



## The Jurisdiction of the Prosecutor's Office is to Confiscate Assets and Eradicate the Crime of Money Laundering

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### ARTICLE INFO

*Keywords:* Jurisdiction, Confiscate Assets, Money Laundering

*Received* : 2 November

*Revised* : 19 December

*Accepted* : 23 January

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### ABSTRACT

Simply put, money laundering is the criminal act of transforming the proceeds of crimes, or what is known as "dirty money," such as money obtained through smuggling, gambling, tax evasion, drug sales, or corruption, into a form that seems safe and legal for use. Both a conceptual and legislative approach are used in this normative research. Legal approach by examining Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes and Law Number 8 of 2010 concerning Eradication of Money Laundering Crimes. The practice of seizing property used in illicit conduct with the goal of returning it is known as asset confiscation. The meaning of the term confiscation is connected to confiscation which is commonly used in the asset confiscation system for the purpose of returning asset recovery as used in UNCAC 2003

## INTRODUCTION

The Webster Student Dictionary states that the word corruption comes from the Latin *corruptus*, or *corruptus*, which itself comes from an earlier Latin word called *corrumpere*. *Corrumpere* can mean anything from immoral or depraved words or utterances to bribery, dishonesty, ugliness, rottenness, and departure from holiness. (Eddy O.S Hiariej, 2019:113). Then the definition of corruption from the Indonesian Dictionary comes from the basic word *corrupt*, which means "likes to accept bribes, rotten, can be bribed (using one's power for personal gain), corrupt", According to the Big Indonesian Dictionary (2008), corruption is defined as the misuse of authority for personal gain, such as accepting bribes or embezzling funds. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (later to be called the Corruption Law) defines corruption as any unlawful act committed by an individual or group of individuals for the purpose of enriching themselves, others, or a corporation that has the potential to negatively impact state finances or the state economy. Based on the various definitions of corruption, it can be inferred that corruption is an unethical behavior that harms the finances of the state for individuals or businesses.

Corruption cases are closely related to money laundering as a further criminal act to hide money resulting from predicate crimes, one of which is corruption. The cumulative number of court rulings in money laundering criminal cases based on alleged predicate crimes is ranked in the top five (five), with Narcotics ranking first with 38 (thirty-eight cases) decisions, according to data from the 2021 Anti Money Laundering & Prevention of Terrorism Financing Statistical Bulletin. fraud totaling 27 (twenty seven) decisions, corruption totaling 12 (twelve) decisions, embezzlement totaling 9 (nine) decisions and, theft totaling 4 (four) decisions (Statistical Bulletin, 2022:46).

Simply put, money laundering is the process of converting or altering the proceeds of crimes, also referred to as "dirty money," such as those obtained through smuggling, gambling, tax evasion, drugs, or

corruption. into a shape that seems authentic so that it can be utilized without risk. (Sarah N. Welling, 1989:290).

The urge to launder money from crimes stems, at least in part, from the fear that the offenders may run afoul of tax authorities, be prosecuted by law enforcement, or even have their earnings seized (Emily G. Lawrence, 1992: 841). Although money laundering has been practiced for a long time, it wasn't until 1988 that it gained significant attention due to the establishment of the 1988 Vienna Convention, also known as the United Nations Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Thoughts about the dangers of money laundering practices and strategies for eradicating them, actually began with international failure in efforts to eradicate the illicit trafficking of drugs in all their forms.

Regarding legislation relevant to money laundering, Indonesia already has laws against it. Law Number 15 of 2002 concerning the Crime of Money Laundering, which was later amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 2002 concerning the Crime of Money Laundering, and Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which is the most recent law update on the matter, are among these laws. (later called the TPPU Law) (Yenti Garnasih, 2019: 11). There has been a paradigm shift from following the suspect to following the money as a result of the creation of criminal law expressly for the crime of money laundering. (July Wiarty, 2017: 102). It is evident that it is possible to track down assets that have been obtained by illegal activity, and that in the event that money laundering stems from an illegal activity that poses a threat to the state, the state that has suffered injury must be compensated for the lost assets. (Yenti Garnasih, 2019: 20-21). The TPPU Law has shortcomings in confiscating assets aimed at restoring state finances. This deficiency is due to the lack of regulations regarding the asset confiscation mechanism for recovering state financial losses resulting from predicate crimes, one of which is corruption.

