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RESEARCH ARTICLE

PROOF OF THE ORIGINAL CRIMINAL ACT AS A CONDITION OF CONVICTION OF THE CRIMINAL ACT OF MONEY LAUNDERING (ANALYSIS OF VERDICT N0: 57/PID. SUS/2014/PN. SLR)

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Abstract

It is an injustice if a person who has actually received benefits from the Money Laundering Crimes but cannot be processed because the original criminal act cannot be proven, this is the reason the Constitutional Court rejected Akil Mochtar's application to test Article 69 of Law Number 08 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Is this reason enough to deprive a person of their freedom and property guaranteed in our Constitution of the 1945 Constitution, especially since there is an expert opinion that states Article 69 violates the principle of Due Proces of Law which is partly adopted in the Criminal Procedure Code because it is an embodiment of the concept of the State of Law (Rechtstaat) such as the principle of presumption of innocence, the principle of non-self-incrimination and the principle of legality. In the definition of an asset forfeiture mechanism, Article 69 is a civil forfeiture of assets processed through criminal justice. The recent development of the Money Laundering Act has been believed by law enforcement to be a stand-alone criminal act. Civil forfeiture who should have pursued his property according to the principle of follow the money turned into also chasing the culprit. So, there are cases where the original perpetrator of the crime was never proven but who helped it is going to jail even though they did not enjoy the money. In fact, there are also cases where the charges are purely violations of the Money Laundering Article without any original crime. In the midst of shifting paradigms from retributive justice to restorative justice, it seems that article 69 is increasingly looming as an anomaly in the concept of the State of Law that we have adopted in the 1945 Constitution.

Introduction:-

Laws and regulations are one of the instruments to direct the people towards the ideal of the establishment of a state which in Indonesia is stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely advancing the general welfare and educating the life of the nation[1], like the adagium of Marcus Tullius Cicero that the welfare and happiness of the people is the highest law in a country (Salus Populi Suprema Lex). Therefore, in the State of Indonesian Law, the formation of law must always aim for the

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[1] Palguna, IDG, Welfare State vs Globalization: The Idea of a Welfare State in Indonesia, PT RajaGrafindo Persada, print. One, Depok, 2019, p. 135welfare and happiness of citizens by achieving Justice, Expediency and Legal Certainty (Gustav Radbruch).

In order to carry out the objectives of the Welfare State, the State needs to regulate its citizens through the laws it makes, one of which is the Criminal Law, where there is a material and formal criminal law[2]

Because sanctions in criminal law result in the deprivation of the human rights of citizens, so that the enforcement of criminal law is still within the corridors of the State of Law, a principle is made that makes law enforcement run efficiently, effectively and still guarantees the right to fair trail[3]. Therefore, even if an Article in an Act has been tested in the Constitutional Court and is still declared valid, as long as it can be proven to be contrary to the Constitution / violates Justice, it can still be retested to be overturned, or at least become an academic study.

Money laundering as a criminal act was first regulated in Law Number 15 of 2002 concerning the crime of money laundering. Then in 2003, it was changed to Law Number 25 of 2003, then in 2010, Law No. 15 of 2002 changed back to Law No. 8 of 2010 concerning the Eradication and Prevention of Money Laundering Crimes which are valid to this day and are referred to as the Money Laundering Law in this paper.

The definition of Money Laundering in the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, starting from Article 3, namely:

[2] Moeljatno formulated the material and formal criminal law as follows:
Criminal Law is a part of the entirety of the law in force in a country, which establishes the basics and rules for:
1) determine which acts should not be done, which are prohibited with threats or sanctions
2) determine when and in what cases to those who have violated it can be criminally sentenced
3) determine how the criminal was carried out for those who have violated it (Moeljatno, Principles of Criminal Law, PT Rineka Cipa, cet. Seventh, 2002, p.1

item 1 contains the formulation of the offense and its sanctions, item 2 contains the criminal liability, both the criminal law is formal, item 3 contains the procedural law / criminal law formil.

