense of corruption does not have to be proven beforehand because TPPU is an independent offense.

Originality/value – This research focuses on analyzing whether or not it is obligatory to prove the original crime of corruption in the money laundering case.

Keywords Corruption, Indonesia, Money laundering, Asset origin

Paper type Research paper

Introduction

Money laundering (TPPU) is a crime aimed at obscuring the origin of assets from a criminal act so that the assets seem to originate from legitimate activities either through placement, layering or integration (Amrani, 2015). Assets in ML (TPPU) are the results of predicate offenses. Without predicate offenses, ML is impossible. Therefore, ML is also referred to as a follow-up crime (Hamzah, 2017). As a follow-up crime, ML actually depends on predicate crimes (Yanuar, 2020). Corruption is a form of predicate crime as regulated in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (TPPU Law).

ML (TPPU) poses a serious threat to the legal and economic system. It also affects the integrity of financial institutions and even changes the strength of the economy in certain sectors. If left untreated, ML will destroy the overall social order (FATF, 2009). One of the ways to prevent and eradicate ML offenses is through a process of proof that deviates from what is regulated in the Criminal Procedure Code. Article

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69 of the TPPU Law states that "in order to carry out investigations, prosecutions and examinations in court proceedings against criminal acts of ML, it is not necessary to prove the original crime first." Based on this provision, there is no prior obligation to prove a predicate crime in a ML case. This means that the Crime of Money Laundering (TPPU) has been accepted as a crime that stands alone apart from the predicate crime.

In the practice of enforcing criminal law, the provisions of Article 69 of the TPPU Law do not immediately resolve problems, especially those related to the absence of prior obligations to prove the predicate crimes in ML crimes. There are at least several problems that arise with the formulation of the article: First, in the case that the public prosecutor formulates an indictment in the cumulative form between a corruption case and a ML case, does the predicate offense of corruption not have to be proven? Second, in the case that the public prosecutor has formulated an indictment for the crime of ML without including the predicate offense of corruption, is it still obligatory to prove the predicate crime of corruption? Third, assets resulting from predicate crimes as referred to in Article 2 paragraph (1) of the TPPU Law are instead included in the formulation of offenses in Article 3, Article 4 and Article 5 of the TPPU Law. In such a case, does the predicate offense of corruption still not obligate to be proven beforehand in the criminal case of laundering? The three legal issues above are the importance of conducting a study on whether or not it is obligatory to prove the original criminal act of corruption in the ML case beforehand.

Research methods

This study is a normative juridical study. The focus of the discussion is whether or not it is mandatory to prove the original crime of corruption in the ML crime case in advance. The legal materials studied were not only the TPPU Law, especially Article 69, but also the development of law enforcement practices regarding ML in several judicial decisions. In this study, the corruption cases as the original crime consisted of corruption, which resulted in the loss of state finance, bribery and gratification.

Evidence and money laundering systems

Theoretically, there are several theories of proof systems that are generally known in the realm of proof of law, namely, the positive legal proof system (*positief wettelijke bewijs theorie*), the proof system according to the judge's conviction (*conviction intime/conviction raisonce*) and a negative statutory proof system (*negatief wettelijk bewijs theorie*). The positive legal proof system is a system of proof according to the law positively (*positief wettelijke bewijs theorie*). According to this theory, the positive proof system depends on evidence as it is called limitedly in the law. The law determines which means of evidence can be used by judges, how the judge must use them, the strength of the evidence and how the judge must decide whether the case being tried is proven or not. In this aspect, the judge is bound to the adage that if the means of evidence have been used in accordance with the provisions of the law, the judge must determine that the defendant is guilty, even though the judge believes that the defendant is not guilty. Likewise, if the method of using evidence as stipulated in the law cannot be fulfilled, the judge must declare the defendant not proven guilty, even though according to his belief the defendant is actually guilty. The statutory system of proof positively seeks to remove all subjective considerations outside the law (Hamzah, 1984).