The Prosecutor's Office of the Republic of Indonesia, a state agency with the capacity to collect state losses, has been handling the process of recovering financial state losses resulting from these acts of corruption. An Asset Recovery Center work unit is part of this office. Attorney Regulation Number 7 of 2020 concerning the Second Amendment to Attorney General Regulation Number PER-027/A/JA/ 10/2014 concerning Guidelines for Asset Recovery contains the principles of effectiveness, efficiency, transparency, accountability, and integration that must be the foundation for the process of seizing assets from criminal acts of money laundering resulting from corruption. (PERJA Number 7 of 2020). Nevertheless, there are a number of challenges in asset recovery, including the fact that the criminal penalty for asset confiscation is still an additional crime, the difficulty of recovering state financial losses, the ambiguity surrounding the basis and agency authorized to calculate state financial losses, and the timing of the confiscation of assets from relatively old corruption convicts. The Prosecutor's Office of the Republic of Indonesia must therefore optimize its enforcement of criminal law policies in order to resolve the confiscation of assets for laundering crimes. As a result, the problem that arises is that, in cases of money laundering resulting from corruption by the prosecutor's office, the confiscation of assets for asset recovery from the prosecutor's office is not yet optimal. funds obtained from the sale of illicit or corrupt activities.

## **METHODS**

This normative research employs both a conceptual and legislative approach. Applying a legislative approach, one can examine Attorney Regulation Number 7 of 2020, which deals with the second amendment to Attorney General's Regulation Number PER-027/1/JA/10/2014 concerning Guidelines for Asset Recovery; Law Number 8 of 2010 about money laundering crimes; and Law Number 20 of 2001, which amends Law Number 31 of 1999 regarding the eradication of corruption crimes. Apart from that, it also uses a conceptual

approach, which is an approach that focuses on emphasizing understanding through legal concepts and principles related to the subject matter.

## **RESULTS AND DISCUSSION**

Success in eradicating money laundering due to corruption is not just about bringing the defendant to court with a final decision that has permanent legal force in the form of a prison sentence. This success is considered insufficient if the state's financial losses cannot be replaced or recovered optimally, namely returning to the original state with the costs of recovering the case. The Prosecutor's Office of the Republic of Indonesia, acting as the law's implementer in this case, and the rules and regulations controlling confiscation to recover state financial losses are related to the failure to recover state losses. The Republic of Indonesia's Prosecutor's Office must pay careful attention to ensure that the law is applied in a way that would enable it to recover state financial damages resulting from criminal acts of corruption and other money laundering crimes.

Confiscation of assets to recover state financial losses is a complex matter, involving a series of sequential mechanism stages from the beginning to reaching the final result. These stages can branch out according to the specifics of the procedural pathways or mechanisms used. Therefore, it is necessary to deepen the regulations regarding the confiscation of assets for money laundering crimes resulting from corruption by the prosecutor's office and optimize the implementation of confiscation of assets for criminal acts of money laundering resulting from corruption by the Prosecutor's Office of the Republic of Indonesia.

To ensure that Indonesia does not stray from using asset confiscation as a means of recovering financial losses suffered by the state throughout the law enforcement process, the Prosecutor's Office of the Republic of Indonesia must establish legislation pertaining to asset confiscation mechanisms. The laws governing the confiscation of assets for the crime of money laundering resulting from corruption are Law Number 20 of 2001 concerning

Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, Law Number 8 of 2010 concerning Eradication of Money Laundering Crimes, and Attorney Regulation Number 7 of 2020 concerning the Second Amendment to Attorney General Regulation Number PER-027/1/JA/10/2014 concerning Guidelines for Asset Recovery.

Assets from money laundering crimes resulting from corruption are confiscated by the prosecutor's office, which in this case is a state institution with the authority contained in Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended into Law Number 11 of 2021 concerning Amendments on Law Number 16 of 2004 concerning the Prosecutor's Law of the Republic of Indonesia (hereinafter referred to as the Prosecutor's Law), namely in the criminal field, the prosecutor's office has the duty and authority to carry out prosecutions, carry out decisions made by judges and courts with permanent legal effect, oversee the execution of supervised and conditional criminal decisions, conduct investigations into specific criminal acts as permitted by law, complete specific case files, and, as a result, are able to conduct further examinations prior to being transferred to court, the execution of which is coordinated with investigators.

Keeping in mind that the Prosecutor's Law has undergone amendments that have added new duties and authority, the prosecutor's office is now empowered to trace, seize, and return assets obtained through criminal activity as well as other assets to the state, victims, or other eligible parties under Article 30 A of the Prosecutor's Law, which pertains to asset recovery. Perja Number 7 of 2020 concerning Republic of Indonesia Prosecutor's Regulations concerning the Second Amendment to Attorney General's Regulation Number PER-027/A/JA/10/2014 concerning Guidelines for Asset Recovery contains the mechanism for implementing Article 30A. Among other resources, prosecutors can obtain financial transaction reports and analysis to assist them in their process of seeking information regarding assets Center (PPATK). As stated in Article 8 paragraph (1) PPATK Regulation Number

15 of 2021 concerning Procedures for Requesting Information to the Financial Transaction Reports and Analysis Center, PPATK has a mechanism for requests for information made by the Prosecutor's Office of the Republic of Indonesia for the purposes of handling cases of criminal acts of money laundering and/or other criminal acts related to criminal acts of money laundering and tracing assets for the recovery of assets. Written requests for information about how money laundering cases are handled and other criminal acts connected to money laundering crimes are signed by the Attorney General or the Head of the High Prosecutor's Office; in the event that one of them is not available, the request for information is made by the Prosecutor's Office. can, upon receiving a mandate, be submitted in writing and signed by the Director or Assistant in charge of the investigation and/or prosecution..

