Quest Journals
Journal of Research in Humanities and Social Science
Volume 12 ~ Issue 8 (2024) pp: 168-182
ISSN(Online):2321-9467
www.questjournals.org

Research Paper

Optimization of Asset Recovery from the Proceeds of Money Laundering

Donny Cahyadi Foeng[1], M. Iman Santoso[2], Siswantari Pratiwi[3], Mardani[4]
[1] *Student of Doctoral Program, Faculty of Law Krisnadwipayana University*
[2] *Professor Faculty of Law Krisnadwipayana University*
[3,4] *Lecturer Faculty of Law Krisnadwipayana University*
Krisndawipayana University Jakarta, Indonesia

Abstrak
Developments in the world of crime, especially economic crimes, have had an impact on the practice of money laundering as a further criminal act. The development of systems, motives and scope of the area of implementation of these crimes presents a challenge for law enforcers to make efforts to return assets from the proceeds of the crime. This study was conducted to discuss the problem, namely how is the correlation between law enforcement and optimizing the return of assets from the proceeds of money laundering? What is the role of international agreements in optimizing the return of assets from the proceeds of money laundering? And how are efforts to optimize the return of assets from the proceeds of money laundering in the future? The method used is normative legal research supported by interviews.
Based on the results of this study, it is known that the correlation of law enforcement with optimizing the return of assets from the proceeds of money laundering is related, but in its implementation, the return of assets from the proceeds of money laundering has not been optimal because not all assets from the proceeds of money laundering can be returned to victims. The current legal instruments have not been able to provide maximum results in returning assets from crime, both in general crimes and in the realm of special crimes. In efforts to return assets from cross-border crimes, international agreements play an important role as a basis for returning assets from the proceeds of crime. Efforts to optimize the return of assets from the proceeds of money laundering crimes in the future can be realized by regulating more specifically regarding the return of assets, including by regulating and implementing Non-Conviction Based (NCB) Asset Forfeiture into the justice system with the aim of legal benefits, expanding StAR (Stolen Asset Recovery) and developing Mutual Legal Assistance (MLA) with other countries.

Keywords: *Optimization, Assets, Money Laundering*

***R**eceived 01 Aug., 2024; **R**evised 08 Aug., 2024; **A**ccepted 10 Aug., 2024 © The author(s) 2024.*
P**ublished with open access at **www.questjournas.org

I. Introduction

In the current legal development, the problem of money laundering is increasingly receiving attention from various groups, not only on a national scale but also regionally and even globally. This is because, in reality, money laundering crimes are increasingly rampant and sophisticated from time to time with various modes that are increasingly developing and diverse along with technological advances in various fields.

Money laundering is a method used by criminals to disguise the origins of illegal wealth and protect their asset base, so that the criminal acts that have been carried out do not leave a trace to avoid suspicion from law enforcement agencies (Yusuf, 2014). Money laundering has many detrimental impacts on the economy, finance, society, and security (Jabar, 2010), Even because the modus operandi is generally cross-country, money laundering has been considered an international crime and is already a world phenomenon and an international challenge (Sjahdeini, 2003).

Indonesia is suspected of being a haven for money laundering because Indonesia adheres to a free foreign exchange regime, bank secrecy is still very strict, and the level of corruption always ranks highest. Based on PPATK data in 2019, 404 TPPU cases were decided by the Court from January 2005 to June 2019 with a maximum sentence of life imprisonment and a maximum fine of 32 billion rupiah (PPATK, 2019). Based

on PPATK data, TPPU/TPPT cases that had been decided by the court from 2021 to March 2023 were 258 decisions (Sutedi, 2007). The high number of money laundering crimes indicates weak law enforcement against this form of crime. This is due to the weak legal basis that has not been able to guarantee the effectiveness of law enforcement, tracing and returning assets from criminal acts.

The return of assets from crime can generally be achieved in two ways. First, through civil law civil-based forfeiture, or non-conviction-based forfeiture (NCB). Second, through criminal law or criminal-based forfeiture (CB). In Indonesia, until now, all existing laws have not specifically regulated the scope of the term "Asset Recovery" as stated in Chapter V of the UNCAC. The existing regulations are limited to the confiscation of assets resulting from criminal acts with two models, namely: 1) Confiscation in the sense of confiscation of assets used to commit a crime (instrumentum sceleris); and 2) Confiscation in the sense of confiscation of objects related to a crime (objectum sceleris). Meanwhile, the confiscation of assets resulting from a crime (frustum sceleris) has not been regulated in detail and adequately including the reverse proof process in the confiscation of criminal assets (Yustiavandan, et al, 2010). Both instrumentum sceleris, objectum sceleris, and fructum sceleris in Indonesia, America and England are only intended for the interests of the state alone and have not been intended for the interests of victims of criminal acts as regulated in the Criminal Law in Belgium and the Netherlands. The confiscation and seizure of the fructum sceleris in Belgium and the Netherlands is intended to compensate victims of criminal acts.

In the context of corruption, the United Nations Convention Against Corruption (UNCAC) also known as the Anti-Corruption Convention (KAK) in 2003 has made a breakthrough regarding Stollen Asset Recovery which includes a system for preventing and detecting the proceeds of corruption (Article 52), a direct asset return system (Article 53), an indirect asset return system and international cooperation for confiscation (Article 55). The essential provisions that are very important in this context are specifically aimed at returning assets from corruption from the custodial state to the country of origin of the corrupt assets. Confiscation of assets from money laundering also needs to be optimized to recover state financial losses due to predicate crimes. For example, regarding state losses due to corruption, based on monitoring results, Indonesia Corruption Watch (ICW) managed to find 579 corruption cases handled by law enforcement officers throughout 2022. Furthermore, 1,396 people with various professional backgrounds were named as suspects. Meanwhile, the value of state financial losses successfully uncovered by law enforcement is around Rp.42.747 trillion, the potential value of bribes and gratuities is around Rp.693 billion, the potential value of extortion or extortion is around Rp.11.9 billion, and the potential value of money laundering is around Rp.955 billion (Yusuf, 2014). In the return of state financial losses that occur due to criminal acts of corruption through Law Number 31 of 1999 in conjunction with. Law Number 20 of 2001 contains the principle of reversal burden of proof, meaning that the proof (against guilt and assets) imposed on the suspect or defendant, in this case, the suspect or defendant is considered guilty of committing a crime of corruption (presumption of guilt) unless he can prove that he did not commit a crime of corruption and harm the state's finances. If we look at the experience in uncovering a crime, finding, arresting, and prosecuting or placing the perpetrator of the crime in prison (following the suspect) but by allowing the perpetrator of the crime to continue to control the results and instruments of the crime and providing opportunities for the perpetrator of the crime or other people who are related to the perpetrator of the crime to enjoy the results of the crime and reuse the instruments of the crime or even develop the crime that has been committed, it turns out that it is not effective enough to reduce the crime rate if it is not accompanied by efforts to confiscate and seize the results and instruments of the crime.

Therefore, it is necessary to change the orientation of handling criminal acts, namely from the follow-the-suspect approach (arresting and prosecuting the perpetrator of the crime) to following the money (tracing the flow of funds) in the context of confiscation and seizure of assets/proceeds of crime. The procedure for confiscation of the proceeds of crime that is recognized and commonly used in countries that adopt the Common Law legal system, especially in the United States legal system, is the in rem character of confiscation. The terminology of thing or object, in the context of the in rem confiscation procedure model, is a legal fiction that confirms that the object (proceeds of crime) is considered a 'legal subject' that has consciousness or intention, like a human being so that its legal status is accountable. The second procedure model (in rem) is also used in Swiss law in addition to the first procedure model, also in Dutch and Belgian law. The in-personam procedure in the form of confiscation and seizure is commonly called Criminal Forfeiture, while the in rem procedure model is known and commonly called Civil Forfeiture. In legal practice in the United States, when dealing with criminal organizations, including money laundering crimes, in rem procedures are often used rather than in personam (Atmasasmita, 2010).

