

Implementation of Reverse Evidence of Internal Assets Case of Consolidation of Corruption Crimes

Pandri Zulfikar

Syekh-Yusuf Islamic University Postgraduate, Tangerang Indonesia

Email : pandri.zulfikar@unis.ac.id

Rosmalily Binti Salleh

Curriculum Development Division, Ministry of Education Malaysia, Malaysia

Email : rosmalily@moe.gov.my

Abstract

The purpose of this study is to find the justification for judicial practice in confiscating the assets of the Defendant who has not been charged with a system of reverse evidence in the combination of Corruption Crimes and Money Laundering Crimes. To find out the application of the Reverse Evidence system regarding the assets of the Defendant who have not been indicted in the case of the merger of Corruption Crimes and Money Laundering Crimes. Qualitative research methods explain the phenomena that occur and prioritize the substance of these phenomena. Techniques for collecting data are interviews with those related to Corruption, observations at research locations, documentation studies in the form of archives, and data according to facts. Conclusion: (1). In implementing Articles 37 and 37.A in Law no.31 of 1999 in conjunction with Law no.20 of 2001, which relates to the Eradication of Corruption Crimes. (2). In Article 38.B paragraph (1) of Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 relating to the Eradication of Criminal Acts of Corruption (3). Article 77 Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. (4). Article 78 of Law no. 8 of 2010, regarding the Prevention and Eradication of Money Laundering Crimes.

Keywords: Reverse Proof, Assets, Corruption

Introduction

It has been proven that the Corruption Eradication Commission (KPK) has successfully applied money laundering articles in corruption cases handled by this super body. [Wendy, A. Najemi., \(2020\)](#). One of the highlights is the Inspector General case. Djoko Susilo, related to the Corruption case in procuring simulators for two-wheeled and four-wheeled SIM simulators at Korlantas for the 2011 fiscal year worth Rp. 196,000,000,000.- (one hundred and ninety-six billion rupiah). The KPK succeeded in seizing the Inspector General's assets. Djoko Susilo was not only related to the SIM Simulator corruption crime, but assets obtained before 2011 were also confiscated. The success in seizing many assets allegedly acquired from money resulting from Corruption and money laundering was due to the recognition of the system of reversing the burden of proof.

The method of reversing the burden of proof has brought satisfactory results, one of which is the successful confiscation of the assets of the former Inspector General of Police. Djoko Susilo, who was previously suspected of laundering money against the proceeds of Corruption from the SIM Simulator (Driving License). [Andi, Hamza., \(2015\)](#). was also proven to have committed the Crime of Money Laundering from 2002 to 2010, according to the Tipikor Court Decision dated September 3, 2013, some assets had been confiscated 44 plots of land and buildings (including petrol stations), cash of IDR 7,747,488,600 and USD 14,637 and SIN 3,062, totaling 11 vehicles, proving contrary to his income. Because it is impossible for a General who does not occupy the highest position at the National Police Headquarters to have that many assets, this increase also occurred when Djoko Susilo served as the Police Traffic Directorate. Supreme Court Decision No. 537K/Pid.Sus/2014 decided that Defendant Djoko Susilo was proven guilty of committing a Corruption Crime and a Money Laundering Crime.

The second is the case of the former Head of the Tax Audit and Investigation Office, Bahasyim Assifie. [Ulang, M. Sosiawan., \(2019\)](#). In the Decision of the Panel of Judges of the South Jakarta Court, it was considered that Bahasyim committed Corruption by accepting bribes from the taxpayer Kartini Mulyadi worth one billion rupiahs when he was Head of the Jakarta Seven Tax Investigation and Inspection Office of the Directorate General of Taxes in February 2005. For this action, Bahasyim was considered to have violated Article 11 of Law Number 20 of 2001.