The system of proof according to the judge's conviction (*conviction intime/conviction raisonce*) is more based on the judge's conviction alone without having to be bound by evidence which is limitedly stated in the law. In this theory, the system of proof based on the judge's conviction has two patterns, namely, *conviction intime* and *conviction raisonce*. The conviction intime places more emphasis on the mere conviction of the judge, meaning that the defendant's guilt depends on the judge's conviction alone, so that the judge is not bound by regulation governing evidence and evidence systems (Mulyadi, 2007). It is the judge's conviction that determines the form of true truth in the proof system (Harahap, 2005; Haswandi, 2017). Meanwhile, the *conviction raisonce* believes that the judge still plays an important role in determining the guilt of the defendant, but the application of the judge's conviction is carried out selectively and the meaning of the judge's conviction is limited and must be supported by clear and rational reasons in making the decision on whether the defendant is guilty or not (Mulyadi, 2007).

The negative statutory proof system is a system of proof according to the law negatively (*negatief wettelijk bewijs theorie*). In principle, in this system a judge may only impose a sentence on the defendant if the evidence is limitedly determined by law and is also supported by the judge's conviction on the existence of the evidence. Historically, this negative statutory proof system is essentially a "concoction" between a positive statutory proof system and a system of proof according to a judge's conviction. With this concoction, the substance of the evidentiary system according to the law in a negative way will certainly adhere to procedural elements and procedures of proof in accordance with the evidence tools of the judge both materially and procedurally (Sumaryanto, 2009).

ML is turning dirty money into net money (Amrani, 2015). This also means "the act of hiding or disguising the origin of assets through various financial transactions so that they appear to have been obtained legally" (Kristiana, 2015). ML itself is not a single crime but is a dual crime which is always related to core crime/predicate crime. ML is a follow-up crime (Garnasih, 2003). Sjahdeini and Safrizar (2004) define ML as a series of activities which is a process carried out by a person or organization against illicit money, namely, money originating from crime, with the intention of hiding or disguising the origin of the money from the government or the competent authorities to take action against criminal acts by way of primarily entering the money into the financial system so that the money can then be removed from the financial system as legal money.

According to Adrian Sutedi (2008), ML is "a method to hide, transfer, and use the proceeds from a criminal act, criminal organization activities, economic crime, corruption, narcotics trafficking, and other activities which constitute criminal activity." Basically, ML involves assets (income/wealth) that are disguised so that they can be used without being detected that those assets originate from illegal activities. Through ML, income or assets originating from activities that are against the law are converted into financial assets that seem to come from legal sources.

The ML process is carried out in three stages, namely, placement, layering and integration (Schott, 2006). The placement stage is the stage where the owner of the money deposits the illicit money to the financial system. Because the money has entered the banking financial system, it means that the money has also entered the financial system of the country concerned. The placement stage, therefore, is an effort to place funds generated from a criminal activity into the financial system. The layering stage is conducted to separate the proceeds of the crime from the source, that is, the criminal act goes through several stages of financial transactions to hide or disguise the origin of the funds. In this activity, there is a process of moving funds from several accounts or certain locations as a

result of placement to another place through a series of complex transactions designed to disguise and eliminate traces of the source of the funds.

The integration stage is defined as an effort to use assets that have appeared legitimate, either to be enjoyed directly, invested in various forms of materials or financial wealth, used to finance legitimate business activities, or to refinance criminal activities. In integration, once the ML process has been attempted and the ML process is successful through the layering method, the next step is to use the money that has become clean money which is used for business activities or criminal operations of criminals or criminal organizations that control the money.

Origin of corruption must be proven in advance

Money laundering (TPPU) as an independent crime

ML is a crime that arises as a result of predicate offenses (Adeniyi *et al.*, 2016). There can be no ML crime without predicate offense. Therefore, ML is seen as a follow-up crime or supplementary crime that begins with predicate offenses. In Indonesian context, these predicate offenses are related to assets obtained from criminal acts as referred to in Article 2 of the Money Laundering Law (TPPU) such as corruption.