The current construction of the criminal law system in Indonesia has not yet made the confiscation and seizure of assets resulting from and instruments of crime an important part of efforts to reduce the crime rate in Indonesia. This can be seen from the Criminal Code and other laws and regulations, which divide the two groups of principal and additional crimes. Based on this division, the confiscation and seizure of assets resulting from and instruments of crime (in Article 10 letter b number 2 of the Criminal Code referred to as "confiscation

of certain goods") is included in the group of additional crimes and not principal crimes (Atmasasmita, 2010). On the other hand, Article 67 of Law Number 8 of 2010 regulates the return of assets resulting from crime without criminal punishment, but efforts to regulate the mechanism for confiscating assets without criminal punishment have their obstacles for Indonesia, including regulations that are not yet comprehensive and are still spread across various sectors of laws and regulations so that they are less harmonious. Based on the explanation above, it can be understood that Indonesia does not yet have a comprehensive and optimal domestic mechanism and regulation related to efforts to confiscate assets resulting from money laundering crimes. The regulation on the return of assets from crime without criminal penalties as stipulated in Article 67 of Law Number 8 of 2010 has not comprehensively and in detail regulated the return of assets from crime and still has many shortcomings (loopholes), and there are differences in the regulation on the return of assets from crime in laws and regulations between one and another in Indonesia and with the latest developments in the world of international law concerning the return of assets from crime, indicating the need for expansion and addition of laws in Indonesia in implementing the mechanism for the return of assets from crime from the perspective of the anti-money laundering regime that is adjusted to developments in international law.

II. Literature Review

Money Laundering Crime

Money laundering is a process or act that aims to hide or disguise the origin of money or assets obtained from criminal acts which are then converted into assets that appear to come from legitimate activities (Sutedi, 2007). In the book Black's Law Dictionary 7th Edition, the term money laundering is defined as "the federal crime of transferring illegally obtained money through legitimate persons or accounts so that its source cannot be traced." There are several definitions of money laundering from various legal experts, including the definition from Sarah N. Welling who defines money laundering as the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate (a process by which to hide the existence, illegal source, or illegal method of income, and also disguises the income to appear legitimate) (Gurule, 2008). Then Sarah N. Welling put forward the definition of money laundering as a process carried out by someone to hide the existence of illegal sources or illegal applications of income which then disguises the income as legitimate. Welling emphasized that money laundering is a process of obscuring, and hiding illegal money through the financial system so that it will reappear as legitimate money.

According to legal expert Fraser, money laundering is defined as, money laundering is quite simply the process through which "dirty" money (proceeds of crime), is washed through "clean" or legitimate sources and enterprises so that the "bad guys" may more safely enjoy their ill-gotten gains (money laundering is a simple process where "dirty" money (proceeds of crime), is washed through "clean" or legitimate sources and enterprises, so that "bad guys" will more safely enjoy their ill-gotten gains). Meanwhile, in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, the definition of money laundering has been expanded to "all acts that fulfill the elements of a criminal act following the provisions of this Law" (Santoso, 2011).

In general, there are several stages in carrying out money laundering, namely as follows.

1) Placement Stage

The placement stage is the stage of collecting and placing money from crime in a bank or a certain place that is considered safe to change the form of the money so that it cannot be identified. Usually, the funds placed are in the form of large amounts of cash that are divided into smaller amounts and placed in several accounts in several places. This stage is the first stage, namely the owner of the money deposits the illicit money into the financial system. Because the money has entered the financial system, it means that the money has also entered the financial system of the country concerned. Therefore, money that has been placed in a bank can then be transferred to another bank, either in that country or in another country, so that the money has not only entered the financial system of the country concerned but has also entered the global or international financial system. So, placement is an effort to place funds generated from criminal activity into the financial system (Sutedi, 2007). The forms of this activity include the following:

a. Placing funds in a bank. Sometimes this activity is followed by a credit/financing application.
b. Depositing money in a bank or other financial services company as a credit payment to obscure the audit trail.
c. Smuggling money from one country to another.
d. Financing a business that appears to be legitimate or related to a legitimate business in the form of credit/financing so that cash is converted into credit financing.
e. Buying valuables of high value for personal use, buying expensive gifts as awards or gifts to other parties whose payments are made through banks or other financial services companies.

2) Layering Stage

The layering stage is an effort to reduce the traces of the origin of the money or the original characteristics of the money from the crime or the name of the owner of the money from the crime, by involving places or banks in countries where bank secrecy will make it difficult to trace the money trail. This action can be in the form of transferring funds to another country in the form of foreign currency, purchasing property, purchasing shares on the stock exchange using deposits in bank A to borrow money from bank B, and so on.

Layering is a process of transferring funds from several accounts or certain locations as a result of placement efforts to other places through a series of complex transactions designed to disguise/deceive the source of the illicit money, for example, bearer bonds, forex markets, and stocks. In addition to these methods, another step used is to create as many accounts as possible from fictitious/pseudo companies by utilizing aspects of bank secrecy and the privileges of the relationship between bank customers and lawyers. This effort is made to eliminate traces or audit efforts so that it appears to be a legal financial transaction.

3) Integration Stage

The integration stage is the stage of collecting and reuniting the proceeds of crime that have gone through the layering stage in a legitimate financial flow process. At this stage, the proceeds of crime are truly clean and difficult to recognize as proceeds of crime and reappear as investment assets that appear legal.

Integration is the process of transferring whitened money from placement or layering activities into official business activities or performances without any links to previous illicit businesses. At this stage, the whitened illegal money is put back into circulation in a form that complies with the law and has become legal. There is an article that states that this method is also called spin dry, which is a combination of repatriation and integration.

Some money laundering methods that are often carried out by money launderers:

a. Smurfing is an attempt to avoid reporting by breaking up transactions carried out by many actors.
b. Structuring is an attempt to avoid reporting by breaking up transactions so that the number of transactions becomes smaller.
c. Purchase of assets/luxury goods, which is hiding the ownership status of assets/luxury goods including the transfer of assets without being detected by the financial system.
d. Exchange of goods (barter), which avoids the use of cash or financial instruments so that they cannot be detected by the financial system.
e. Use of third parties, which are transactions carried out using the identity of a third party to avoid detection of the identity of the party who is the owner of the funds from the criminal act.
f. Mingling is mixing funds from criminal acts with funds from legal business activities to obscure the source of the funds.

Return of Criminally Proceeded Assets

The term asset return by Purwaning Yanuar is reaffirmed as not the same as the term "Asset Confiscation" used in the draft of the Asset Confiscation Bill. The use of this term is inappropriate because it does not correspond to the meaning, background, and purpose of taking the assets themselves. The term "Asset Confiscation" contains the meaning of forcibly taking assets belonging to other people while "Asset Return" means "returning assets" as before, as before (Yanuar, 2009). However, in essence, asset confiscation or asset return is both for the takeover of rights to wealth or profits that have been obtained or may have been obtained by a person from a crime committed either in Indonesia or in a foreign country which in the end is indeed to be returned so that it becomes as before. Asset return and asset confiscation are different because asset return is the next stage after asset confiscation. According to the provisions of the law, the confiscation and seizure of a person's property and goods must be preceded by a criminal act directly related to the property or goods. Without a criminal act related to an object, confiscation cannot be carried out. It is necessary to distinguish between "confiscation" and "confiscation".

