

THE INVESTIGATION AUTHORITY OF CRIMINAL ACTION MONEY LAUNDERING (AML) FOR JUSTISIABLE OF MILITARY JUSTICE

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ABSTRACT

Investigators of predicate crimes who are authorized to conduct ML investigations have determined in a limited manner, namely only appointing investigators from the State Police agency Republic of Indonesia, Attorney General's Office, Corruption Eradication Commission (KPK), National Narcotics Agency (BNN) and the Directorate General of Taxes and the Directorate of Customs and Excise of the Ministry of Finance Republic of Indonesia, meanwhile a TNI soldier, TNI Investigator is not on the list as an investigator for predicate crimes. The purpose of this study is to analyze the authority TNI investigators in conducting an investigation of money laundering offenses allegedly committed by Justisiabel Military Courts are still a problem, on the other hand there should be no omission of every act that violates the law in the pursuit of justice and legal certainty. Method The approach used in this research is a sociological juridical approach with using secondary data and reinforced by primary data. Secondary data obtained from interviews with resource persons, and questionnaires distributed to nurses in the District Sidoarjo, while secondary data were obtained from the statute approach and conceptual approach.

The sampling method chosen is the purposive sampling method which is considered to be able to represent the population. The data obtained from this study were then analyzed qualitatively to answer the problems in this research. The results of this study indicate that according to the applicable procedural law within the Military Courts which are authorized to conduct an investigation into a criminal act allegedly committed by a Judicial Justicia he military is a TNI Investigator, it turns out that it can't be applied immediately in the process ML investigation because the Law (UU TPPU) has determined otherwise, in providing ML investigation authority.

Keywords : Money Laundering, Authority, Military Justice

INTRODUCTION

The authority of TNI Investigators in conducting investigations of suspected criminal acts carried out by the Military Court Justice, applies to all criminal acts, both criminal acts criminal offenses regulated in the Criminal Code, the Criminal Code and criminal acts regulated by law others, of course as long as there are no other provisions of the law. So whether the investigative authority applies to the Crime of Money Laundering (TPPU), because it is in accordance with the mandate of the law that is given the authority to conduct ML investigations returned to the investigator of the original crime. So do TNI investigators have a strong basis for being able to carry out a money laundering offense investigation so that the results of the investigation can be accepted in accordance with applicable law.

This is where the legality of the authority of TNI investigators in conducting investigations against money laundering offences is here. What is alleged to have been done by the Military Court Justice is still a problem, on the other hand parties must not allow any unlawful act in an effort to justice and legal certainty. This is in line with the mandate of the Head of the TNI at the flag ceremony dated 17 August 2017 which stated "We must struggle in organizing and enforcing" fair legal system. We remember that all citizens are equal in front of us law and deserve justice. Therefore the law must be upheld for justice all the nation's children". For this reason, in this paper the author tries to provide input suggestions, in the framework of the law enforcement process within the Military Courts, particularly in the ML investigation.

As described in the background above, there are problems in This research is: (a) How is the authority to investigate money laundering offenses according to article 68 Law Number 8 of 2010 concerning Prevention and Eradication of Crime Money laundering ? ; (b) What is the authority of TNI Investigators in conducting investigations? Against money laundering offenses allegedly committed by the Military Court Justice in accordance with the law Number 31 of 1997 concerning Military Courts?

THEORETICAL FRAMEWORK

Authority Theory

The word authority comes from the basic word authority which is defined as authority, the right and power to do something. Authority is power formal, powers conferred by law or from executive administrative powers. According to Ateng Syafrudin (2000) there is a difference between the notion of authority and authority, authority (authority gezag) is what is called formal power, power which comes from the power granted by the Act, while the (competence bevoegheid) only about a certain "onderdeel" (part) of authority.

Within the authority there are powers (rechtsbevoegdheden). Authority is the scope of public legal action, the scope of government authority, not only covers authority to make government decisions (bestuur), but includes authority in the context of implementation of duties, and assigning authority and distribution of the main authority is determined in the laws and regulations. Juridically, the notion of authority is the ability given by regulations legislation to cause legal consequences (Indrohato, 1994). Whereas the definition of authority according to H.D. Stout is "bevoegheid wet right worden omscreven als het geheel van bestuurechtelijke bevoegdheden door publiekrechtelijke rechtssubjecten in het bestuurechtelijke rechtsverkeer" that authority can be explained as a whole rules relating to the acquisition and use of government authority by subjects public law in public law (Stout, in Fachruddin, 2004).