Corruption Crime Eradication. Apart from that, according to the panel of judges, Bahasyim was also proven to have committed money laundering because he kept funds from criminal acts at financial institutions and divided them into accounts in the names of his wife and children. In this case, [Eka, Yulastuti., \(2020\)](#). the panel of judges applied the reverse principle of proof; namely, Bahasyim had to prove that his assets worth IDR Sixty-one billion were not proceeds of crime.

1. Research Methods

This study uses a normative juridical approach, namely an approach guided by the rule of Law or a juridical/normative supported by the results of interviews related to the issues to be studied.

1.1. Research Object

- a. Rules that serve as justification for judicial practices in the confiscation of "the assets of the Defendant who have not been charged" with the Reversal of the Burden of Proof system in the case of the merger of Corruption Crimes and Money Laundering Crimes.
- b. Application of the "Reverse Burden of Proof" system in law enforcement for money laundering and corruption crimes.

1.2. Research Data or Secondary Legal Materials

- a. The expert opinion expressed in print media: Journals, daily newspapers, seminar papers, transcripts of the Professor's inaugural speech,
- b. Results of direct interviews with Law Enforcement and Experts
- c. Papers in seminars and articles
- d. Court decisions relating to arrangements for implementing the Reversal of the Burden of Proof principle in the case of the merger of Corruption Crimes with Money Laundering Crimes.

1.3. Data Collection Techniques:

- a. Observation at the research location in the Court

- b. Interviews with related officials and other related parties
- c. Study of documentation in the form of important notes in court meetings and other important files

2. Results and Discussion

The research results are all data obtained by the author during the study, [Ardeno, Kurniawan., \(2018\)](#). Including primary and secondary data.

2.1. UU no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

It is not a reversal of the burden of proof because whether or not the norms of the article are included will not affect the Defendant's defense of the charges according to the Accusatoir system adopted by the Indonesian Criminal Justice System, namely a system in which the Defendant is placed as a subject who has equal rights before the Law. [Ardeno, Kurniawan., \(2018\)](#). The accusation principle shows that a defendant examined in a court session is no longer an object of examination but a subject.

Based on all the data obtained by the author during the research. Regarding the assets belonging to the Defendant, who has not been indicted, can they be confiscated for the state based on an article related to this issue, namely Article 38 paragraph (1), which states: Everyone charged with committing one of the criminal. Even though the provisions of the Law clearly state that "his property which has not been indicted" is the property of the Defendant which has not been included in the indictment, [Andi, Sofyan., et al., \(2016\)](#). which was later discovered during trial, however, at the practical level, it has raised a problem, namely that there is an interpretation of the phrase "property." his property which has not been indicted," namely the assets belonging to the suspect/defendant that are not related to the support of the suspect/defendant originating from the acts indicted by the prosecutor/KPK.

The argument put forward by a group that argues that the assets belonging to the Defendant, who was not charged, may be confiscated is that in the case of large wealth that is not following his profile, then the Defendant cannot prove the source of his wealth then it can be said to be a crime so that the state can confiscate it. [Nys, Arfa., et al., \(2019\)](#). While the argument put forward by the group believes that the assets belonging to the Defendant, who was not indicted, should not be seized, the point is that the Prosecutor/KPK can only confiscate the support of the Defendant that is related to the actions being charged.

According to Lawrence M. Friedman, the function of Law is to exercise social control or control, dispute settlement, and social engineering, and according to Soerjono Soekanto, in Indonesia, the role of Law in development is as a means of community development. This is based on the assumption that order, in effect, is considered important and very necessary. As a rule of Law, the function of Law is to channel the direction of community activities to the goal desired by the change. Of course, the legal part above should be carried out in addition to the legal function of social control. Theo Huijber put forward the process of Law; the Law functions to maintain.

2.2. The purpose of Law in the 1945 Constitution is to protect the entire Indonesian nation and all of Indonesia's bloodshed

Legal functions by legal experts can be structured legal functions as follows:

- a. The function of Law is to provide guidance or direction to citizens to behave.
- b. The function of Law as a supervisor or social control
- c. The legal function is as a dispute settlement.
- d. The function of Law is as social engineering.