Confiscation is part of the law enforcement process that seeks coercive measures carried out by the state to take over control of a person's property that is directly related to a crime. Meanwhile, confiscation is the takeover of a person's property rights who has received a court decision that has permanent legal force (Santosa, 2010). The legal concept of confiscation according to Indonesian criminal law is the takeover of the property of a person who has committed a crime as an additional punishment imposed by a judge together with the main crime as regulated in Article 10, letter (b) number (2) of the Criminal Code (KUHP).

Asset confiscation is a form of additional punishment used in Indonesian law to punish the perpetrator by confiscating his assets after committing a crime. This generally refers to any criminal activity within the scope of Indonesian criminal law to cause harm to the convict who has been found guilty by a binding court decision so that he cannot profit from the crime. The additional punishment has consequences, namely that it must always follow the main case and cannot stand alone, meaning that the additional punishment may only be

given along with the imposition of the main punishment. This means that only when the main case is investigated and the defendant is found guilty of goods purchased with the proceeds of crime, can the assets from the crime be confiscated. In line with the mandate of Article 39 paragraph (3) of the Criminal Code, to be able to seize assets that will be returned to the state, investigators must first seize assets suspected of being the proceeds of a crime. That is why the judge who decides on a criminal case mandates that assets that have been confiscated previously during the investigation stage be confiscated to become the property of the state. In UNCAC 2003, the confiscation of assets of perpetrators of corruption crimes can be carried out through criminal and civil channels. The process of confiscating the perpetrator's assets through criminal channels goes through 4 (four) stages, namely:

a. First, asset tracking to identify, proof of ownership, and storage location of assets related to the crime committed.
b. Second, freezing or confiscation of assets according to Chapter I Article 2 letter (f) UNCAC 2003 where it is temporarily prohibited to transfer, convert, dispose or move assets or temporarily bear the burden and responsibility to manage and maintain and supervise assets based on a court order or a decision from another competent authority.
c. Third, asset confiscation according to Chapter I Article 2 letter (g) UNCAC 2003 is interpreted as the revocation of assets forever based on a court order or other competent authority.
d. Fourth, return and handover of assets to the victim country. Furthermore, in UNCAC 2003 it is also regulated that the confiscation of assets of perpetrators of corruption crimes can be through direct return through a court process based on the "negatiation plea" or "plea bargaining system", and through indirect return, namely through a confiscation process based on a court decision (Articles 53 to 57 UNCAC).

In personam asset confiscation or criminal forfeiture or conviction based is a judgment in personam against the defendant, which means that the confiscation is carried out in connection with the punishment of a convict. In personam asset confiscation is an action aimed at a person personally or individually, therefore proof of the defendant's guilt is needed first before confiscating the defendant's assets. The public prosecutor must first prove what the defendant did with the assets resulting from or instruments of a crime controlled by the defendant. If proven, then the court decision that has permanent legal force is the legal basis for confiscating the defendant's assets. Meanwhile, civil confiscation or in rem is an effort made to cover up weaknesses and even deficiencies that occur in criminal confiscation actions against efforts to eradicate criminal acts. In some cases, criminal confiscation cannot be carried out and in these cases in rem confiscation can be carried out, namely in the case of:

a. The perpetrator of the crime is on the run (fugitive). Criminal trials cannot be carried out if the suspect is a fugitive or being pursued.
b. The perpetrator of the crime has died or died before being found guilty. Death stops the ongoing criminal justice system process.
c. The perpetrator of the crime has legal immunity.
d. The perpetrator of the crime has power and authority so that the criminal court cannot try him.
e. The perpetrator of the crime is unknown but the assets resulting from his crime are known/found.
f. The criminal assets are controlled by a third party who in the legal position of the third party is not guilty and is not the perpetrator or related to the main crime.
g. There is insufficient evidence to be submitted to a criminal court.

In some cases, in rem confiscation can be carried out because it is an in rem action which is an action aimed at an object, not a person, or in this case, there is no need for a perpetrator of a crime who was previously charged in court. With the confiscation aimed at the asset itself, the absence of a subject of the perpetrator of the crime seen in this case makes the position of the parties related to the asset or even the owner of the asset a third party. Therefore, in this case, the first party is the state through its apparatus, the second party is the asset and the third party is the owner of the asset or those related to the asset. In some cases, in rem confiscation can be carried out because it is an in rem action against property, not people, and criminal proof is not required, or both. In rem asset confiscation can also be useful in situations such as the following:

1) The offender has been acquitted of the underlying criminal charges as a result of the lack of evidence presented or failure to meet the burden of proof. This applies in jurisdictions where in rem asset confiscation is applied to a lower standard of proof than the standard of proof determined in the criminal case. While there may be sufficient evidence for a criminal charge beyond a reasonable doubt, the offender has sufficient evidence to show that the assets did not originate from illegal activity based on the reverse burden of proof.
2) Irrefutable forfeiture. In jurisdictions where rem forfeiture is carried out as a civil proceeding, standard appraisal procedures are used for asset seizure, thereby saving time and money.
3) In rem, forfeiture is very effective in recovering losses incurred and returning the proceeds of crime to both the State and the rightful parties. While rem forfeiture should never be a substitute for criminal prosecution,

in many cases (especially in the context of corruption), rem forfeiture may be the only tool available to recover the proceeds of crime appropriately and ensure justice. The influence of corrupt officials and other practical realities may prevent a criminal investigation from taking place entirely, or until after the official has been declared dead or absconded. It is not uncommon for corrupt officials who seize state property to also seek immunity from prosecution. Because the concept of in rem asset forfeiture is not dependent on criminal prosecution, it can proceed without death, or the immunity that an official who commits a corrupt act might otherwise enjoy.

III. Research Method

This research is normative legal research. Research directed at normative law with a qualitative juridical approach. Normative legal research is legal research that places law as a building of a norm system. The norm system in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements, and doctrines (teachings) (Fajar, 2010).

This research is prescriptive analytical research, meaning that research on the crime of money laundering not only describes a condition or symptom, both at the level of positive and empirical law but also wants to provide recommendations for the regulations that should be (Das Sollen) and solve legal problems related to law enforcement against the crime of money laundering, as stated by Soekanto that prescriptive research is a research aimed at obtaining suggestions on what should be done to overcome certain problems (Sukanto, 2006).

The type of data used in this study is primary data and secondary data. Field research was conducted by conducting interviews with the following informants: (i) Kombespol Roberthus De Deo (Head of Sub-Directorate of TPPU, Directorate of Special Economic Crimes, Criminal Investigation Agency); (ii) Atang Pujiyanto, S.H., M.H. (Head of the North Jakarta District Attorney's Office); and (iii) Syarief Sulaeman Nahdi, S.H., M.H. (Head of the South Jakarta District Attorney's Office). Meanwhile, secondary data was obtained through literature study or documentation obtained from written data.

IV. Results and Discussion

Correlation of Law Enforcement to Optimizing the Return of Assets from the Proceeds of Money Laundering

The return of criminal assets aims to eliminate or prevent economic benefits from criminal practices. Eliminating these benefits is intended to reduce the intention to commit crimes at the first level, and also to ensure that the criminal assets are not used for subsequent criminal practices or the development of other crimes. The return of criminal assets is to prevent criminals who carry out illegal activities from taking advantage of their criminal actions. The proceeds of the crime must be confiscated and used to provide compensation to victims of the crime, both the state and individuals.Law enforcement in the return of assets from the proceeds of money laundering can be seen in the following cases:

1) Indosurya Case

In the Indosurya case, defendants Henry Surya and June Indria were found guilty of committing the crime of collecting funds from the public in the form of deposits without a business license from the Head of Bank Indonesia (Article 46 Paragraph (1) of the Banking Law) and the crime of money laundering. The defendant's mode of committing this crime was by promising to provide benefits to members in the form of interest of 7% to 11% per year or above the average BI interest and the profit was not based on the distribution of SHU. The realization of the operation of the Indosurya Inti Savings and Loans Cooperative did not carry out savings and loan business activities from members by members and for members the Indosurya Inti Savings and Loans Cooperative was used by the Defendant to collect funds from the public/customers without a business license from Bank Indonesia and also without the approval of the Indosurya Inti Cooperative member meeting in its management. In handling the case, confiscation was carried out at the investigation stage and confiscation during the trial based on Article 81 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, then based on the Supreme Court Decision Number 2113 K/Pid.Sus/2023, the confiscated assets were confiscated to recover the losses experienced by the victims. However, the difference in the amount of assets that were successfully confiscated based on the court's decision is still very far compared to the amount of the victim's losses. The total loss of the victim in this case is approximately 16 (sixteen) trillion rupiah, while the assets that were successfully confiscated were only around 2.4 (two point four) trillion rupiah.