Theory of the Crime of Money Laundering.

The term money laundering or money laundering has been known since 1930 in America United States, that is when Al Capone, America's greatest past criminal, laundered black money from his criminal attempt using Meyer Lansky, a Polish, who is an accountant, laundered Al Capone's crime money through a laundry business (Sutedi, 2010). Al Capone buy a legitimate and official company, namely a clothes washing company or so-called laundromat which at that time was famous in the United States as one of its strategies, which then this clothes washing business developed, and various proceeds of money were obtained crimes such as from other business branches are invested in this clothes washing company, such as the proceeds of illegal liquor, gambling proceeds and the proceeds of prostitution.

METHOD

This research was conducted using a normative juridical research method (Soekanto, et. al, 1994) by conducting a comprehensive study based on laws and regulations as well as empirical juridical research, namely conducting an assessment based on analysis and observation of the Handling of the Crime of Money Laundering (TPPU), as excess of the more aggressive eradication of corruption. This research is a legal research that uses several approaches to answer the problems studied, namely: 1) the legal approach (statute approach), 2) conceptual approach (conceptual approach), 3) comparative approach (comparison approach), and 4) historical and philosophical approach (historical approach) and (philosophy approach).

Data processing is done qualitatively. Written legal materials that have been collected and then systematized according to the problems studied. Furthermore, the legal material is reviewed and described in accordance with the problem with the following: using relevant theoretical foundations. To answer the problem, on legal materials that has been systematized, then an assessment is carried out so that it can answer correctly meaning and position as well as the legal implications of the State Policy in the constitutional system Indonesia, between the application of national law in military crimes.

DISCUSSION

Money Laundering is simply defined as a process of making the proceeds of crime (proceedings) of crimes) or referred to as dirty money that is converted or converted into a form that looks legal so that it can be used safely (Setiadi, et al; 2010). (Dr. Yenti Garnasih, S.H., M.H. in his book Enforcement of Anti-Money Laundering Laws and The problem is in Indonesia). The purpose of converting or changing these assets is to hide or disguise the proceeds of crimes as if the property comes from activities that are legal and safe to enjoy (Ganarsih, 2003).

Definition of the Crime of Money Laundering (TPPU)

To understand the meaning of the Crime of Money Laundering (TPPU), the author conveys first. First, a simple example is as follows: "a person who has assets resulting from a crime, for example money from corruption, then to obscure the origin of wealth as if the result of a lawful transaction, that person will try to change first into another form, for example saving it first in the form savings or deposits. This example is known as the Crime of Money Laundering (TPPU).

In general, there are 3 patterns of actions carried out by perpetrators in committing money laundering offenses namely Placement, Layering and Integration. Placement (Placement) is an attempt to place cash originating from a criminal act into a financial system (Financial system) or institutions related to finance, for example by how to deposit. Layering is an attempt to further distance wealth originating from a criminal act, for example transferring assets that have been placed from one financial service provider to another. Integration (Integration) is an attempt to use the assets resulting from a criminal act that has been placed (placement) and or layering which looks as if it is a legal property for halal business activities, for example used for company capital.

Money Laundering is a double crime because of this crime, it cannot be released from other crimes as predicate offenses/predicate offenses, or in other words, that money laundering offences will not appear by itself without any action predicate offense/predicate offense. For example, someone who spend or transfer money resulting from corruption, then the act of someone who has spending or transferring money constitutes money laundering offenses, while

corruption is a crime/predicate offense. However, not all types of crimes/crimes can be crime/crime originating from a money laundering offence. The types of crimes/crimes that can be a crime/predicate offense that precedes this money laundering offense, namely the act of criminal offense as stipulated in article 2 paragraph (1) of Law Number 8 Year 2010 regarding ML. In this article, 26 types of crimes can be determined be a predicate crime of a money laundering offense including corruption, bribery, narcotics, psychotropic substances and so on.

Investigators and Investigations in Military Courts Justifiable and Jurisdiction are two different things, but they are mutually exclusive related. Justiciabel are people who are subject to or submitted to the authority of the body certain courts, while Jurisdiction is the authority of the court to examine and judge. Military Court Justice means people who submit or are subject to Military Courts, including TNI Soldiers. Justifiable Military Courts become Jurisdiction (authority) Military Court if committing or suspected of committing a crime, because The authority of the Military Court is to examine, hear, and decide cases of criminal acts criminal. As for what is included in the Justice of the Military Court as specified in article 9 point 1 of Law Number 31 of 1997 is a person who at the time crime, are: (a) Soldier; (b) Which by law is equated with soldiers; (c) Member of a group or agency or body or the equivalent or considered a soldier by law; (d) A person who does not belong to the group in letter a, letter b, and letter c but upon the decision of the Commander in Chief with the approval of the Minister of Justice, must be tried by a Court within the Military Court environment.