As one of the predicate crimes, corruption must still be proven in a ML case. Then, does the obligation to prove a criminal act of origin of corruption in a ML case does not contradict Article 69 of the TPPU Law which explicitly states that "in order to carry out investigations, prosecutions and examinations in court proceedings against the crime of ML, it is not necessary to prove the original criminal act?" According to Wiyono (2014), what is meant by "not required to be proven beforehand" in the article is that it is not obligatory to be proven by a court decision that has permanent legal force (*inkracht*). Understanding Article 69 of the Money Laundering Criminal Act (TPPU) must be viewed in a comprehensive way. It should be noted that the provisions stipulated in Article 69 of the Money Laundering Law (TPPU) state that "it does not have to be proven beforehand." Thus, it does not mean that in carrying out investigations, prosecutions and examinations in court proceedings are not obliged to prove predicate crimes, but it is necessary to fully understand and read that the phrase "beforehand" is more explaining about the time to prove the original criminal act.

Article 75 of the Money Laundering Criminal Act (TPPU) also provides that in the event that an investigator finds sufficient initial evidence of the crime of ML and predicate offenses, the investigator combines the investigation of predicate crime with the investigation of the crime of ML and notifies the Reporting Center and Financial Transaction Analysis (PPATK). This article confirms the obligation to prove the predicate crime together with the Crime of Money Laundering (TPPU). Investigation of a ML case must be carried out simultaneously with an investigation of predicate crimes. The implication is that the public prosecutor is not allowed to compile a single indictment for the Crime of Money Laundering (TPPU) without the existence of predicate offenses or to splitting ML cases with predicate crimes.

This argument is also strengthened by the existence of Article 77 and Article 78 paragraph (1) and paragraph (2) of the TPPU Law. Article 77 states that "for the purpose of examination in court proceedings, the defendant is obliged to prove that his assets are not the results of a criminal act." The phrase "the defendant is obliged to prove that his assets are not the results of a criminal act" necessitates proving the predicate crime in a ML case. This is because the defendant is obliged to prove that the assets obtained did not originate from the predicate crime. If it turns out that the defendant is unable to prove that the assets did not originate from a predicate crime, it means that the defendant has been proven to

have committed the crime of ML with the predicate offense in which the assets were acquired. The obligation of the defendant was also further emphasized by the judge's order to the defendant to prove that the assets related to the case did not originate from or were related to the criminal act as referred to in Article 2 paragraph (1) of the Money Laundering Criminal Act (TPPU).

The obligation to prove predicate offenses of corruption in ML cases is also related to the formulation of predicate crimes in each of Article 3, Article 4 and Article 5 of the TPPU Law. In these three articles, the element of "Assets which he knows or should reasonably suspect is the result of a crime as referred to in Article 2 paragraph (1)" is explicitly stated in the three offenses. Consequently, the public prosecutor is obliged to prove this element. All elements in which expressive verbis are formulated or included in an offense must be proven by the public prosecutor. The failure of the public prosecutor to prove any of these elements has implications for the requirement to state that the defendant is not proven to have committed the crime of ML. This means that even though ML has been accepted as an independent crime, the predicate crime in a ML case must still be proven because it is included as an element of offense even though the indictment is compiled singly as a crime of ML or is cumulatively formulated between one laundering crime and a criminal act other than ML.

Charges are cumulatively constructed between the corruption origin crime and the money laundering crime

If the indictment is compiled cumulatively between the predicate offense of corruption and the crime of ML, then both types of criminal acts must be proven. All objective and subjective elements of the offense both on the first (corruption) and on the second (ML) charges must be proven. If one of the elements contained in the two charges is not proven to have been committed or is present in the defendant, the panel of judges is obliged to release the defendant from all the public prosecutor's demands.