The defendant Henry Surya was found guilty of the crime of collecting funds from the public in the form of deposits without a business license from the Head of Bank Indonesia and the crime of money laundering. He was sentenced to 18 (eighteen) years in prison and a fine of Rp15,000,000,000.00 (fifteen billion rupiah), with the provision that if the fine is not paid, it will be replaced with imprisonment for 8 (eight) months. Meanwhile, the defendant June Indria was sentenced to 14 (fourteen) years in prison and a fine of Rp12 billion, subsidiary to 6 months.

2) Binomo Case

In this case, the defendant Indra Kesuma alias Indra Kenz was proven to have committed the crime of spreading false and misleading news regarding fraudulent investments that resulted in consumer losses in Electronic Transactions (Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of the ITE Law) and the crime of money laundering. The defendant Indra Kesuma alias Indra Kenz was found guilty of the crime of spreading false and misleading news that resulted in consumer losses in Electronic Transactions and Money Laundering. He was sentenced to 10 (ten) years in prison, and a fine of Rp. 5,000,000,000.00 (five billion rupiah), with the provision that if the fine is not paid, it will be replaced with imprisonment for 10 (ten) months.

In this case, the victim's losses reached approximately Rp. 83,000,000,000,- (eighty-three billion rupiah). However, the defendant's assets that were successfully confiscated only reached approximately Rp. 67,000,000,000,- (sixty-seven billion rupiah).

The confiscated assets were decided to be returned to the victims through the United Indonesian Traders Association (PTIB) based on the court's decision at the cassation stage. However, before the decision, there was a controversy where at the district court stage it was decided that the confiscated assets would be confiscated for the state.

3) The case of business email compromise (BEC) of the Mediphos (Netherlands) and Althea Italia. S.p.a. (Italy)

Mediphos (Netherlands) and Althea Italia S.p.a (Italy) were victims of criminal fraud with the mode of business email compromise (BEC) and money laundering, where the perpetrators, in this case Indonesian citizens, sent fake emails or emails regarding changes in payment account numbers to victims who were conducting buying and selling transactions.

In this case, the Mediphos company suffered a loss of USD 3,597,875 or Rp. 52,523,567,750,- (fifty-two billion five hundred twenty-three million five hundred sixty-seven thousand seven hundred and fifty rupiah), while Althea Italia. S.p.a. suffered a loss of EUR 3,672,146.91 or Rp. 58,831,437,451,- (fifty-eight billion eight hundred thirty-one million four hundred thirty-seven thousand four hundred and fifty-one rupiah).

In both cases, the assets were successfully returned to the victims based on the verdict of the criminal court in Indonesia which was then executed by the Prosecutor and transferred from the District Attorney's holding account to the victim's account. The assets that were successfully returned to Mediphos (Netherlands) amounted to approximately Rp. 27.9 billion and to Althea Italia. S.p.a. amounted to approximately Rp. 56.6 billion.

With the current legal system in Indonesia, optimizing the return of assets from money laundering crimes is highly dependent on law enforcement and related agencies, namely the police, prosecutors, PPATK, and especially the role of judges as decision makers. All existing legal instruments must coordinate to obtain optimal return of assets from crime.

The Role of International Agreements in Optimizing the Return of Assets from Money Laundering Crimes

International cooperation procedures regarding confiscation are an important force because perpetrators of criminal acts often hide the results, tools, and evidence of criminal acts abroad to thwart law enforcement efforts. The existence of international agreements is regulated in Law Number 24 of 2000 concerning International Agreements. Article 1 number 1 of Law Number 24 of 2000 defines an international agreement as an agreement, in a certain form and name, which is regulated in international law and is made in writing, and gives rise to rights and obligations in the field of public law. Article 26 of the Vienna Convention on the Law of Treaties between States 1969 emphasizes that in the context of international agreements between countries, there is a principle of pacta sunt servanda which states: Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Indonesia must enter into international agreements and adjust them to national law. The a need for regulations on the return of criminal assets so that the management of criminal assets can be carried out more transparently. The asset return process is not going well because there are still laws and regulations in the eradication of money laundering that are currently not adequate if they are intended to save assets from other countries to be confiscated and returned to victims of money laundering.

Article 13 of the UNTOC emphasizes that a State Party that receives a request from another State Party that has jurisdiction to confiscate the proceeds of crime in the form of assets, equipment/other equipment, must allow for extensive development in its national law, namely:

a) Submitting to the authorized official the intent of the confiscation.

b) Submitting to the authorized official the existence of a confiscation order issued by the court of the requesting state party against the proceeds of the crime located in the territory of the requested state party

This provision also applies to mutual legal assistance cooperation as regulated in Article 18 of the UNTOC. The request for confiscation must contain a description of the assets confiscated and facts from the requesting state to facilitate the requested state. Confiscation cooperation can be rejected if the form of the crime is not a

transnational crime regulated by the Convention, and the provisions of Article 13 UNTOC will not harm the bona fide rights (honesty) of third parties.

The transfer of assets resulting from criminal acts or confiscated assets, following Articles 12 and 13 UNTOC must comply with national law. The settlement of confiscated criminal proceeds must be considered for return to the applicant country so that compensation can be given to victims of the crime.

International agreements have a role in optimizing the return of assets from the proceeds of money laundering crimes. The agreement functions to make the return of assets resulting from money laundering crimes more effective. International agreements play an important role in resolving international law because:

1) International agreements are one of the main references for the International Court of Justice in deciding legal disputes between countries;
2) International agreements are the basis for submitting dispute resolution to certain dispute resolution forums, such as the International Court of Justice; and
3) Various international agreements contain articles regarding legal settlement mechanisms related to the implementation of the international agreement itself which must be adhered to by the parties.

The international anti-money laundering legal regime is a step forward with a strategy that is no longer focused on drug crimes and catching the perpetrators but is directed at efforts to eradicate the proceeds of crime. The United Nations (UN) is the first international organization to take the idea of drafting international legal instruments to combat money laundering, which is an object of combat organized crime that has a solid organizational structure with a clear division of authority, very strong funding sources and has a network that crosses national borders.

