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Application of Reverse Evidence for The Crime of Money Laundering Based on The Origin of Narcotics

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Abstract

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Reverse Evidence,
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The perpetrators of money laundering proceeds from narcotics crimes use banking facilities in carrying out their crime businesses so that banking products offered to the public can potentially be misused and used to benefit the narcotics criminals or to disguise and hide the proceeds of their crimes. The purpose of this study was to analyze the application of reverse evidence for perpetrators of money laundering crimes with drug related crimes in North Sumatra, Indonesia. With a qualitative research approach, the data was collected through interviews, observations, and literature studies, including the related laws. The informants in this study were the officials of the Directorate of Drug Investigation, Lawyers, Academics, Prosecutors, Investigators, Judges, and Members of the North Sumatra House of Representatives. The purposive sampling technique was used to identify the informants. This study raised an important issue of reverse evidence for the crime of money laundering based on the origin of narcotics, highlighting the drawbacks in the related laws. It was also found that the law enforcement process for narcotics criminals is adjusted to the rules contained in Law no. 35 of 2009 concerning Narcotics and Law no. 35 of 2010 on the Crime of Money Laundering in North Sumatra. The inverse burden of proof for perpetrators of money laundering crimes with narcotics originating crimes in North Sumatra is carried out in accordance with the rules contained in Articles 77 and 78 of the Money Laundering Law, where the defendant is given the authority to prove that his assets are not the proceeds of crime. The results of this study also found that there was an increase in the number of perpetrators of narcotics crimes and money laundering in North Sumatra during the last three years. A total of six (6) decisions on money laundering crimes were given in North Sumatra which had a permanent legal force. However, between 2018-2021, only two (2) cases of Money Laundering of narcotics predicate cases have been found but not yet signed nor any sentence given.

Introduction

The development of the crime rate in Indonesia continues to increase every year, causing many people discomfort, especially during the current pandemic. One of the most troubling types of crime is the narcotics crime. Currently, the problem of narcotics has become a problem for nations because it can be categorized as a transnational crime. In law enforcement, narcotics crimes are included in the category of violations in the domain of special criminal law which have material juridical and formal juridical implications. Various modus operandi of narcotics crimes has been evident which show how the criminals ensnared new users as victims and plunged them into a counterproductive life and developing them into potential drug dealers.

Narcotics crime, currently developing rapidly with the development of technology, poses a serious threat to each country in general and Indonesia

in particular. The regulation on narcotics crime must be more serious considering that this crime has become a crime that crosses state boundaries. Law enforcement officers should devise special instruments to eradicate these crimes, to suppress and control the number of narcotics abuses to a minimum and make efforts to reduce the adverse effects caused by narcotics abuse.

Law enforcement against narcotics crimes has been widely carried out by law enforcement officers and has received many judges' decisions. Law enforcement should be expected to be a deterrent factor to the increase in illicit trade and narcotics trafficking. However, the more intensive law enforcement gets active, the higher is the circulation and increase in the illicit trade of narcotics. The statutory provisions governing the narcotics problem have been drawn up and enforced, however, this crime related to narcotics cannot be appeased. In recent years, many drug dealers and dealers have been caught and received severe sanctions, but other perpetrators seem to have ignored these instances and are even more inclined to expand their area of operation.

Narcotics-related crimes are included in extraordinary crimes. The number of incidents of narcotics-related crimes in Indonesia in 2015 – 2019 has shown fluctuation. Criminal statistical data released by the Central Statistics Agency shows that at the national level the number of crimes related to Narcotics in the jurisdiction of the North Sumatran regional police ranks second with 6,201 incidents, the most being the Metro Jaya Regional Police with 6,338 incidents ([Criminal Statistics, 2020](#)). North Sumatra is one of the fertile areas for the development of narcotics crime. In this region, many are found as distributors, dealers, dealers, and sellers. They work in a disconnected network and often do not know each other. Most law enforcement officers could only arrest traffickers and perpetrators as users; though the North Sumatra Regional Police have also uncovered and arrested many narcotics dealers, as seen in the data on the settlement of drug crimes in [Table 1](#):