The level of seriousness of the problem of Corruption and money laundering can be seen from the increasing number of corruption and money laundering cases that have occurred until now and have yet to be implemented optimally, [Rudy, C. Kurniawan., \(2021\)](#). where the handling is considered slow. In consideration of the Corruption Eradication Commission (KPK) Law in 2002, eradicating Corruption needs to be improved professionally, intensively, and sustainably because Corruption has harmed state finances and the country's economy and hindered national development. The essence of the formation of the Law on Corruption is one of them other than eradicating Corruption, namely to restore state assets.

2.3. Policies for dealing with money laundering using criminal Law cannot be separated from public protection policies.

Efforts to criminalize money laundering into acts that Law prohibits cannot be separated from the development of various crimes, including money laundering, both by individuals and corporations within the boundaries of a country's territory. In contrast, these crimes generate enormous amounts of wealth. [Waluyo, Bambang., \(2016\)](#). The eradication of money laundering is also seen as a strategy to eradicate Corruption by destroying or preventing the perpetrators from enjoying the proceeds. The development of Corruption in Indonesia over the last fifty years has shown an increasing condition in quantity and quality. Corruption has occurred at almost all levels of the bureaucracy and law enforcement agencies. It is also important to understand that using the TPPU Law is also interpreted as an effort to use other legal instruments besides the Corruption Law, for example, to seize corruptors' assets by applying the TPPU articles.

Thus, when referring to the function of Law as described above and with the goals of the state as formulated in the Corruption Crime Law, [Harry, B. Priyono., \(2018\)](#). The coercion of a second interpretation which is formalistic will certainly hinder the objective of establishing the Corruption Crime Law, because the performance of law enforcers the Law is not optimal, especially in terms of efforts to confiscate state assets.

In conclusion, if Defendant cannot prove the origin of his assets while the main crime is confirmed, the judge has evidence supporting his belief that Defendant's assets originate from corruption crimes. [Ones, Marsahala., \(2019\)](#). The judge can determine that Defendant's assets presumably derive from crime and dispossession of the country. That the Formulation of rules along with the implementation of judicial practices like this deserve support because they follow the aims and objectives of the founders of the Corruption Crime Law, and these rules are correct and deserve to be maintained in the context of eradicating criminal acts of Corruption as well as confiscation of state assets. Regarding the issue, which is based on whether the predicate crime/predicate crime must be proven, then what has been described above can be used to explain this question. If it is agreed that property other than the one being charged can be confiscated, then based on analogical thinking.

2.4. The link between Corruption Law and the Money Laundering Law

Reliable, proportional, professional, and conscientious law enforcers do not leakephisticated Law from becoming productive to its basic purpose. [Ardeno, Kurniawan., \(2018\)](#). Related to the issue of whether the corruption case with money laundering is a merger of instances or not, it will be described as follows. In practice so far, if during the investigation process, it is found that the suspect's assets were allegedly obtained from the proceeds of crime or which are not follow the suspect's income profile, then he will also be charged with the money laundering article, as the case handled by the KPK which is the sample object of the author's research, namely the case Luthfi Hasan, the Djoko Susilo case and the Bahasyim case.

From the merger of these cases several benefits were obtained when the Corruption Crime case was merged with the Money Laundering Case (TPPU), namely:

- a. Maximizing Confiscation of State Assets.
- b. Sophisticated modes of hiding state assets resulting from criminal acts/crimes can be uncovered.
- c. Can keep pace with increasingly complicated and rampant corruption crimes.