[3] The right to fair trial, including the right to equal standing before the courts, the right to an open trial, the right to a presumption of innocence, the right to legal aid, and various other rights. These rights are not only contained in the provisions of the International Convention on Civil and Political Rights, the Universal Declaration of Human Rights (ICCPR), but also contained in Law Number 8 of 1981 concerning the Code of Criminal Procedure and various other provisions. The scope of the fair trail is fourfold, namely Pre-trial rights, Rights during the trial, Rights of special conditions and Rights of post-trial (https://www.bantuanhukum.or.id/web/hak-atas-peradilan-yang-jujur-adalah-hak-asasi-manusia-yang-tidak- bisa-dibatasi/

"Any Person who places, transfers, transfers, spends, pays, gives, entrusts, brings abroad, changing the form, exchanging for currency or securities or other acts on Assets that he knows or reasonably suspects are the result of criminal acts as referred to in Article 2 paragraph (1) with the aim of concealing or disguising the origin of the Assets" [4]

Article 2 paragraph 1 of The Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, explains the predicate crime of money laundering, namely: a) corruption; b) Bribery; c) narcotics; d) psychotropics; e) smuggling; f) labor; g) banking; h) in the Capital Market Sector; i) in the field of insurance; j) customs clearance; k) excise duty; l) trafficking in persons; m) illicit arms trade; n) terrorism;

o) kidnapping; p) theft; q) embezzlement; r) fraud; s)counterfeiting of money; t) gambling; u) prostitution; v) in the field of taxation; w) in the field of forestry; x) in the field of the environment; y) in the field of marine and fisheries; z) other criminal offenses that carry a penalty of imprisonment of 4 (four) years or more, which is carried out in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and the criminal act is also a criminal act according to Indonesian law.

Another definition is article 4 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes states: "Any person who hides or disguises the origin, source, location, designation, transfer of rights, or actual ownership of assets that he knows or reasonably suspects are the result of criminal acts as referred to in Article 2 paragraph (1) sentenced to money laundering crimes with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).

Article 4 was rejected by Expert Dr. Yeti Garnasih, because according to Yeti what needs to be regulated in the Law is the process of occurrence of crimes not the purpose of crimes, disguise is the purpose of the crime of money laundering crimes[5]

Then article 5 of The Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which is referred to as the definition of passive perpetrators states:

[4] Law No. 8 of 2010 concerning Money Laundering

[5] Public Hearing Meeting on 19 May 2010 on expert input on the TPPU Bill

"(1) Any Person who receives or controls the placement, transfer, payment, grant, donation, custody, exchange, or use of Any Property which he knows or reasonably suspects to be the result of a criminal offence referred to in Article 2 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

(2) The provisions referred to in paragraph (1) shall not apply to the Reporting Party carrying out reporting obligations as stipulated in this Law."

According to Jonah Hussein Article 3 is an active offense, Article 5 is a passive offense. Such a determination can make it easier for law enforcement to prove criminal acts of money laundering. Meanwhile, Article 4 is a new offense to ensnare perpetrators who hide their origins, sources and others, but the perpetrators are not the perpetrators of the original criminal acts[6]

In Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, there is an additional Article that does not seem to be related to the previous Laundering Law, namely Article 69 which states: "To be able to carry out investigations, prosecutions, and examinations in court hearings for money laundering crimes, it is not mandatory to prove the original criminal act first."

So far, it can be seen that Article 69 is seen, although it states that the original crime does not have to be proven first, but it is recognized the existence of the original criminal act, namely the criminal act referred to in Article 2 paragraph 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. So there is a predicate crime referred to in Article 2 paragraph 1 and a follow-up crime contained in Articles 3, 4 and 5. However, the sentence does not have to be proved first, it actually violates the principle of presumption of innocence in the criminal justice process, because the person who is suspected of committing the crime must be considered innocent until there is a court decision of permanent legal force (in kracht van gewijsde). Because the principle of presumption of innocence comes from human rights, namely the right to an honest trial/ the right to fair trial which is the foundation of law enforcement in a State of Law.