Table 1. Narcotics Crime Data
Directorate of Investigation and Narcotics of the North Sumatra Regional Police, Years 2019 to February 2021

No.	Types of Crime	Years					
		2019		2020		2021	
		Number of Crimes	Number of Crime Settlement	Number of Crimes	Number of Crime Settlement	Number of Crimes	Number of Crime Settlement
1.	Narcotics	6466	5865	7288	7265	1466	1105

Source: [Directorate of Investigation and Narcotics of the North Sumatra Regional Police, 2021](#)

Furthermore, the decisions on money laundering cases in 2018 belonged to 16 provinces. Most of the decisions on money laundering cases were in DKI Jakarta as many as 15 decisions (28%). This was in accordance with the description of high-risk areas based on the results of the Indonesian

National Risk Assessment on Money Laundering, where the document showed that DKI Jakarta was the area with the highest risk of money laundering. The next province with the most money laundering cases was North Sumatra (6 decisions, 11%); Central Java and East Kalimantan (5 decisions each, 9%); Banten (4 decisions, 7%); Aceh, West Java, West Nusa Tenggara, Riau (3 decisions each, 6%); East Java, South Kalimantan, Lampung, East Nusa Tenggara, Papua, West Sumatra and South Sumatra (1 verdict each, 2%) ([Financial Transaction and Reporting Center, 2018](#)).

Based on these data, it shows that efforts were made by law enforcement police officers to suppress the number of narcotics crimes. However, the crime of money laundering and drugs could not be resolved. Not only that, to create a deterrent effect on narcotics criminals, in addition to implementing Law no. 35 of 2009 concerning Narcotics, the police also used an additional instrument of Law Number 8 of 2010 concerning the Acts of Laundering. If suspicious elements were found, especially for narcotics traffickers, strict action would be taken by profiling the perpetrators. The aim was to impoverish the perpetrators of narcotics crimes because it turned out that so far, the perpetrators of narcotics crimes had enjoyed a lot of the proceeds of their illicit sales and had hidden them in the form of movable and non-movable assets. These perpetrators of money laundering used banking facilities in carrying out their illicit businesses so that banking products offered to the public can potentially be misused and benefits be derived for the narcotics criminals to disguise and hide their criminal proceeds.

The type of criminal acts at high risk of occurrence and frequency in Money Laundering crimes originated from Narcotics. These perpetrators frequently identified had profiles of self-employed, unemployed (not working) and private employees. The profiles of students/students, workers/farmers, the police of the Republic of Indonesia/the Indonesian National Army, and civil servants were at a low risk. If these perpetrators of the Money Laundering Crime originating from Narcotics objected to any allegations and accusations imposed upon them, they were given the opportunity to prove their innocence. They were required to prove that their wealth did not originate from the proceeds of the crime of money laundering to avoid being ensnared under the Money Laundering Law. This is stated in Article 77 and Article 78 of the Money Laundering Law which reads thus:

“In accordance with the provisions of Article 77 of the Money Laundering Law, the defendant is obliged to prove that his assets are not the result of a criminal act at trial. Article 78 of the Anti-Money Laundering Law mandates the judge to order the defendant to prove the said assets by submitting sufficient evidence” (Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering).

This type of evidence is also regulated under the Criminal Procedure Code. This type of evidence requires the Defendant to prove that he is not guilty and refute to the charges of the Public Prosecutor. Article 183 of the Criminal Procedure Code stipulates that to determine a criminal

offense against a defendant, his guilt must be proven by at least two valid pieces of evidence, for the judge to give the conviction that a criminal act had occurred. Furthermore, Article 189 paragraph (4) of Law no. 8 of 1981 concerning the Criminal Procedure Code (“KUHP”) states: *“The defendant’s statement alone or the defendant’s confession is not sufficient to prove that he is guilty of committing the act he is accused of but must be accompanied by other evidence.”* The legal evidence known in Article 184 paragraph (1) of the Criminal Procedure Code include witness testimony, expert testimony, letter, instruction, and defendant’s statement.

Therefore, a need was felt to conduct research related to the application of reverse evidence for perpetrators of money laundering crimes. This study responds to these problems and conditions because the perpetrators of narcotics crimes and money laundering had cause huge state losses. The government, the community, the police must be at the forefront as a bulwark to prevent and eradicate narcotics crimes. This study is an attempt to analyze the application of reverse evidence for perpetrators of money laundering crimes with drug origin crimes in North Sumatra.