One of the international conventions that regulates money laundering is the United Nations Convention Against Transnational Organized Crime (UNTOC) which has been ratified by Indonesia through Law No. 5 of 2009. The convention is one of the bases for state parties to carry out international cooperation in terms of confiscation of assets resulting from criminal acts, as stipulated in Article 13 of UNTOC**.**

In addition, the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires every country that has ratified it to criminalize money laundering through legislation. Several important provisions in the convention are Article 3 (1) letter (a) which requires every member country to criminalize money laundering related to the illicit trafficking of narcotics, in addition to regulating provisions regarding the list of violations related to the industry, distribution or illicit sale of narcotics and their organization and management, or finances from illicit drug trafficking activities. The most important thing in the convention is the substance that strengthens the formation of the International Anti Money Laundering Legal Regime, which is one of the international efforts to establish a new international legal regime in an international body. This regime aims to eradicate money laundering with a strategy to combat the proceeds of crime. In addition, this international anti-money laundering legal regime also determines the direction of policy to criminalize money laundering with certain standards that still provide a place for the legal sovereignty of each country (state sovereignty). The most important thing in the convention is the substance that strengthens the formation of the International Anti Money Laundering Legal Regime, which is one of the international efforts to establish a new international legal regime in an international body. This regime aims to eradicate money laundering with a strategy to combat the proceeds of crime. In addition, this international anti-money laundering legal regime also determines the direction of policy to criminalize money laundering with certain standards that still provide a place for the legal sovereignty of each country (state sovereignty).

Another quite monumental international effort was in 1989 when the countries that were members of the G-7 countries agreed to form the Financial Action Task Force on Money Laundering (FATF), as a task force with the task of compiling international recommendations to combat money laundering. FATF is an intergovernmental body as well as a policy-making body consisting of experts in the fields of law, finance, and law enforcement who assist state jurisdictions in compiling laws and regulations. Currently, FATF membership consists of 31 countries and territories, plus 2 regional organizations. FATF cooperates with several international bodies and organizations including ADB (Asian Development Bank), IMF (International Monetary Fund), Interpol, IOSCO (International Organization of Securities Commissions), and APG (Asia Pacific Group on Money Laundering), and Council of Europe MONEYVAL. The three main functions of FATF are:

a. Monitoring the progress achieved by FATF members in implementing measures to eradicate money laundering;
b. Conducting studies on money laundering trends, techniques and countermeasures; and
c. Promoting the adoption and implementation of anti-money laundering standards to the international community.

The definition of Asset Confiscation/Return is stated in Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters, stating that Asset Return is an effort to take over assets suspected of being the proceeds of crime, reviewed from court decisions that are legally binding both domestically and abroad. Considering that many assets are being taken from Indonesia and vice versa from abroad to Indonesia, one

important aspect that is very necessary is an international agreement that regulates the return of assets that are abroad. Indonesia's efforts to prevent Money Laundering through international cooperation often fail because in Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters, the weakness is that there is no detailed explanation regarding the Distribution of Proceeds from Confiscation of Assets from Criminal Acts (sharing fee forfeiture) and (Asset Management) asset management so that both of these things become obstacles for the Indonesian government in establishing MLA with other countries. Meanwhile, extradition is an effort to arrest perpetrators of criminal acts who are in a foreign country. Meanwhile, the Transfer of Sentenced Person agreement is the transfer of a defendant who has served half of a foreign country's criminal sentence and continues the remaining time of the criminal sentence that has not been served in his home country.

The asset recovery mechanism is explained in Articles 51 to 57 of the UNCAC, including confiscating assets without criminal conviction known as Non-Conviction Asset Forfeiture (NCB) or a civil asset recovery mechanism (in rem). The UNCAC mandate regarding this matter is contained in Article 54 paragraph (1) letter c which regulates "Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.". The provisions regarding confiscation without criminal conviction have not been comprehensively adapted to the legal system in Indonesia. In Articles 65 to 67 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering in conjunction with. Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling of Assets in Money Laundering or Other Criminal Acts, regulates the mechanism of investigators' authority to apply to the District Court so that the court decides that Assets known or reasonably suspected to be the result of a crime become state assets or are returned to those entitled. In this case, the Assets are assets suspected by the PPATK as suspicious transactions. With this mechanism, there is still a weakness where the objects of assets that can be seized are only assets contained in the user's account at the Financial Services Provider. Assets other than that, for example, assets in the form of movable or immovable goods other than assets included in the assets whose transactions have been stopped by the PPATK, cannot be objects of confiscation. The system of confiscation of assets without criminalizing the perpetrators has been implemented in several countries such as the United States and Australia, where every asset that will be confiscated and confiscated civilly can be blocked and must be announced to the public based on a court order. In the confiscation, there is no need for a criminal verdict stating the perpetrator of the crime is guilty, so this is the embodiment of the goal of the anti-money laundering regime with a focus on confiscating assets resulting from or instruments of crime before finding the suspect. The system that focuses on returning assets resulting from instruments of crime is in line with one of the goals of the law, namely to bring benefits to society, that the law makes a great contribution to general happiness and the most basic good is for the greatest happiness for all citizens (the greatest happiness of the greatest number). In countries that adopt the common law system,

Conviction (NCB) Asset Return as an instrument to confiscate and take assets originating from, related to, or resulting from crimes is commonly practiced. The roots of the NCB principle were first found in the Middle Ages in England when the British monarchy confiscated items considered to be instruments of death often referred to as Deodand. The emergence of the industrialization era in England then forced parliament to abolish deodand after the increasing number of accidents that occurred, causing many assets to be confiscated. Although in practice NCB is often considered oppressive and unfair, the first Congress of the United States maintained its use in shipping law by passing a regulation that authorized the federal government to seize ships. The Supreme Court later also supported the use of NCB in America in the Palmyra case which occurred in 1827 where the court rejected the argument of the shipowner's lawyer who said that the seizure and takeover of his ship was illegal because there was no verdict stating that the owner was guilty. This case became the basis for the use of NCB in the United States.

The NCB concept can be a very useful tool to seize and take over assets from criminals in Indonesia. There are at least several uses of NCB to assist law enforcement in the asset recovery process, namely:

a. NCB is not related to a crime so confiscation can be requested from the court more quickly than criminal confiscation. Unlike confiscation in criminal proceedings which require a suspect or a guilty verdict, NCB confiscation can be carried out as quickly as possible once the government suspects a connection between an asset and a crime. In the context of Indonesia, the speed of confiscation is essential in the stolen asset recovery process. As previously stated, corruptors often move their assets abroad to make it difficult for Indonesian law enforcement to confiscate and take them as soon as there is an indication that they will be investigated for involvement in a crime.

b. NCB uses civil standards of proof. This can facilitate stolen asset recovery efforts in Indonesia because civil standards of proof are relatively lighter to meet than criminal standards of proof. In addition, NCB also adopts a reverse burden of proof system, thus lightening the burden on the government to provide evidence for the lawsuit filed.

c. NCB is a lawsuit process against assets (in rem). This means that NCB only deals with assets that are suspected of originating, being used, or having a relationship with a crime. The perpetrator of the crime itself is not relevant here so the escape, disappearance, death of a corruptor, or even the acquittal of the corruptor is not a problem in NCB. The trial can continue and is not disturbed by the condition or status of the corruptor. Seeing how often corruptors escape or become ill during the corruption trial process in Indonesia, NCB is a very profitable alternative for the process of returning the assets of corruptors.

d. NCB is very useful for cases where criminal prosecution is hampered or impossible to carry out. NCB is very useful because law enforcement officers are dealing with assets from the corruptor so that the political and social costs of a criminal charge can be minimized. In addition, there are times when an asset related to a crime is not known to its owner or perpetrator. In this case, NCB is very useful in this condition, because what is being sued is the asset, not the owner. If using the criminal regime, the unclaimed asset will be difficult to take, because in general, confiscation in criminal law is related to the perpetrator of the crime. So if within a certain period after the confiscation is carried out, no other party objects, the state can immediately seize the unclaimed asset. Furthermore, it must be realized that the application of NCB in the confiscation of assets resulting from criminal acts is a way to overcome the stagnation of confiscation of assets resulting from criminal acts considering the provisions in the Criminal Procedure Code that an asset can only be confiscated if the public prosecutor can prove the defendant's guilt and the asset in question is the result or means of a crime (confiscation is very dependent on whether or not a defendant is proven). Confiscation of assets resulting from criminal acts based on the Criminal Procedure Code system cannot be carried out if the defendant cannot be present at the trial, either because he died, ran away, his whereabouts are unknown, or is permanently ill. Thus, of course, legal prosecution cannot be carried out against these assets, except by using the NCB instrument or provisions. For the application of NCB not to conflict with the fundamental principles in criminal law, namely the principle of the presumption of innocence as stated in the general explanation of the Criminal Procedure Code point c, demands confiscation of assets resulting from criminal acts based on NCB will only be made if the Criminal Procedure Code procedure cannot be carried out.