[6] Hussein, Y. (2011, February 18). The Role of INTRAC in Preventing &Eradicating Money Laundering Crimes Based on Law No. 8 of 2010. Paper. delivered at the Faculty of Law, University of Jember

If you look at memorie van Toelichting Law Number 8 of 2010, when experts were presented to discuss Article 69, namely Prof. Sutan Remy Syahdeini, Prof. Marjono Reksodiputro, Prof. Bismar Nasution and Dr. Yenti Garnasih, in the hearing meeting Prof. Sutan Remy did not discuss article 69, but the other three experts said that what article 69 meant was Civil Forfeiture or Non Conviction Based Asset Forfeiture[7], a civil suit from the state over the property of a person acquired through a suspicious transaction in which the Prosecutor as the State's Attorney pursues the property (not the person) and if the person who owns the property cannot prove then the State has the right to confiscate the property without the need to prove a criminal offence against the person.[8]

This definition of Civil Forfeiture is explained in the Asset Forfeiture Bill Article 1 number 8, which is an act of the state taking over assets through a court decision in a civil case based on stronger evidence that the assets are

suspected to have come from a criminal act or were used for criminal acts. It is expressly stated here that against assets alleged from and for criminal offences are heard in a civil court.[9]

The final result of this civil forfeiture is in the form of a court decision to take over assets allegedly from the proceeds of a criminal act without being accompanied by criminal sanctions against the perpetrators of the crime. Parties interested in the assets in question (even if suspected criminals) can be related parties in the trial to retain the assets.[10] This mechanism will be appropriate if it is related to Articles 77 and 78 paragraph 1 of reverse proof which requires the alleged perpetrator of the criminal act of money laundering to prove the origin of the assets they own.

However, in practice, in addition to never using the civil lawsuit mechanism to seize the assets of people suspected of committing criminal acts, law enforcement of money

[7] Public Hearing Meeting between members of the House of Representatives of the Republic of Indonesia Panja RUU TPPU and Experts on May 19, 2010

[8] In the common law country, there are 3 mechanisms for forfeiture of assets, administrative forfeiture, civil forfeiture and criminal forfetuire. Administrative forfeiture is an asset forfeiture mechanism that allows the state to carry out the seizure of assets without involving judicial institutions, Criminal forfeiture is the seizure of assets carried out through criminal justice so that the seizure of assets is carried out simultaneously with proof whether the defendant actually committed a criminal act whereas Civil forfeiture is also called the asset forfeiture model which is purely using civil law (civil suit), using civil lawsuit so that there is no need to wait for the proof of criminal charges. (Greenberg, Theodore S. et al, Stolen Asset Recovery, A Good Practices Guide for Non-Conviction Based Asset Forfeiture, World Bank:Washington DC, 2009)

[9] Saputra, Refki, Challenges of Implementing Non-Conviction Based Asset Forfeiture in the Asset Forfeiture Bill in Indonesia, FH Hatta, Padang, West Sumatra. p. 119 [10] ibid laundering crimes has even turned into an independent crime[11], by taking the analogy of Article 480 of the Criminal Code on The Prosecution so that article 69 is when implemented by Law Enforcement[12], it is changed to “To be able to carry out investigations, prosecutions, and examinations in court hearings for the crime of Money Laundering it is not necessary (previously not mandatory) to be proven in advance the criminal act of its origin.” In fact, the element of Article 69 which states "it is not mandatory to prove in advance the original criminal act" has also been considered a violation of human rights, especially when the Money Laundering Act becomes a stand-alone Criminal Act.

According to the Center for Financial Transaction Reporting and Analysis (PPATK) until September 2015, there have been 136 court decisions on TPPU, most of which have permanent legal force which show, that to examine TPPU cases, it is not proven in advance that the crime of origin is.[13] Based on the results of PPATK monitoring in the period from 2009 to 2014, there were at least 33 (thirty-three) verdicts stating that the defendants legally and convincingly committed (only) money laundering crimes.[14] For example, Decision No. 57/PID. SUS/2014/PN. SLR, where the primary indictment is Article 3 of Law Number 8 of 2010 and the secondary indictment of Article 4 of Law Number 8 of 2010, where in its decision the primary indictment according to the Panel of Judges is not proven but the secondary charge is proved.[15]