The use of cumulative charges between predicate offenses of corruption and ML has implications for the use of *concursus delicten* in Article 63, Article 65 or Article 66 of the Criminal Code. Concurrence is the occurrence of two or more criminal acts by one person in which the first criminal offense has not been convicted, or between the first criminal act and the subsequent criminal act has not been limited by a judge's decision (Sakidjo and Poernomo, 1990). According to Utrecht (2000), there were some possibilities for this offense. It is said to have occurred simultaneously, in the event that within the time between committing two criminal acts, one criminal is not determined because of the earliest crime between the two crimes. In this case, two or more criminal acts will be filed and examined in one case and the perpetrator will be sentenced to one punishment. Therefore, there will be no penal weight in this context. If an earlier criminal act has been decided by convicting the perpetrator with a final legally binding decision, there will be repetition so that in that case the penal weight is enforced. Finally, in the event that the criminal act committed for the first time has been imposed on the perpetrator, but the verdict does not yet have permanent legal force, then there is no concurrency or repetition. However, each criminal act is imposed individually in accordance with the maximum penalty of each article that is violated.

In the context of the indictment that was compiled cumulatively by the public prosecutor between the predicate crime of corruption and ML, according to this study, the concept used is a realist discourse as referred to in Article 65 and Article 66 of the

Criminal Code with the argument that the perpetrator of the crime of ML must have committed two criminal acts that stand alone in terms of both the act and the time of committing the crime. The predicate offense of corruption must be committed first, and then the crime of ML will then be committed. The use of Article 63 of the Criminal Code is not appropriate in the case that the indictment is compiled cumulatively because the perpetrator who is subject to this article actually only committed one prohibited act.

In several ML cases, the public prosecutor charged the defendants cumulatively, namely, corruption and ML. The implication is that the predicate offense of corruption must be proven. This means that even though Article 69 of the TPPU Law states that "in order to carry out investigations, prosecutions and examinations in court proceedings against the crime of ML, it is not necessary to prove the original criminal act in advance," the preparation of such an indictment requires the public prosecutor to prove the predicate offense of corruption. This can be seen in the following court decisions on ML cases where corruption was the origin of crime below (Table 1).

Origin of corruption does not have to be proven in advance

TPPU as an independent crime

The crime of ML was born because it was preceded by predicate offenses which in the context of the ML Law are explicitly regulated in Article 2. In its development, the anti-ML regime in almost all countries placed ML as a crime that does not depend on the act of predominant criminal in the case of an investigation process as well as an examination at trial. The formulation of Article 2 of the TPPU Law on types of predicate crimes is only to show that assets in the crime of ML originate from criminal acts as regulated in that article. The formulation of article 69 of the TPPU Law implies that although the criminal act of laundering is a follow-up crime from predicate crime, to initiate investigations, prosecutions and examinations in court proceedings, proving ML does not need to wait to prove the predicate crime. The crime of laundering is an independent crime that has a special character. Therefore, the public prosecutor can file a ML charge regardless of the type of predicate crime. In addition, even if a person has escaped the predicate crime, it does not mean that he has also escaped the crime of ML.

Romli Atmasasmita (2014) said that the existence of the ML crime does not stand alone as other conventional criminal acts, but rather a criminal act related to other crimes (predicate offense). Therefore, it is appropriate to state that the crime is a *conditio sine qua non* of the crime predicate punishment as stated in Article 2 paragraph (1) of Law no. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. The same predicate offense and proceeds of crime because the intention to commit a predicate crime embodied in the act is different from the intention to commit a predicate offense which is manifested in an act that is different from the intention to commit the crime of ML which is normatively reflected in the formulation of the provisions of Article 3, Article 4 and Article 5 of the 2010 TPPU Law. Based on these reasons, the crime of ML is not a continuing crime (*voorgezette handeling*). The criminal act, therefore, is an act (concurrent) that stands alone even though it is related to one another.