In building a confiscation system, as stated in the Star guidelines, jurisdictions need to consider whether in rem asset confiscation can be included in the applicable law (Lex Generalis) or made a separate Law (Lex Specialis). In addition, jurisdictions also need to consider to what extent existing procedures can be referred to and included and to what extent they must create new procedures. Conceptually, the StAR guidelines provide basic conceptual keys in terms of countries making efforts to eradicate corruption specifically and other crimes that can harm state assets or the state economy in general. The conceptual keys include:

1. In Rem confiscation (based on no criminal conviction) should not be a substitute for criminal prosecution;
2. The relationship between in rem asset confiscation cases and any criminal confiscation, including pending investigations, must be explained;
3. In rem asset confiscation must be available when criminal prosecution is not available or is unsuccessful;
4. The rules on evidence and applicable procedures must be provided as clearly and in detail as possible;
5. Assets derived from a wide range of criminal offenses should be subject to asset forfeiture;
6. The definition of assets within the scope of forfeiture should be interpreted broadly to include new or future forms of value;
7. Tainted assets acquired before the enactment of the In rem asset forfeiture law may be subject to forfeiture;
8. The government should have the authority to set limits in determining policies following the guidelines in forfeiture actions;
9. The government's steps should be specific in its actions to delay the investigation and management of assets that must be previously determined to be forfeited;
10. Steps taken in response and investigation can be taken without having to give notice to the asset holder and during the pre-judicial process to try the case related to the forfeiture claim;
11. There should be a mechanism to modify orders for surveillance, monitoring, and search of evidence and to obtain any ruling that remains bad to the government or a request for review is pending from any order that could place the forfeiture action beyond the reach of the courts; 12) Governments should be empowered to reverse transfers if the property has been transferred to an insider or anyone with an underlying knowledge of the illegal act;
12. Establish an agency with jurisdiction to investigate and prosecute forfeiture cases;
13. Consider assigning judges and prosecutors with specialized expertise or training in forfeiture to handle failed rem asset forfeitures;
14. Correct terminology should be used, especially where international cooperation is involved;
15. Extraterritorial jurisdiction should be granted to courts;

16. States should have the authority to enforce foreign applications;
17. States should have the authority to enforce foreign forfeiture requests and should enact laws that maximize the enforcement of their judgments abroad;
18. In rem asset forfeiture should be used to return property to victims;
19. Governments should be empowered to share assets or to return assets to cooperate within the jurisdiction;

From the several concepts above, it is a key reference in the act of asset confiscation, it is said that the implementation of criminal charges that support the confiscation of assets in rem will make criminal law effective and foster public confidence in its law enforcement. Therefore, confiscation of assets in rem can be an effective tool to recover assets related to crimes or other criminal acts, but it should not be used as an alternative to criminal prosecution if the jurisdiction can prosecute the offenders. In other words, criminals should not be allowed to avoid criminal prosecution by referring to the concept of confiscation of assets in rem as a mechanism to seek compensation for crimes that have been committed. In terms of the mechanism for preventing and overcoming criminal acts, in general, the best choice is to carry out criminal prosecution, criminal sanctions (criminal decisions), and confiscation actions. Thus, criminal prosecution should be carried out whenever possible to avoid the risk that prosecutors, courts, and the public will view the confiscation of assets as a sufficient sanction when criminal law has been violated. However, confiscation of assets in rem must complement criminal prosecution and criminal decisions. It may precede criminal charges or criminal sanctions simultaneously. In addition, in rem asset seizure should be maintained in all cases so that it can be used if criminal prosecution becomes unreachable or unsuccessful, and this principle should be expressly stated in the Law. It will still be necessary to prove that the asset is tainted. In this case, the asset is either the proceeds of crime or an instrument used to commit the crime.

Efforts to Optimize Asset Recovery from Money Laundering Proceeds in the Future

The Financial Transaction Reports and Analysis Center (PPATK) must continue to improve the quality of analysis results and examination results related to money laundering and asset recovery. This aims to return assets to victims through the optimization of asset recovery. In the future, PPATK will strengthen the quality of analysis results and examination results on the flow of financial transaction funds in the context of law enforcement.

PPATK continues to coordinate with law enforcement so that examination results can be followed up for law enforcement purposes. Legally, the confiscation and return of assets originating from the crimes of suspects and their descendants in the jurisdiction of Indonesia, namely the lack of understanding of the Lawmakers in making legal products related to asset recovery and the implementation of laws that are not running well.

The qualifications of the acts are arranged in such a way as to ensnare the perpetrators of money laundering, but some things must also be a point of attention, namely the object, namely the assets that are the assets of the victims of the crime. The articles in Law No. 8 of 2010 have been able to ensnare the perpetrators of money laundering, but it turns out that it does not provide a guarantee for victims to get back their assets that have been lost due to the perpetrator's actions.

In the general explanation of Law No. 8 of 2010, it is stated that in the concept of anti-money laundering, the perpetrators and the proceeds of the crime can be identified through tracing so that the proceeds of the crime are confiscated for the state or returned to those entitled to it. Based on this general explanation, it is clear that the purpose of the Law on the Prevention and Eradication of Money Laundering Crimes is, among other things, law enforcement to trace assets (wealth) which are then returned to those entitled to it or confiscated for the state. However, it turns out that the legal substance of the Law has not yet reached the point of returning assets to those entitled or in this case victims of crime. The return of assets resulting from criminal acts is not regulated at all in Law No. 8 of 2010 so regarding the return of the proceeds of crime in the form of wealth, it must return to the rules in the Criminal Procedure Code.

In the process of handling TPPU, coordination between investigators and the Financial Transaction Reports and Analysis Center (PPATK) plays a very important role. In Indonesia, PPATK acts as a Financial Intelligence Unit (FIU), and one of its tasks is to trace assets resulting from crime through the follow-the-money approach. In the field of asset recovery from criminal acts, PPATK acts as a provider of intelligence information in the financial sector for asset tracing, both in the process of analyzing financial transactions and at the stages of investigation, prosecution, and examination of defendants in court. Asset tracing by PPATK is not limited to a country's territory, so this institution has the authority to cooperate with similar institutions throughout the world. Domestic asset tracing is carried out in collaboration with financial service providers, banks, and non-banks, as well as other service/goods providers. To combat money laundering, financial service providers and other service/goods providers as the front line to carry out early detection of all suspicious transactions through the financial system to be further reported to PPATK (Rahayuningsih, 2011). The analysis process carried out

by PPATK assists law enforcement officers in providing information on suspected suspicious financial transactions. Following the mandate given in Article 46 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes against the authority of PPATK, the government issued Presidential Regulation Number 50 of 2011 concerning Procedures for the Implementation of PPATK's Authority.