The essence of this Article 69 is the law enforcement's concern that the proceeds of the crime will be untraceable if they wait for the first proof of the original criminal offence so that it is seized as soon as possible if there is an allegation that the money obtained is tainted. The mechanism of criminal seizure of assets where the perpetrator of the crime / follow the person must be proven and civilly where what is pursued is the result of his crime / follow the money where the standard of proof is lower, as ramelan wrote that the standard of proof in criminal cases must be at a very high degree of probability, with diction 'legitimately and convincingly' or in the anglo saxon legal system based on 'beyond reasonable doubt'. Whereas the civil evidentiary model is based on the principle of prepondance of evidance, where a truth is based

[11] https://www.hukumonline.com/berita/baca/lt5612f12d4e884/ppatk-tegaskan-tppu-sebagai-iindependent-crime-i/

[12] Decision of the Constitutional Court No. 77/PUU-XII/2014 p. 186

[13] testimony of M Yunus Husein representing PPATK in the decision of the Constitutional Court Number 90/PUU-XIII/2015 p. 90

[14] Decision of the Constitutional Court No. 90/PUU-XIII/2015 p. 67

[15] Halif, Proof of Money Laundering Without Charges of Original Crime: A Study of Judgment No. 57/PID. SUS/2014/PN. SLR, Judicial Journal Vol. 10 No. 2 August 2017, p. 10. 173-192 solely on which evidence is more convincing or measurable with who has more evidence and the party who must prove is the party who declares or demands the right. [16]

The Corruption Law (Law Number 31 of 1999 as amended into Law Number 20 of 2001) recognizes both types of asset seizure mechanisms, specifically for civil seizure of assets, the condition is that there is a state loss, but the Money Laundering Law seems to make a new breakthrough where the process of criminal seizure of assets but using the principle of civil seizure of assets where it should be that if the original criminal offence does not need to be proved because all that is being pursued is the money, the culprit should not be imprisoned. The question is can criminally forfeiture of assets use the principle of civil forfeiture of assets? Isn't it in the Criminal Procedure Code that the seizure of assets is an additional criminal offense? which means that it must first be proved criminally.

So there are two important issues in this Article 69, firstly, there is the possibility of a person being convicted in the absence of guilt, because the original criminal act was not proved and secondly a person was deprived of his property rights without sufficient basis of rights because it has not been proven wrong, not to mention a third party who is a victim of deprivation of assets for acquiring those assets in good faith so that the nature of the origin of the crime has been lost.

The mechanism of asset expropriation using criminal proceedings but using the principle of civil forfeiture of assets which is considered a breakthrough seems to qualify for violating human rights as stated in Article 28-H paragraph (4) of the 1945 Constitution which reads: "Everyone has the right to have private property rights and those property rights should not be arbitrarily taken over by anyone." The protection of a person's assets is indeed very protected from state arbitrariness, as one of the characteristics of the state of law (Article 1 paragraph 3 of the 1945 Constitution – The State of Indonesia is a State of Law). In addition, in criminal courts the principle of presumption of innocence applies, where until the verdict is of permanent legal force the accused must be presumed innocent so that before being found guilty the State shall not criminalize him and deprive every citizen of his personal property. It is important, then, to see to what extent the seizure of assets does not violate constitutional principles.

[16] Ramelan. Guidelines for Indonesian Public Prosecutors in Handling Crime Proceeds. Indonesia – Australia Legal Development facility. Jakarta. 2008

Equating the Crime of Money Laundering with the Criminal Act of Restraint (Article 480 of the Criminal Code) so that the Crime of Money Laundering can become an Independent Crime[17], is an analogy that is prohibited in the Criminal Law because it deviates from the principle of legality, in the definition of Andi Hamzah included in the recht analogy. [18] Because in the custody of the culprit, it must be different from the one who obtained the goods through crime. The conviction as a stand-alone criminal offence as per Supreme Court Jurisprudence No.: 79 K/Kr/1958 dated July 09, 1958 and Supreme Court Jurisprudence No.: 126 K/Kr/1969 dated November 29, 1972 is still basically debatable, firstly, the jurisprudence of the Supreme Court does not bind the judge's decision, secondly, if it refers to the element of fulfilling the criminal act of imprisonment in a civil law country such as France, then the prosecution is not a stand-alone criminal act (zelfstandig misdrijft) but as an act of helping to commit a crime or as a medeplichtigheid in a crime, that is, by the act of which the perpetrator can obtain objects obtained from the crime. [19]