Literature Review

Theory of Criminal Intent

A study of crime includes all aspects of crime and law enforcement such as social regulations, prohibitions, prevention of crime, investigations, and detection, arrest, and punishment ([Merriam-Webster](#)). Crime is defined as an act or omission that is prohibited by law which can be punished with imprisonment or a fine ([Sowmyya, 2014](#)). A crime can be legal or illegal. Illegal and punishable crimes are violations of administrative rules or state law or practices of wrongful and dangerous acts for oneself or against third parties, which are regulated in criminal law. Crimes that are legal and unpunishable are all acts of self-defense.

Hence, there are varying degrees of criminal intent, determined by the elements of purpose, knowledge, negligence, and recklessness ([Burger, 2001](#)). In addition, philosophers such as Jeremy Bentham have argued that the punishment for committing a crime must be proportionate to the crime itself ([Hagan & Daigle, 2018](#)), that is, by calculating the cost-benefit ratio of committing a crime. The state can ensure that the punishment imposed is painful enough to act as a deterrent and will discourage any future criminal intent ([Adrian, 2015](#)).

Proof Theory

a. Positive Legal Proof

The purpose of positive evidence according to the law is to prove that the defendant is guilty or not guilty and complies with the law. This system is very different from the conviction-in-time and conviction-raisonee verification systems. In this system, there is no place for “judge conviction”.

A person is found guilty if the evidentiary process and the evidence presented at the trial show that the defendant is guilty. The process of proof and the evidence submitted should be strictly regulated by law (Harahap, 1993).

b. Negative Legal Proof

In contrast to the positive statutory proof system, the negative statutory requires the conviction of the judge to determine whether the defendant is guilty or not. In this evidentiary system, the evidence is strictly regulated by law, as well as the evidence mechanism adopted. When the evidence supports the correctness of the charges against the accused, the judge must have confidence in the truth of the evidence. If the evidence supports the truth that the defendant is guilty but there is no confidence in the judge, the sentence cannot be imposed.

Reverse Burden of Proof

The defendant plays an active role in stating that he is not a criminal. Therefore, it is the defendant in front of the court who will submit the proof of his innocence. If the defendant cannot prove, he can be declared guilty of committing a crime. This reversed burden of proof is a form of deviation from universally applicable criminal law principles. This deviation lies in the deviation from the principle "who accuses, then he must prove" where the burden of proof is reversed, it is the defendant's obligation to prove his innocence.

Reverse Evidence in Court

Reverse proof is the opposite of the principle of proof. Evidence is a provision that contains outlines and guidelines on ways that are justified by law to prove the guilt that has been charged to the defendant. The provisions of Article 37 of Law Number 20 of 2001 states that: *"(1) The defendant has the right to prove that he has not committed a criminal act of corruption. (2) In the event that the defendant can prove that he did not commit a criminal act of corruption, then the evidence is used by the court as a basis to declare that the charge is not proven"*.

The application of evidence in the practice of criminal justice must be based on juridical guidelines. Evidence must be seen from the perspective of criminal procedural law, namely provisions that limit court proceedings to find and defend the truth, both by judges, public prosecutors, defendants and legal advisors and according to the assessment of evidence determined by law. The defendant is not allowed to defend something that is considered true outside the provisions stipulated by law. The juridical consequence of this reversed evidence is that in the event that the defendant can prove that he did not commit corruption, the evidence can be used by the court as a basis to state that the charge is not proven (Sinaga, Syahrin, Hamdan, & Harianto, 2016).

Narcotics Crime

Narcotics crime is the part of organized crime, which is essentially a crime against development and a crime against social welfare which is of national and international concern (Amrullah & Rugebregt, 2017). Basically, narcotics in Indonesia are drugs that are needed in health services, so their availability needs to be guaranteed. On the other hand, narcotics can cause dependence if misused, so that it can cause physical, mental, social, security and public order disorders which in turn disrupt national security. Because of these detrimental properties, narcotics must be monitored both nationally and internationally. The Narcotics Law classifies the types of narcotic precursors and regulates criminal sanctions for abuse of narcotic precursors for the manufacture of narcotics. To create a deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, it is regulated regarding the weighting of criminal sanctions, both in the form of a special minimum sentence, imprisonment of 20 (twenty) years, life imprisonment, and death penalty. The criminal weighting is carried out based on the class, type, size, and number of narcotics (Widiasyam, Haris and Abdullah, 2020).