The PPATK analysis process towards law enforcement if there is a suspicion of TPPU. Article 40 letter d, PPATK can recommend to law enforcement agencies the importance of conducting interception or wiretapping of electronic information and/or electronic documents following the provisions of laws and regulations. Furthermore, the authority to wiretap is explained in Article 39 of Presidential Regulation Number 50 of 2011 concerning Procedures for Implementing PPATK's Authority, so PPATK can recommend the importance of wiretapping to law enforcement agencies for electronic information and/or electronic documents following the provisions of laws and regulations. Recommendations are submitted by the Head of PPATK to the head of the law enforcement agency. Then, the institution receiving the PPATK recommendation is required to respond. Furthermore, the results of the interception or wiretapping processing are submitted to PPATK as long as they do not conflict with the provisions of laws and regulations. The results of the interception or wiretapping processing are confidential (Rahayuningsih, 2011). The presidential regulation above provides additional authority to the PPATK as stipulated in the provisions of Article 37, namely that the PPATK can receive reports and/or information from the public regarding suspected TPPU. Reports can be submitted electronically or non-electronically. The PPATK can follow up on the public report and then develop the report and/or information received; or place the report and/or information into the PPATK database. The report must be kept confidential by the PPATK. The action of tracing the perpetrator's assets for confiscation is one of the efforts to prevent/prevent the occurrence of money laundering during the handling of predicate crimes, but not all predicate crimes/criminal acts that trigger money laundering (predicate crimes) as explained in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering are subject to asset tracing activities for confiscation (the perpetrator's assets are not proceeds of crime/corporate delictie) only criminal acts that cause state financial losses, namely: Corruption. Predicate Crime perpetrators who generate wealth/money in large amounts from their crimes may have committed money laundering before being discovered by law enforcement officers, so law enforcement officers often only confiscate goods suspected of being the proceeds of crime (corpora delicate) and tools for committing crimes (instrumental delicate), assets that are claimed by Predicate Crime perpetrators as belonging to them and not the proceeds of crime have to be traced because they are hampered by the absence of laws and regulations that authorize law enforcement to make efforts to trace assets to be confiscated as many as 25 (twenty-five) original crimes of Money Laundering (Predicate Crime) other than corruption, so these efforts cannot be implemented (Setyowahyudi, 2016).

In general, the concept of returning evidence has been regulated in the Criminal Procedure Code, namely in Article 215 which states that "The return of confiscated objects is carried out unconditionally to the most entitled party, immediately after the verdict is issued if the convict has fulfilled the contents of the verdict." Regarding confiscated objects, Article 39 of the Criminal Procedure Code states that those that can be subject to confiscation are:

a) Objects or claims of the suspect or defendant which are wholly or partly suspected of being obtained from criminal acts or as a result of criminal acts;
b) Objects that have been used directly to commit a crime or to prepare for it;
c) Objects used to obstruct the investigation of a crime;
d) Objects that are specifically made or used to commit a crime;
e) Other objects that have a direct relationship to the crime committed.

In Law Number 8 of 2010 concerning the Eradication of Money Laundering Crimes, there is only one article that regulates confiscation, namely Article 81, which states that if sufficient evidence is obtained that there are still assets that have not been confiscated, the judge orders the public prosecutor to confiscate the assets. As explained above, in general, confiscation will also be associated with seizure whether it is related to the proof of the case and must be ordered by the judge to be confiscated for the confiscated property to be handed over to the rightful party (returned to the person or those mentioned in the decision, unless the object according to the judge's decision is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or if the object is still needed as evidence for another case (Article 46 paragraph (2) of the Criminal Procedure Code), or confiscation associated with additional criminal penalties, namely as regulated in Article 39 of the Criminal Code, which can be confiscated are: (Ginarsih, 2016)

a. Goods belonging to the convict obtained through crime;
b. Goods belonging to the convict that have been intentionally used to commit a crime.

Related to Article 39 letter a, these goods are objects of the Crime of Money Laundering which should have been confiscated from the start of the investigation, because this is the focus of the Crime of Money Laundering,

namely following the proceeds of the crime (tracing the proceeds of crime). So, this confiscation decision is very dependent on the professionalism of the investigator, both in terms of confiscation and in terms of blocking, although it can also be pursued with Article 81 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, as explained above, namely confiscation carried out during the trial process.

The relationship between the crime of money laundering and banking crimes and fraud is very closely related to the predicate crime of the crime of money laundering as regulated in Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Money laundering is a means for perpetrators of corruption to legalize their corrupt money by hiding or disguising the origin of money obtained from other criminal acts through the financial system mechanism.

Law enforcement and optimization of asset return from the proceeds of money laundering have not been optimal because not all assets from money laundering can be returned to victims. The legal instruments currently in force in Indonesia have not been able to optimally regulate and accommodate mechanisms for the return of assets resulting from crime, both in general crimes and in the realm of special crimes. The state should be able to provide the same justice for victims as when the state is a victim of corruption because the asset recovery model in corruption is more effective in restoring state assets so that it can be applied to general crimes with follow-up money laundering crimes. The concept of restitution for the return of losses to victims of crime from the perpetrator should be conceptualized with a mechanism that is closest to the provisions of the Corruption Eradication Law, only that the substitute sentence of imprisonment for defendants who are unable should not be applied in the original crime in the form of a general crime if the defendant is unable, the provisions for compensation regulated in civil law can still be implemented.

V. Conclusion and Suggestions

Conclusion

1) The correlation between law enforcement and optimizing the return of assets from the proceeds of money laundering is related, but in its implementation, the return of assets from the proceeds of money laundering has not been optimal because not all assets from money laundering can be returned to victims. The current legal instruments have not been able to provide maximum results in the return of assets from crimes, both in general crimes and in the realm of special crimes, as seen in the Indosurya case which has been described in this study, that the results of tracing and returning assets have not achieved maximum results to be returned to victims. The return of assets from the proceeds of money laundering is largely determined by the role of judges who have the authority through the decisions they make, as seen in the Binomo case (Indra Kenz) which has been described in this study where differences in interpretation by judges greatly determine the purpose of returning assets from criminal acts in the case.

2) International agreements play an important role in optimizing the return of assets from the proceeds of money laundering between countries. Through international agreements, it is easier to investigate, prosecute, and examine in court following the provisions of the laws and regulations of the requested country. International agreements have an important position in the framework of eradication and asset recovery. One form of cooperation as occurred in the Mediphos case and also the CV SMBM case that has been described in this study, is that Indonesian law enforcement can carry out the return of money laundering crime assets to victims from other countries. However, in the Indonesian legal system, there is still an asset confiscation system recommended by the International Convention (UNCAC) that has not been comprehensively regulated, namely regarding asset confiscation without criminalization or Non-Conviction Based (NCB) Asset Forfeiture. 3) Legal efforts in optimizing the return of assets from the proceeds of money laundering in the future are by regulating more specifically regarding asset return. In the criminal law system, there has not been the formation of a special institution to manage and administer assets originating from criminal acts including money laundering which can encourage the return of assets from the proceeds of the crime to be carried out transparently. There is a need for optimization in the regulation and implementation of Non-Conviction Based (NCB) Asset Forfeiture into the justice system with the aim of legal benefits, expansion of StAR (Stolen Asset Recovery), and development of bilateral and multilateral agreements with other countries.

VI. Suggestions

1) Legislators need to include the concept of asset recovery in the eradication of Money Laundering, especially for the assets of victims of crime by adding a replacement fine, but if they do not pay within a certain time, the perpetrator's assets will be auctioned, and then returned to the victim of the crime in the amount of their assets that were harmed by the perpetrator. It is also necessary to immediately ratify the Draft Law on Asset Confiscation as a form of optimizing the return of assets resulting from money laundering.

2) The government should increase bilateral and multilateral agreements with countries where assets resulting from crime are placed to make the return of assets resulting from money laundering more effective. In

addition, the government and regulators must align national and international laws, not only through ratification of related conventions but also through comprehensive regulations regarding asset confiscation mechanisms recommended by international conventions, one of which is regarding asset confiscation without criminal punishment.