The teachings of the legal mind (idee des recht) developed by Gustav Radbruch as quoted by Sudikno Mertokusumo state that there are 3 (three) elements of the legal mind that must exist, namely legal certainty (rechssicherkeit), justice (gerechtikeit), and expediency (zweckmasigkeit)[20] where Justice is at its highest priority, new expediency and Legal Certainty[21]. It appears that Article 69 does not meet these three legal ideals.

Research Method:-

The type of research carried out is Normative Juridical Law research using two problem approaches, namely the statutory approach and the conceptual approach. The Nature of Analytical Descriptive Research which discusses Article 69 of Law Number 08 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which is associated with the theory of legal theory about the State of Law, Human Rights, Justice, Expediency and Legal Certainty. This research will be processed with normative analysis methods, which is a way of interpreting and discussing research materials based on legal understanding, legal

[17] Testimony of M Yusuf, Chairman of PPATK when giving expert testimony in the trial of Case Number 90/PUU-XIII/2015, minutes of the trial of case number 90/puu-xiii/2015
[18] Endrawati, Lucky, Reconstruction of Analogies in Criminal Law as a Method of Legal Interpretation for the Renewal of Criminal Law With a Progressive Flow Approach, p. 3
[19] Lamintang, Crimes Against Wealth, Jakarta, Sinar Grafika, 2009. thing. 362.
[20] Sudikno Mertokusumo & A. Pitlo, Chapters On Legal Discovery.
[21] Purpose of the Law. http://statushukum.com/tujuan-hukum.html norms, legal theories and doctrines related to the subject matter. Legal norms are needed as major premises, then correlated with relevant facts (legal facts) which are used as minor premises and through the process of syllogisms conclusions will be obtained on the problem.

The Need for The Original Crime in the Money Laundering Crime to be Proven First

Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Contains the following contents:

"To be able to carry out investigations, prosecutions, and examinations in court for money laundering crimes, it is not mandatory to prove in advance the crime of origin"

What is meant by the original crime or predicate offenced is explained in Article 2 of the Prevention and Eradication of Money Laundering Act.

Edy O.S Hiariej argued that the formulation of criminal acts has two functions. First, the formulation of criminal acts as an embodiment of the principle of legality. Second, the formulation of criminal acts serves as a show of evidence in the context of criminal procedural law.

Based on the description of Edy O.S Hiariej, the formulation of criminal acts in Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes is in the form of fragments in the form of elements of criminal acts, in addition to being an embodiment of the principle of legality, that there is no criminal act before the criminal act is formulated first by law, these elements must also be proved to determine whether the perpetrator of the criminal act of money laundering actually committed the act of money laundering. One of the elements of the criminal act of money laundering as regulated in Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes is "the known or suspected results of criminal acts as referred to in Article 2 paragraph

(1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes". This means that the act of transferring, placing and so on is not called a criminal act of money laundering if the property transferred, placed into the financial system does not come from the property resulting from the criminal act as stipulated in Article 2 The known or appropriate results of criminal acts as referred to in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

The existence of regulations on original criminal acts in the formulation of money laundering crimes is not only in Indonesia ASEN countries in formulating money laundering crimes including predicate offence, namely criminal acts that are the source of origin of illicit money (dirty money) or crime proceeds (crimenal proceeds) which are then laundered. Malaysia, the Philippines and Yanmar also list original crimes as objects of money laundering, albeit with a different formulation than Indonesia.