Proof of ML is normatively different from proving predicate crimes. The direction of proving predicate offenses is against both the actions and mistakes of the creator, while the evidence of assets in the ML crime is the acquisition of assets suspected to have originated from a criminal act. Therefore, the linkage is between the assets of the defendant and the original criminal offense. The logical consequences of ML and

Court decision	Origin of crime	Legal consideration
39/Pid.Sus-TPK/2014/ PN Pal	Corruption related to the loss of state finance	• With regard to deposits and transfers made by the Defendant whose funds came from account number: 001.01.03.25597-1 in the name of the Regional Head of Central Sulawesi Province Cash Holder, the Defendant's actions were carried out on the same day and time. Transferring the proceeds from the crime of corruption he has committed. Defendant also cannot prove or indicate the origin or source of funds contained in the defendant's account. • The funds deposited or transferred by the Defendant to the Defendant's savings account amounted to IDR 3,040,650,573.10 derived from the proceeds of the criminal act of corruption. Thus, the element "On assets which he knows or should reasonably suspect is the result of a criminal act" has been proven with the aim of concealing or disguising the origin of the assets.
1793 K/PID. SUS/2014	Corruption related to the loss of state finance	• The defendant's actions were contrary to the Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services and had resulted in state financial losses according to the BPKP audit report, amounting to IDR 12,275,275,408.00 which are used to enrich themselves or others. • The Defendant's act of receiving a money transfer from Johan Tancho in the amount of IDR 3,250,000,000.00 which was the proceeds from the procurement of Medical Devices, Medical and Family Planning at the Health Office of South Labuhanbatu Regency for the 2012 Fiscal Year, and the Defendant could not prove that the money did not come from the proceeds of the criminal act of corruption, had fulfilled the elements of offense of money laundering.
336K/PID. SUS/2015	Bribery and gratification	• Defendant's act of accepting promises of money in the amount of IDR 3,000,000,000 from Hambit Bintih regarding the handling of an objection case on the results of the 2013 Gunung Mas Regional Head Election. • The Defendant received a prize in the form of money related to the request for objection to the results of the 2013 Lebak Regency Election at the Constitutional Court. • Between 22 October 2010 and 2 October 2013, the defendant had committed criminal acts related to the crime of money laundering by placing, spending or paying, exchanging foreign currency and taking other actions on assets originating from the criminal acts of corruption with the aim of hiding or disguising the origin of the assets, so that the Defendant's actions met the elements of Article 3 of ALM.

(*continued*)

Table 1.
Court's legal consideration on proving predicate offense of corruption

Court decision	Origin of crime	Legal consideration
912 K/Pid.sus/2010	Receiving gratification	• The defendant has been proven guilty of receiving gratification of total amount of USD 3,500,000.00 from Alif Kuncoro related to the tax case of Bumi Resources Tbk and its subsidiaries, KPC and Arutmin Tbk. The defendant also received a total of Rp. 925,000,000.00 from tax consultant Robertus Santonius related to the Metropolitan Retailmart Tbk tax case he was handling, and did not report it to the Corruption Eradication Commission (KPK). • The defendant actually tried to hide or disguise the origin of his assets by placing the assets in a safety deposit box which was deliberately rented, which contained 31 pieces of precious metal @ 100 grams, total cash of USD 659,800.00 and cash amounting to SGD 9,680,000. 00.

Table 1.

predicate crimes are independent. Therefore, proving ML does not depend on the original crime (Ramdan, 2017).

According to Husein (2007), there are several reasons why the origin of corruption in the ML case does not need to be proven first. Article 69 of Law Number 8 of 2010 states that to examine a ML case, it is not obligatory to prove the original criminal act. There is not one article stating that it is mandatory to be examined, what is said is that it is not obligatory to be proven beforehand, so there is no one that states that it is not obligatory. In accordance with Article 183 of the Criminal Code where we adhere to proof whose name is *negative wettelijk*, a criminal act is needed. There are two sufficient pieces of evidence, the defendant is guilty, and the judge must be sure that the defendant is the one who committed it, and then he can be punished. If in order to examine the TPPU case, the predicate crime must be punished first, it would be very long, one case would take more than a year, not appealed and not on PK yet.