3) The idea of future law as a novelty in this study is in the context of returning assets originating from money laundering crimes that can create a prosperous, just, and prosperous Indonesia, namely by optimizing the regulation and implementation of Non Conviction Based (NCB) Asset Forfeiture into the justice system with the aim of legal benefits, expanding StAR (Stolen Asset Recovery), developing bilateral and multilateral agreements with other countries to facilitate international cooperation and diplomatic relations related to asset return, providing an expansion of the authority of law enforcement agencies to be ready to face transnational TPPU such as the Indonesian Attorney General's Office, the Indonesian Corruption Eradication Commission, the Indonesian Police, and the Financial Transaction Reports and Analysis Center (PPATK), as well as the establishment of a special institution in managing and administering assets originating from criminal acts including money laundering crimes that can encourage the return of assets resulting from these crimes to be carried out transparently.

References

[1]. Adrian Sutedi, Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, dan Kepailitan. Jakarta: Sinar Grafika, 2007.
[2]. Arief, B. N, Kapita Selekta Hukum Pidana, Bandung, Citra Aditya Bakti, 2013.
[3]. Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana, Jakarta, 2022
[4]. Bambang Setyowahyudi, Strategi Penanganan Tindak Pidana Pencucian Uang. Surakarta : UNS Press, 2016.
[5]. Barda Nawawi Arief, Kebijakan Hukum Pidana. Semarang: Bunga Rampai, 2011.
[6]. Bima Priya Santosa, et. al, Lembaga Pengelola Aset Tindak Pidana Tertentu. Jakarta: The Netherlands-Indonesia National Legal Reform Program, 2010.
[7]. Chandra T Santoso, dkk, Panduan Investigasi dan Penuntutan dengan Pendekatan Hukum Terpadu. Bogor: Cifor, 2011.
[8]. Ferry Saputra, "Polisi Masih Memburu Aset KSP Indosurya Rp 3 Triliun", https://nasional.kontan.co.id/news/polisi-masih-memburu-aset-ksp-indosurya-rp-3-triliun#:~:text= Kenyataannya%2C%20persoalan%20aset%20dari%20kasus,mencapai%20Rp%202%2C4%20triliun, diakses 5 November 2023
[9]. https://pji.kejaksaan.go.id/index.php/home/berita/1938, diakses 7 November 2023
[10]. Iman Santoso, Hukum Pidana Internasional. Bandung: Pustaka Reka Cipta, 2013.
[11]. Ivan Yustiavandana, Arman Nefi, dan Adiwarman, Tindak Pidana Pencucian di Pasar Modal. Bogor: Ghalia Indonesia, 2010.
[12]. Jimmy Gurule, Unfunding Terror: The Legal Response to The Financing of Global Terrorism, Cheltenham: Edward Elgar Publishing Limited, 2008.
[13]. Muhammad Yusuf, Mengenal, Mencegah, Memberantas Tindak Pidana Pencucian Uang, Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan PPATK, 2014.
[14]. Mukti Fajar et al. Dualisme Penelitian Hukum Normatif dan Empiris. Yogyakarta: Pustaka Pelajar, 2010.
[15]. Peraturan Bank Indonesia Nomor 3/10/PBI/2001 Tahun 2001 tentang Penerapan Prinsip Mengenal Nasabah (Know Your Customer Principles)
[16]. Peraturan Kejaksaan Republik Indonesia Nomor 7 Tahun 2020 tentang Perubahan Kedua atas Peraturan Jaksa Agung Nomor PER-027/A/JA/10/2014 tentang Pedoman Pemulihan Aset
[17]. Peraturan Kejaksaan Republik Indonesia Nomor 9 Tahun 2019 tentang Perubahan atas Peraturan Jaksa Agung Nomor PER-027/A/JA/10/2014 tentang Pedoman Pemulihan Aset
[18]. Purwaning M Yanuar, Pengembalian Aset Hasil Korupsi (Berdasarkan Konvensi PBB Anti Korupsi 2003 dalam Sistem Hukum Indonesia. Bandung: Alumni, 2007.
[19]. Pusat Pelaporan dan Analisis Transaksi Keuangan Indonesia, Ringkasan Eksekutif Laporan Hasil Tipologi Pencucian Uang Berdasarkan Putusan Pengadilan Atas Perkara Tindak Pidana Pencucian Uang, 2021
[20]. Rahel Narda Chaterine, Krisiandi Tim Redaksi, "Polri: Total Aset Indra Kenz yang Disita pada Kasus Binomo Capai Rp 67 Miliar", https://nasional.kompas.com/read/2022/06/09/095 81141/polri-total-aset-indra-kenz-yang-disita -pada-kasus-binomo-capai-rp-67-miliar. Diakses 5 November 2023
[21]. Romli Atmasasmita, Globalisasi Kejahatan Bisnis. Jakarta: Kencana Prenada Media Group, 2010.
[22]. Romli Atmasasmita. Perbandingan Hukum Pidana. Bandung: Alumni, 2000.
[23]. Santoso, T., Chandra, R., Sinaga, A.C., muhajir, M. dan Mardiah, Panduan Investigasi dan Penuntutan dengan Pendekatan Hukum Terpadu. Bogor: Cifor, 2011.
[24]. Soerjono Soekanto, Kesadaran Hukum dan Kepatuhan Hukum. Jakarta: Rajawali Press, 2004.
[25]. Soerjono Soekanto, Pengantar Penelitian Hukum. Jakarta: Penerbit Universitas Indonesia (UI-Press), 2006.
[26]. Sutan Remy Sjahdeini, Pencucian Uang: Pengertian, Sejarah, Faktor-Faktor Penyebab, dan Dampaknya Bagi Masyarakat, dalam Jurnal Hukum Bisnis, (Jakarta : Yayasan Pengembangan Hukum Bisnis, Volume 22 Nomor 3 Tahun 2003).
[27]. Theodore S. Greenberg, Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture (StAR Initiative). USA, World Bank Publications, 2009.
[28]. Toetik Rahayuningsih, Analisis Peran PPATK Sebagai Salah Satu Lembaga Dalam Menanggulangi Money Laundering di Indonesia. Surabaya : Fakultas Hukum Universitas Airlangga, 2011.
[29]. Tood Barnet, "Legal Fiction and Forfeiture: A Historical Analysis of the Civil Asset Forfeiture Reform Act", 40 Duquesne Law Review Fall 2001
[30]. Undang-Undang No 8 tahun 1981, Kitab Undang-Undang Hukum Acara Pidana
[31]. Undang-Undang No. 25 Tahun 2003 tentang perubahan atas Undang-Undang Nomor 15 Tahun 2002 tentang Tindak Pidana Pencucian Uang
[32]. Undang-Undang No. 5 Tahun 2009 tentang Pengesahan United Nations Convention Against Transnational Organized Crime (Konvensi Perserikatan Bangsa-Bangsa Menentang Tindak Pidana Transnasional yang Terorganisasi)
[33]. Undang-Undang No.8 tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

[34]. Undang-Undang Nomor 7 Tahun 2011 tentang Mata Uang
[35]. Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang
[36]. Undang-Undang Nomor 8 Tahun 2014 tentang Pengesahan Perjanjian antara Republik Indonesia dan Republik Korea tentang Bantuan Hukum Timbal Balik dalam Masalah Pidana
[37]. Undang-Undang Nomor 9 Tahun 2014 tentang Pengesahan Perjanjian antara Republik Indonesia dan Republik India tentang Bantuan Hukum Timbal Balik dalam Masalah Pidana
[38]. Undang-Undang Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang
[39]. United Nations Conventions Against Corruption Tahun 2003.
[40]. Yenti Ganarsih, Penegakan Hukum Anti Pencucian Uang dan Permasalahannya di Indonesia. Jakarta: PT. Raja Grafindo Persada, 2016.