Based on the description above, it can be concluded that the existence of a money laundering crime cannot be separated from the existence of an original criminal act first, because one of the elements of the money laundering crime in Article 3, Article 4 and Article 5 "it is known or reasonably suspected that it is the result of a criminal act as referred to in Article 2 paragraph (1)".

Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes in terms of asset returns, there are two systems for returning assets resulting from criminal acts. first, in personam, which is a model of deprivation of proceeds from criminal acts through the criminal justice process, meaning that assets from crimes can be seized by the state after a judgment from the court. Secondly, in rem is a model of deprivation of the proceeds of a criminal act through a lawsuit like in criminal law, this model of deprivation of

assets is based on a "taint doctine" in which a criminal act is considered "taint" (desecrating) an asset used or is the result of a criminal act. In other words, Romli Atmasasmita explained that this model in brake is a deprivation of assets resulting from criminal acts by emphasizing on objects (things). The terminology of objects in this model of the seizure of assets in rem is a legal fiction that considers that property resulting from a criminal act as a "legal subject" who has consciousness or intention, like a human being so that it is worth accounting for its legal status.

So, the in-personam model of deprivation focuses more on the perpetrator whether he is guilty or not so as to determine the assets resulting from his crimes can be seized by the state after a verdict from the court. Meanwhile, the in-rem seizure model focuses more on objects, namely property from criminal acts, where in carrying out the seizure of assets do not wait for the criminal process to be completed, from the beginning with a lawsuit and with formal evidence where the proceeds of the crime have something to do with the perpetrator, then the property of the proceeds of the crime can be seized by the state.

If Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes is formulated to seize assets from criminal acts with an in-personam model, then the implementation of investigations, prosecutions and the implementation of judicial processes against money laundering crimes cannot be carried out. Because of the investigation process, prosecution and examination in court must first examine and decide the deeds and mistakes of criminal offenders.

Proof of the Elements of the Money Laundering Crime in Decision No. 57/PID. SUS/2014/PN. SLR for Crime of Origin Not Charged

Decision No. 57/PID. SUS/2014/PN. Slr with defendant R was charged by the public prosecutor with the primary charge of Article 3 of Law Number 8 of 2010 and the secondary indictment of Article 4 of Law Number 8 of 2010. Because the primary charge of Article 3 is proved by the judge by outlining the elements of Article 3 and proving one by one the elements. The elements of Article 3 are formulated by the judge as follows: 1) each person; 2) who places, transfers, transfers, spends, pays, gives, entrusts, carries abroad, changes the form, exchanges for currency or securities or other acts on property known to him or reasonably suspected of the proceeds of a criminal act as referred to in Article 2 paragraph (1); and 3) with the aim of concealing or disguising the origin of wealth. The element of each person according to the judge's consideration has been proved. While the element "that places, transfers, transfers, spends, pays, gives, entrusts, takes abroad, changes shape, exchanging for currency or securities or other acts on assets that he knew or reasonably suspected the proceeds of a criminal act as referred to in Article 2 paragraph (1) according to the judge were not proven.

The judge considered that the process of transferring the property allegedly from the proceeds of the criminal smuggling act was carried out by the co-defendant in Maumere to the BRI account in the name of AR totaling Rp129,000,000,- This indicates that this transfer activity was not an active attitude of defendant R, but from ar witnesses who were asked for help by the defendant. So, the transfer was not made by the accused but was made by a partner and without the defendant. Thus, the judge considered that this element was not proven. Since one element is declared unproven then the next element is not proved by the judge, so it is concluded by the judge that the criminal act of money laundering as stipulated in Article 3 is not proved.

In the form of an indictment letter prepared by the public prosecutor in the form of a subsider indictment letter, the Judge reviewed and proved the elements of Article 4 of Law Number 8 of 2010 as the subsider indictment as follows:

1. The element of each person;
2. Elements hide or disguise the actual origin, source, location, appropriation, transfer of rights, or ownership of the property known to him;
3. The element should be suspected to be the result of a criminal act as referred to in Article 2 paragraph (1).