The benefits obtained from the procedure for merging cases, as mentioned above; it is the right policy to combine issues if, during the investigation or investigation process, it is found that the suspect's assets were allegedly obtained from the proceeds of crime or which do not match the suspect's income profile. [Andi, Sofyan., and Nur, Aziza., \(2016\)](#). However, based on the author's research in the field, there are still differences in this matter, namely the opinion of legal expert Muzakir, who argues that if, in a corruption crime case, assets are found that exceed the income profile of the suspect/defendant, they must be charged or tried separately, they cannot be combined because of the crime of laundering. Money is a separate crime.

Opinions that agree with the merging of cases are categorized as progressive opinions; that is, they want legal reform for the sake of society's sense of justice. That this advanced flow has the view:

- a. Decide based on faith.
- b. Judges because their decisions are based on justice as stated in the Judicial Law.
- c. Corruption is an Extra Ordinary Crime.

Thus advanced Law has a strong moral content. [Elfid, N. Mubarok., et al., \(2021\)](#). The spirit of progressivism wants to make Law a moral institution. So, the basic progressive assumption starts from the basic nature of Law for humans because it does not exist for itself but for human values to achieve justice, welfare, and happiness.

2.5. The basic philosophy of progressive Law is "law is an institution that aims to deliver people to a just, prosperous life and make people happy"

Therefore, the progressive attitude of law enforcers mentioned above prioritizes "objectives" rather than "procedures" as a creative and innovative step in enforcing the Law on Corruption and money laundering.

Regarding the issue of the KPK's authority concerning the subject of the Reversal of the Burden of Proof Procedural Law regarding the confiscation of "the assets of the Defendant who have not been charged" in the case of the merger of Corruption Crimes and Money Laundering Crimes, [Nys, Arfa., et al., \(2019\)](#). This stems from the Formulation of provisions in the Law that has so far been in force opportunity for various parties to debate the legitimacy of the KPK in prosecuting TPPU.

Citing the judge's considerations in the decision of the Djoko Susilo case that Corruption Eradication Commission investigators have the authority to carry out investigations, [Hendra, S. Theja., \(2021\)](#), and public prosecutors at the Corruption Eradication Commission have the power to prosecute money laundering crimes committed by the Defendant in the period before Law Number 8 of 2010 came into force by using Law Number 15 of 2002 which has been amended by Law Number 25 of 2003. However, this is only limited to the assumption that the money laundering crime committed by Defendant originated from a criminal act of Corruption.

The judge's considerations mentioned above are in line with the spirit of strengthening law enforcement in efforts to eradicate Corruption; moreover, [Abdulrahim, L. O. Husen., et al., \(2020\)](#). the fact that other law enforcement institutions, such as the prosecutor's office and the police, have not been effective. Thus the role of the KPK is still highly expected to maximize the potential of law enforcement in efforts to eradicate Corruption, especially in overcoming

the problem of returning corrupt state assets through the merger of money laundering cases with corruption cases currently being handled by law enforcement. However, was the confiscation of the suspect's assets carried out by the KPK before Law No. 8 of 2010 against Inspector General Djoko Susilo's assets can be legally justified? As in the Legality principle

One of the consequences of the provisions of that article is the prohibition of applying a criminal law retroactively, or what is known as the retroactive principle. The principle of retroactivity is indispensable in trying extraordinary crimes. [Vania, Kurnia., et al., \(2020\)](#). The qualifications for a great crime can be seen in the number of victims, the way the crime was committed, the psychological impact it caused, and the capabilities of the crime determined by the United Nations. Does special handling also mean that retroactive principles can be applied?

At the practical level, based on the author's observations, it turns out that there are indications that there are still problems related to law enforcement, namely that law enforcement resources have not been maximized in optimizing the benefits of the rules regarding asset confiscation contained in this Law on the Eradication of Money Laundering Crimes. [Hasri, R. Utari., et all., \(2020\)](#). Based on the data found by the author in the field, the Attorney General's Office only investigated one money laundering case. Thus, from the above data, it can be read that the application of the prosecutor's authority in carrying out investigations into money laundering crimes.