The source of law alone is not only law but also interpretation and jurisprudence. There are already 116 jurisprudences, most of which have permanent legal force, indicating that to examine ML cases, it is not obligatory to prove the original criminal act. In addition, in the comparison of articles in the TPPU Law with article 480 of the Criminal Code concerning Detention, there is no need to punish the thief to process the collector because there are so many jurisprudences. Therefore, there is no need to prove the original criminal act. TPPU can be examined similar to the articles of detention stipulated in Article 480 of the Criminal Code. This is mainly related to ML which is regulated in Article 5 of Law Number 8 of 2010. Fifth, the TPPU Law adopts the reversal of the burden of proof, which is regulated in Article 77 of Law Number 8 of 2010. This principle adopts a follow the money approach because what is being pursued is money or assets. Thus, the one that proves that the asset comes from a legitimate source is the defendant. If there has been a criminal act and there is a result, it does not have to be proven who the perpetrator is to be punished first. With the follow the money approach, the assets or money from the proceeds of the crime are proven by the defendant because the priority goal of ML is to pursue the money and assets, not to pursue the perpetrators.

When examining a ML case, in common law and civil law countries such as The Netherlands, the USA and Australia, it is not necessary to prove the original crime. In the framework of drafting the TPPU Law, the United Nation Office of Drug and Crime

(UNODC) issued some guidelines. The guideline is called the model of legislation on ML and financing of terrorism. There are two guidelines, namely, guidelines for installment law and common law countries. In these guidelines, it is stated that to examine ML cases, it is not necessary to prove it first or for the defendant to be punished first through the statement "in order to prove the illicit of origin of the proceeds, it shall not be required to obtain the *convintion of the predicte offenced*." Thus, to prove or pursue the proceeds of crime with a ML approach (follow the money), obtaining a conviction of the predicate offenses is not required. It was the best practice guideline issued by UNODC and IMF funds.

Corruption origin cases have been decided by permanent court decision

Sometimes, the public prosecutor splits the files (splitting) of ML cases with cases of predicate offenses of corruption. Article 142 of the Criminal Procedure Code actually opens opportunities for the public prosecutor to prosecute each defendant separately. According to Yahya Harahap (2007), the splitting of the case files into several independent files was intended to place each defendant as mutual witnesses among themselves. If they are combined in a file and trial examination, they cannot be used as mutual witnesses between one another. The case file splitting is caused by the factor of the perpetrator of the crime consisting of several people.

In the context of this study, the public prosecutor can split the original corruption case files apart from the ML (TPPU) case files. Regarding the corruption case file, the public prosecutor will try beforehand until a court decision has permanent legal force (*incraht*). After that, the public prosecutor tried the case files for the Crime of Money Laundering (TPPU). In court proceedings for ML (TPPU) cases, the predicate offense of corruption no longer needs to be proven because it has been decided by the court with a final legally binding decision. Evidence against the ML case is purely related to the defendant's actions of ML activities as referred to in Article 3, Article 4 or Article 5 of the Money Laundering Criminal Act (TPPU). If there is evidence about the origin of assets, it is nothing more than proof of a technical nature. If in the case of a criminal act of origin of corruption it turns out that the court acquits the defendant, then the public prosecutor can no longer hear the Money Laundering Crime (TPPU) case if the case is a realist discourse.

Money laundering crime case (TPPU) is a left offense

The predicate offense of corruption also does not need to be proven if the handling of the Crime of Money Laundering (TPPU) case is related to the offense as regulated in Article 71 of the Criminal Code. The assumption that the legislators included in this article was to enforce the provisions regarding concurrent proceedings if a defendant had committed two or more criminal acts but in the trial, there was a criminal act that was not tried. This prevents the defendant from being harmed due to the imperfect or incomplete investigation or prosecution (Hiariej, 2016). Article 71 of the Criminal Code states as follows:

> If a person after being convicted is found guilty again for committing a crime or other offense before the criminal verdict is made, then the crime that was previously counted towards the punishment will be imposed using the rules in this chapter regarding cases being tried at the time same.