In the provisions of this article, apart from the regulation regarding the Justiciabel Military Court, There is also a provision regarding the Jurisdiction of the Military Courts, namely adjudicating criminal cases. One of the subsystems of the Criminal Justice System is the criminal justice process an investigation that aims to find and collect evidence with that evidence make clear the crime that occurred and to determine the suspect. According to article 1 number 11 of Law Number 31 of 1997 concerning Military Courts with the authority carry out investigations into criminal acts that are suspected to have been carried out by the Judicial Justicia

The military is carried out by TNI investigators. The law has determined which includes Investigators The TNI is the superior with the right to punish (Ankum), the military police, and the public prosecutor. The Superior Investigator with the Right to Punish (Ankum) has the authority to conduct investigations into criminal acts committed by members of TNI soldiers who under his command authority, but for effectiveness and efficiency in its implementation is carried out by Military Police Investigators and/or Public Prosecutor. As well The Prosecutor's authority to conduct investigations is limited to certain cases of the order of the Prosecutor General of the TNI (Orjen TNI). Thus, in general, investigations in Military Courts are carried out by Military Police Investigators, but of course not reduce the authority of the Ankum investigator and the Public Prosecutor in accordance with the authority.

The Authority of TNI Investigators as stipulated in Article 71 Law Number 31 of 1997 has the authority to carry out investigations against an event that is suspected to be a criminal act. To interpret the word "criminal act" as stated in Article 71, means that TNI investigators have the authority to carry out investigations against any criminal acts, both criminal acts regulated in the Criminal Code, the Criminal Code and other laws. Referring to these provisions, the investigation of criminal acts carried out by the Military Court Justice cannot be carried out by other Investigators other than those who has been determined by law, namely the TNI Investigator. Investigating the Crime of Money Laundering (TPPU) Basically, the ML investigation process still refers to the applicable procedural law in each court environment, as long as it is not specified in the Money Laundering Law other. This is in accordance with Article 68 of Law Number 8 of 2010 which states "Investigation, prosecution, and examination in court hearings as well as the

implementation of decisions that have been obtain permanent legal force against criminal acts as referred to in This law is carried out in accordance with the provisions of laws and regulations, unless specified otherwise in this Act". In other words, if the money laundering offences are processed through the courts

In general, the investigation process still refers to the procedural law applicable in the environment General Courts, namely the Criminal Procedure Code (Law Number 8 of 1981), as well as if the money laundering offences processed through the Military Court, the investigation process still refers to the procedural law that applies within the Military Court, namely Law Number 31 of 1997.

About Military Courts.

As described above, according to the applicable procedural law in the environment Military Courts that are given the authority to conduct investigations of criminal acts What is suspected to be done by the Military Court Justice is the TNI Investigator. these terms it turns out that it does not necessarily apply in the money laundering offense investigation process because The Law (UU TPPU) has determined otherwise, in granting investigative authority Money Laundering. One of the characteristics of ML is the granting of investigative authority to predicate crime investigator.

This is in accordance with Article 74 of Law Number 8 of 2010 which states: "Investigations of money laundering crimes are carried out by investigators of predicate crimes in accordance with with the provisions of procedural law and statutory provisions, unless otherwise specified according to this law". In other words, those who are authorized to carry out . The investigation for Money Loundering is based on investigators from the agency that has conducted the investigation the original crime. The types of predicate offenses that preceded money laundering offenses have been determined in article 2 paragraph (1) of Law Number 8 of 2010, for example corruption, bribery, narcotics and so on. Looking at the types of predicate crimes as referred to in Article 2 paragraph (1), it follows that: It is certain that TNI (Indonesian National Army) investigators have the authority to carry out investigations if the criminal act is suspected to have been committed by the perpetrator who is included in the Judicial Justification Military. Then the problem arises if the investigation of the predicate crime is found there is sufficient preliminary evidence that money laundering offences have occurred.