3. Conclusions and Suggestions

3.1. Conclusion

The procedural law provisions which form the basis for justifying the existence of judicial practices in the confiscation of "the assets of the Defendant who have not been charged" with the Reversal of the Burden of the Evidence system in the case of the merger of Corruption Crimes and Money Laundering Crimes are as follows:

- a. The legal basis used in judicial practice regarding the interpretation of Article 38B paragraph (1) of the phrase "his property that has not been charged" in the case of the merger of Corruption Crimes and Money Laundering Crimes is not strictly regulated in laws and regulations. The justification in this judicial practice is that the Law Enforcers (Panyidik, Public Prosecutors, and Judges) belong to groups with progressive views that argue that the interpretation of the phrase "his assets that have not been charged" is interpreted in addition to the Defendant's property which has not been charged but found in the trial, also interpreted as the assets of the suspect/Defendant that were confiscated by the investigators which were then used as evidence in Court that were not related. The interpretation of Article 38 B paragraph (1) of the phrase "his property that has not been charged" underlies it in a progressive understanding.
- b. Judicial practice is related to regarding "his assets that have not been charged" in the case of a combination of Corruption Crimes and Money Laundering Crimes; there is an interpretation of the phrase "his assets that have not been charged" as stipulated in Article 38 B paragraph (1) because it is not regulated in law enforcers interpret that the meaning of "his property that has not been charged," in addition to assets that have not been charged and then found in Court, is also interpreted as the property of the suspect or Defendant that is not related to the alleged act or was charged but was also charged because he was allegedly associated with a criminal act of Corruption so that he was also confiscated or confiscated by investigators and by the judge in his decision.

- c. The Defendant's case has been legally and convincingly proven to have committed the crime of bribery or gratuity in the amount of Rp. 1,000,000,000.00, but there are "his assets that have not been charged" which have nothing to do with the crime of bribery or gratuity in the form of money in 7 (seven) accounts in the names of his wife and children at Bank BNI and BCA which amount to IDR 60,992,238,206.00 (sixty billion nine hundred ninety-two million two hundred thirty-eight thousand two hundred six rupiahs) and USD 681,147, 37 whose origins could not be proven by the Defendant so that the Panel of Judges thought that the Defendant's assets were reasonably suspected of being the result of a criminal act of Corruption and an illegal act of money laundering. Therefore these assets ("his assets which have not been indicted") are dispossessed from the country.

3.2. Suggestion

- a. For court institutions, it is necessary to have a strict interpretation of the Corruption Crime Act, specifically Article 38 paragraph (1) regarding the phrase which reads "his property that has not been charged" should be "...obliged to prove otherwise against his property which has not been charged". charged, as well as against his property from crimes related to Corruption. The reason for the suggestions or recommendations above is so as not to provide opportunities for differences in interpretation, with the hope that it can encourage judges to give decisions that are in line to eradicate Corruption and money laundering.
- b. For judges in the case of merging corruption crimes with money laundering crimes, the investigation is carried out by the KPK because of what has been going on so far. So to support the effectiveness and efficiency of eradicating Corruption and other crimes related to Corruption, in the revision of the Corruption Eradication Commission Law and the future TPPU Law, it is best to strictly stipulate the expansion of the KPK's authority so that it includes management in the form of being able to prosecute ML cases in terms of the original crime form of Corruption.
- c. For investigators, it is not only the authority to become an investigator as stipulated in the current TPPU Law. The reason for the suggestion or recommendation above is because so far, it has been the Corruption Eradication Committee (KPK) that had consistently prosecuted money laundering where the predicate crime was Corruption when it was found that there were assets outside of which were charged with the actions of the Defendant who were also suspected of originating from crime (Corruption). However, this suggestion still needs study because it will change the criminal justice system that has been running so far; where one investigative agency is also a prosecution institution, how do investigators deal with 24 other predicate crimes.

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