In the context of the Money Laundering Crime (TPPU) case, an investigator or public prosecutor may carry out an investigation or prosecution of a corruption case which has been decided by the court with a conviction that has permanent legal force. During

the investigation, prosecution and examination in court, the investigator, public prosecutor and judge do not know that the defendant has actually committed the crime of ML. They just found out that the defendant, in addition to committing corruption which had been incarcerated, had also committed the crime of ML. The money or assets proceeds of corruption by the defendant turned out to be laundered using a mechanism that is difficult to trace, and it was only discovered a few years later after the corruption case was decided. If the public prosecutor charges the defendant with ML, then the original criminal act of corruption does not need to be proven again because it has been investigated and decided beforehand. Therefore, the focus of case proof is on proving the elements of offenses in the TPPU Law, both regarding Article 3, Article 4 or Article 5 of the TPPU Law.

Although the predicate offense of corruption does not need to be proven in the case of the Crime of Money Laundering (TPPU) as a trafficking offense, there are legal signs that need to be considered, especially regarding the imposition of crimes against the accused of the Crime of Money Laundering (TPPU). In the case that the main punishment imposed on the defendant is temporary imprisonment, it is necessary to understand that the minimum imprisonment of this type is one day and the maximum is 15 years. Temporary imprisonment can be imposed for a maximum period of 20 years if there are things that are burdensome such as concurrent criminal acts, recidivists and criminal acts committed in certain circumstances or situations.

In the context of a trafficking offense, if the defendant for a criminal act of corruption has been sentenced to imprisonment for 12 years, then in the case of Money Laundering (TPPU) as a trafficking offense, he can only be sentenced to imprisonment of three years. This is because the imprisonment for the time being should not exceed 15 years. If there is a criminal objection, the defendant in the Money Laundering (TPPU) case can only be sentenced to a maximum of eight years. This is because the temporary imprisonment cannot be more than 20 years, and this only applies in the presence of aggravating things.

For example, A has been sentenced to imprisonment for ten years because he is proven guilty of committing a criminal act of corruption as referred to in Article 3 of the Corruption Act, then he is tried again for the Money Laundering Crime (TPPU) case as a trafficking offense as regulated in Article 3 or Article 4 of the TPPU Law. In this case, the panel of judges can only imprison A five years in imprisonment in the absence of criminal weighting. If there are things that prove criminal, the panel of judges can only impose a sentence on A for a maximum of ten years in prison.

Conclusion

There are two views regarding the obligation to not prove a criminal act of corruption in the Criminal Act of Money Laundering (TPPU). The first view states that the origin of corruption must be proven, especially because the Money Laundering Crime (TPPU) is a follow-up crime, so it is necessary to prove corrosive crime as one of the predicate offenses. The formulation of Article 69 of the TPPU Law, especially the phrase "beforehand," explains about the time to prove the original crime. The defendant is also burdened with the obligation to prove that the assets related to the case are not originating or related to the criminal act as referred to in Article 2 paragraph (1) of the TPPU Law. In Article 3, Article 4 and Article 5 of the TPPU Law, the element of "Assets which he knows or should reasonably suspect is the result of a criminal act as referred to in Article 2 paragraph (1)" is explicitly stated in the three offenses. Consequently, the public prosecutor is obliged to prove this element. In the event that the public

prosecutor formulates a cumulative indictment between the criminal act of corruption and Money Laundering (TPPU), the two offenses must be proven including the predicate offense of corruption.

The second view states that the predicate offense of corruption does not have to be proven beforehand because the Money Laundering Crime (TPPU) is an independent offense. The direction of proving predicate offenses is against both the actions and mistakes of the creator, while the evidence of assets in the crime of ML is the acquisition of assets suspected to have originated from a criminal act. The case for the origin of corruption has been decided by the judge with a verdict that has permanent legal force (*incraht*). Money Laundering Crime Case (TPPU) is an offense from the original corruption crime so that the provisions of Article 71 of the Criminal Code apply.

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Corresponding author
Mahrus Ali can be contacted at: mahrus_ali@uii.ac.id

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