The element of "everyone" according to the judge has been proven. Meanwhile, the element of "concealing or disguising the origin, source, location, designation, transfer of rights, or actual ownership of the property known to him" based on the facts and circumstances revealed at the trial of one another correspondent between the testimony of witnesses and the testimony of the accused (Decision No. 57/PID. SUS/2014//PN. SLR):

1. That on January 3, 2014, witness AR made a money withdrawal transaction at Bank BRI, first in the amount of Rp54,000,000, - and secondly, amounting to Rp75,000,000, -;

2. That before the withdrawal of the money took place, witness AR met with defendant R at Rauf Rahman port of Selayar Fort, then the accused asked witness AR to have a bank account number as there would be someone willing to transfer money to the accused and the witness gave his BRI account number to the accused;
3. That after the accused got word from his partner in Maumere that his money had been transferred, the defendant told the AR witness to check the veracity of the money transfer. As it turned out, the transfer of money from the defendant's associate did exist and the witness took the money and handed it over to the defendant and the withdrawal was done twice. After the money is handed over to the defendant by the witness, then the witness leaves the defendant without asking and obtaining compensation from the defendant.

The money transferred from the defendant's friend in Flores/Maumere to through the AR witness account was allegedly money from the sale of Matahari stamp fertilizer carried out by the defendant in Flores/Maumere East Nusa Tenggara. From these facts, the judge considered that the element of "concealing or disguising the origin, source, location, appropriation, transfer of rights, or actual ownership of the property known to him" had been proved.

The element "should be suspected to be the result of a criminal act as referred to in Article 2 paragraph (1) according to the evidence and consideration of the judge has been proved. That the property transferred by the co-defendant in Flores/Maumere was the result of a criminal offence in the marine and fisheries sector. Because the defendant has admitted several times that he had been to Batam to make transactions ordering goods that were allegedly Matahari stamp fertilizer from Malaysia. The criminal act of smuggling fertilizer or criminal acts in the marine and fisheries sector was not charged and not proven, especially since it turned out that the main ingredient of the Sun stamp fertilizer, namely ammonium nitrate, was actually not excisable so it was not a smuggling (REGULATION OF THE MINISTER OF FINANCE NUMBER 13 / PMK.011 / 2011 CONCERNING THE FIFTH AMENDMENT TO THE REGULATION OF THE MINISTER OF FINANCE NUMBER 110 / PMK.010 / 2006 CONCERNING THE ESTABLISHMENT OF A SYSTEM OF CLASSIFICATION OF GOODS AND THE IMPOSITION OF IMPORT DUTY TARIFFS ON IMPORTED GOODS with the code 3102.10.00.00)

The judge in proving Article 4, especially the element "known or reasonably suspected to be the result of a criminal act as referred to in Article 2 paragraph (1)" in Decision Number 57 / PID. SUS/2014/ PN. The SLR stated that it had been proved only on the basis of the defendant's statement in the BAP, that the defendant was alleged to have travelled to Batam and continued to Malaysia, from these activities the defendant allegedly smuggled Matahari stamp fertilizer from Malaysia to Indonesia. The property resulting from the criminal act was laundered by the accused.

The judge also did not ask the defendant to make reverse proof of the origin of his property as stipulated in Articles 77 and 78 of Law Number 8 of 2010.

Especially for this reverse proof, if it is connected with the United Nations Convention (UN) Anti-Corruption 2003 (KAK 2003) which Indonesia ratified by Law Number 7 of 2006, it is actually prohibited because it has the potential to violate human rights, because it is contrary to the principle of presumption of innocence, thus causing a shift in evidence to the principle (presumption of guilt).

Criminal Conviction Of Money Laundering Without Proven Criminal Origin From The Perspective Of Human Rights And Justice

An English Jurist William Blakcstone once said "it is better for ten ten allegedly guilty persons to be free than one innocent person to be imprisoned". The Criminal Law, which still prioritizes imprisonment as the main punishment, must indeed be supported by the Criminal Procedure Law which upholds Justice and Protection of Human Rights.

The modern legal thought put forward by Gustav Radbruch combines the three classical views (philosophical, normative and empirical) into those known as the three basic values of law that include; justice (philosophical), legal certainty (juridical) and expediency for society (sociological). Gustav Radbruch started with the view that society and order have a very close relationship, even said to be two sides of the coin, this shows that every community the community (society) in it needs order. To realize this order, in society there are always some norms such as customs, decency and law.