Do TNI Investigators have the authority to carry out an Money Laundering investigation in accordance with the explanation of Article 74 of the Law Number 8 of 2010 which states "The original investigator can carry out criminal investigations" because the perpetrators of the crime are included in the Military Court Justice and TNI (Indonesian national army) Investigators are also investigators of predicate crimes because they have conducted investigations to the original crime. If we only look at the sound of Article 74 of the Law Number 8 of 2010 which states "Investigation of criminal acts of money laundering is carried out by investigators for predicate crimes" it seems that TNI investigators are "authorized" to investigate money laundering offenses which is suspected to have been carried out by the Military Court Justice. To find out whether it is authorized TNI (Indonesian National Army) investigators conduct Money Laundering investigations, of course we need to understand in its entirety the meaning of the article.

To find out the purpose of Article 74 of Law Number 8 of 2010 mentioned above, need to understand the explanation of the article which is an inseparable part of the the provisions of that article. Elucidation of article 74 states "What is meant by "investigators of criminal acts" redicate offense" means an official from an agency authorized by law to conduct investigations, namely the Indonesian National Police, the Prosecutor's Office, the Commission Corruption Eradication

(KPK), the National Narcotics Agency (BNN), and the Directorate General of Taxes and the Directorate General of Customs and Excise of the Ministry of Finance of the Republic of Indonesia”

Observing the explanation of the article, investigators of predicate crimes who are authorized conducting an investigation of money laundering offenses has been determined in a limited manner, namely only referring to investigators from the Indonesian National Police, the Prosecutor's Office, the Eradication Commission Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN) and the Directorate General of Taxes and the Directorate General of Taxes Customs and Excise of the Ministry of Finance of the Republic of Indonesia, meanwhile TNI investigators did not enter inside it. With the absence of the TNI Investigator as the original investigator in the money laundering offense case So according to the author, TNI investigators are not authorized to investigate money laundering offenses even though The perpetrator is a Military Court Justice and TNI Investigators have conducted an investigation the original crime.

So what if there is money laundering offense allegedly committed by the Military Court Justice? on the one hand in accordance with the authority granted by law ((UURI Number 31 1997) investigation of the original crime (eg corruption) is of course carried out by TNI Investigators because other investigators do not have the authority to do so, in On the other hand, according to the explanation of Article 74 of Law Number 8 of 2010 TNI investigators do not including as an investigator for predicate crimes appointed to conduct ML investigations.

Are TNI investigators authorized to carry out their ML investigations based on the *lexi principle? specialis derogat legi generalis* (special rules override general rules) with Based on the balance, the authority of TNI Investigators is regulated in a special law, namely: Law Number 31 of 1997 concerning Military Courts. In the author's opinion, no The authority of TNI Investigators is right to be able to carry out ML investigations on the basis of to the principle of *lex specialis derogat legi generalis*, for the following reasons:

1. Both RI Law No. 31 of 1997 and RI Law No. 8 year 2010 is both a special rule. Specificity of Law Number 31 of 1997 based on the perpetrator of the crime (Justicial Military Court), while the specificity of Law Number 8 of 2010 is based on the type of crime (TPPU) and in it specifically regulated the procedural law, including on authority investigation.
2. Law Number 31 of 1997 concerning Military Courts as a rule of law events within the Military Courts are *lex specialis* of Law Number 8 1981 concerning the Criminal Procedure Code as a rule of procedural law within the General Courts and both are formal criminal law (procedural law).

CONCLUSION

With this problem, if the money laundering offense investigation is still (forced) to be carried out, by TNI investigators, according to the author, the legality of the investigation will be a matter of debate because it is contrary to the intent of article 74 above and can be a loophole for the Defendant or Legal Counsel at the time of making exceptions or defense in the trial process. Apart from the issue of legality in the investigation of money laundering offenses against the perpetrators who are included in the Justifiable Military Court, of course we agree that in the pursuit of justice and certainty By law, there should be no omission of a criminal act without a legal process. For accommodate that problem, then in practice if there is an alleged money laundering offence carried out by the Military Court Justice, it is sufficient to apply the article of the original crime only, while the money laundering offenses can be considered as a ballast by not

closing it the possibility to be examined and in the file separately, of course, carried out by the investigator authorized.

The need for administrative follow-up, so that TNI investigators have legality in conducting Money Laundering investigations conducted by the Military Court Justice and do not become legal loopholes in the prosecution process, it is necessary to make improvements to the explanation of Article 74 of Law Number 8 of 2010 concerning Money Laundering by including: TNI (Indonesian National Army) investigators in it. As long as TNI (Indonesian National Army) investigators are not included in it, according to the author, the legality of the investigation of money laundering offenses carried out by the Military Court Justice will always be the subject of debate.

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