The Attorney General signs written requests for information from PPATK about asset tracing for asset recovery made by the Prosecutor's Office of the Republic of Indonesia. If the Attorney General is not present, a written request for information must be made, copied to the Deputy Attorney General for General Crimes and the Deputy Attorney General for Special Crimes, and signed by the head of the asset recovery center at the very least after receiving the mandate.

The Financial Intelligence Unit (FIU) under the name PPATK is tasked with receiving financial transaction reports, analyzing them, and forwarding the analysis's findings to law enforcement agencies. Anti-money laundering regulations facilitate the tracing of assets resulting from criminal acts. The TPPU Law's existence supports PPATK's status as an independent organization free from outside influence and intervention. As a result, it is forbidden for anybody to obstruct PPATK from carrying out its responsibilities and exercising its authority. Furthermore, PPATK is required to refuse and/or disregard any intervention from any party in the course of carrying out its responsibilities and powers.

Since the regulations governing money laundering crimes were still open to interpretation when PPATK was first formed, implementation was

not yet felt. This was due to the fact that the organization was still operating under the Money Laundering Crime Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning Money Laundering Crimes. differ, including legislative ambiguities, imprecise application of punishments, underutilization of the shift in the burden of evidence, restricted information availability, restricted scope and kind of reporting, and unclear responsibilities and power of PPATK. For this reason, the prior restrictions are renewed and revoked by Law Number 8 of 2010 about the Eradication and Prevention of the Crime of Money Laundering.

The crime of corruption is one of the predicate offenses of TPPU, as stated in Article 2 paragraph (1) of the TPPU Law. One of the ways that money laundering and corruption are associated is when assets resulting from corruption are hidden so that they can be used safely later on after money laundering has taken place. The fundamental idea behind money laundering prevention is that criminals can be found and their proceeds may be tracked down through tracing, with the goal of either returning the proceeds to the rightful owners or confiscating them for the state. This can be found in the second paragraph of the TPPU Law's explanation. While conducting a money laundering crime, there are generally 3 (three) stages required, namely placement, layering and integration.

According to the TPPU Law, seizing assets is a crime that results from money laundering caused by corruption. Asset confiscation is a facultative crime, meaning it can be imposed or not, and there are obstacles in the way of the TPPU Law's implementation because it is only an additional crime that cannot be enforced without the primary crime, as stated in Article 10 of the Criminal Code. Aside from these barriers, the reason for legal issues in this situation is that either the TPPU Law's asset confiscation legal norms are not applied in a way that is consistent with reality, or the TPPU Law's asset confiscation legal norms are not applied in a way that is consistent with reality do not represent the ideal that should be implemented.

## CONCLUSION

Asset confiscation is the process of regaining assets that have been wrongfully taken by another party (stolen asset recovery) following a ruling by a panel of judges in a criminal case that is carried out by the executing attorney and has permanent legal force (in kracht van gewijsde). The Asset Recovery Guidelines found in PERJA Number 7 of 2020 are used in this study. Asset confiscation is the process of seizing property used in criminal activity with the intention of returning it. The term confiscation is related to the meaning of confiscation which is commonly used in the asset confiscation system for the purposes of returning asset recovery which is used in UNCAC 2003. In matters related to asset confiscation and its connection to asset confiscation, the author has explored books that are relevant to the theory of asset confiscation as stated in proposed by Guy Stessens. There are three sorts of asset confiscation: instrumentum sceleris, obiectum sceleris, and fructum sceleris. This information is revealed indirectly in the book Money Laundering: A New International Law Enforcement Model. Legal guidelines pertaining to the seizure of assets for the purpose of money laundering stemming from corruption are mostly found in statutes and are subject to the Prosecutor's Office of the Republic of Indonesia's discretion. In the previous description, the author conducted an analysis of the regulations of the TPPU Law, Corruption Law and PERJA number 7 of 2020. Based on the results of the study and analysis, the author believes that the TPPU Law provisions regarding criminal sanctions for confiscation of assets for the crime of money laundering resulting from corruption use regulations. The Corruption Law is still difficult to implement effectively, because there are a number of weaknesses that are factors inhibiting its implementation. These weaknesses include the fact that the crime of asset confiscation for money laundering resulting from corruption is only considered a facultative additional crime, there are no clear and strict guidelines on how to prove assets resulting from corruption, there is no established agency to determine state losses and no standards or

methods for estimating the size of state losses, and the statute of limitations on the amount of time the convict's property can be seized is excessive. One of the primary goals of law enforcement against criminal acts of corruption is to recover state damages, although efforts to do so have been severely impeded and/or hindered by the ambiguity of the rules used in the development of Article 18 of the Corruption Law.

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