Article 69 of Law Number 8 of 2010 from the point of view of returning assets as a seizure of property (in Rem) without waiting for the completion of the criminal process will not be contrary to Human Rights and Justice if the purpose is not to imprison people.

Constitutional Court Decision No. 77/PUU-XII/2014 on judicial review of Article 69 of Law Number 8 of 2010 which in its consideration says "it is an injustice that a person who has actually received profits from a money laundering crime is not processed criminally only because the original criminal act has not been proven first" while the perpetrator has died in practice the return of state losses it can still be done like the case of the supersemar foundation corruption civil lawsuit. The chosen deprivation is to use a civil path. That is, the seizure of assets resulting from the crime is carried out without the need to impose criminal sanctions on the offender. That is, the concentration of law enforcement is only on its assets, not the perpetrator. Deprivation through this civil route was chosen, since the already existing criminal deprivation must be attributed to the guilt of the accused. That is, there must be proof of guilt first and then the assets resulting from criminal acts can be seized by the state.

Basically, in-rem deprivation has the same purpose as criminal deprivation, which is to take the proceeds from the crime, but with a different process. This mechanism places the state as the plaintiff and the assets as the defendant, while the parties associated with the appropriation process are the intervention parties.

The emphasis of in-brake deprivation is to reveal the relationship between assets and criminal acts, not the relationship between assets and perpetrators. Errors are not part of the evidence in the seizure in rem, but rather the evidence of the origin of the asset property. Assets alleged to be derived from criminal acts, as long as neither party proves otherwise, then the court may rule that the assets are 'tainted' and may be seized by the State. This in-brake seizure, which is the soul of article 69 of Law Number 8 of 2010, the purpose is not to replace the criminal process against the perpetrator of the crime but in the case of law enforcement it is difficult to prosecute the perpetrator of the crime criminally.

This mechanism of deprivation without criminal charges contains a very crucial point. That is, in relation to human rights contained in Article 28-H paragraph (4) of the 1945 Constitution which reads: "Everyone has the right to have private property rights and such property rights should not be arbitrarily taken over by anyone." Protection of one's assets is strongly protected from state arbitrariness, as one of the characteristics of the rule of law. It is important, then, to see the extent to which the seizure of such assets does not violate constitutional principles.

Conclusion:-

1. Proof of Money Laundering without Crime of Origin provided for in the Criminal Act of corruption, burdening a person with reverse proof of his property at the time of being a defendant in a court hearing, the Money Laundering Act N0 8 of 2010 already burdens a person with reverse proof of his property while still a suspect at the level of investigation. Reverse proof at trial, even if referring to the Criminal Procedure Code which adheres to the accusatorial / due process of law system (not an inquisitor where the confession of the suspect / defendant is the most important evidence) is basically contrary to the principle of non-self incrimination and the principle of presumption of innocence, besides that the confession of the suspect / defendant is not evidence (Article 184 of the Criminal Procedure Code). The synchrony of these articles, of course, in practice, in addition to the emergence of judgments that do not have legal certainty, can also occur the arbitrariness of law enforcement officials when investigations and prosecutions are carried out.
2. The Crime of Origin as a condition of Conviction in the Criminal Act of Laundering is a process in which an act aimed at concealing or disguising the origin of money or property that ostensibly originated from a legitimate activity. In accordance with article 2 of Law Number 25 of 2003 as amended by Law Number 8 of 2010, criminal acts that trigger the occurrence of criminal acts of money laundering. Money laundering activities have a serious impact on the stability of the financial system and the economy as a whole. Money laundering is a multi-dimensional and transnational crime that often involves a large amount of money. Meanwhile, in terms of criminal law, what is meant by the criminal act of money laundering is an attempt to store money elsewhere, divert money or entrust it, award, invest or withdraw profits from proceeds that should be known or reasonably suspected to be obtained from narcotics or other criminal acts.

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