Based on the Narcotics Law, it is known that it is possible for narcotics perpetrators to be sentenced to a maximum imprisonment, namely the death penalty in addition to imprisonment and a fine or compensation. It is also evident that narcotics crimes fall into the category of certain types of criminal acts against which criminal threats can be imposed cumulatively with imprisonment and fines or capital punishment and fines. The category of narcotics crime applies to addicts, dealers, and users. Drug users and addicts are two types of individuals that are interconnected. Many addicts currently use narcotics not for medical purposes but for their own convenience and trends (Septiawan, 2020).

Money Laundering (ML)

ML is one of the White-Collar Crimes that has attracted much attention and concern from the international community, including the Indonesians. This is in view of the impact caused by the extraordinary money laundering act, in addition to threatening economic stability and the integrity of the financial system. It also endangers the foundations of social, national, and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Bismar Nasution, in his writings "Money Laundering, A New International Law Enforcement Model," chalked out at least three reasons based on Guy Stessen's observations that questioned why money laundering should be eradicated and declared a crime (Bismar Nasution, 2004). First, the influence of money laundering on the financial and economic system is believed to have a negative impact on the world economy, for example a negative impact on the effective use of resources and funds. When the cases of money laundering increase, resources and funds are widely used for illegal activities harming the community. Many funds are not used optimally, for example, they are used for "sterile investment" in the form of

property or expensive jewelry. This is because the proceeds of crime are mainly invested in countries in bank accounts in other locations (Tarina, Dinanti, & Sakti, 2019). Placement can also be done by physical transfer of cash, either through smuggling cash from one country to another, or combining cash proceeds of crime with money obtained from the proceeds of legitimate activities. This placement process is the weakest point of the crime of money laundering.

A few enforcement agencies have also detected Layering, which is separation of the proceeds of a crime from its source, namely related criminal activities, operated through several stages of financial transactions. In this case, the process of transferring funds from certain accounts or locations due to their placement to other places through a series of complex transactions are designed to disguise or hide the source of the illicit money. Layering can also be done through opening as many as possible fictitious company accounts by utilizing bank secrecy provisions.

Money Laundering and Narcotics Trafficking

The first attempt to criminalize money laundering was carried out to combat and eradicate narcotics trafficking. Drug traffickers are indulged in money laundering to convert illegal income into legal ones. The laundering of money obtained from the drug trade is carried out to complicate the original crime, namely drug trafficking. Narcotics has become a major commodity in making money for transnational organized crime. Initially, narcotics was used by people living in drug-producing areas for medicinal, religious, and entertainment purposes. Narcotics is now misused so frequently that it has been included in a person's necessities of life. For this reason, drug trafficking, like other forms of crime, has the ultimate goal of obtaining financial benefits (Nurhadiyanto, 2020).

Research Methodology

The research method used in this study is a qualitative research method. Data collection techniques included interviews, observations, literature studies and collection of secondary materials through various acts and laws. A few of these Laws include Law Number 14 of 1970 concerning Basic Provisions of Judicial Power; Law Number 8 of 1981 concerning Criminal Procedure Code (KUHP); and Law Number 22 of 1997 concerning Narcotics. The informants in this study amounted to 9 informants, namely the Directorate of Drug Investigation, Lawyers, Academics, Prosecutors, Investigators, Judges and Members of the North Sumatra House of Representatives. The purposive sampling technique was used to determine the informants of the study. This study took place in North Sumatra, Indonesia (Bungin, 2007). Table 2 presents is a list of research informants: To successfully administer the interview instrument, researchers adopted interview guidelines (comprising question) to probe the right information from informants. The interviews were audiotaped and later transcribed for descriptive analysis. The content analysis and data

reduction techniques were used to present data and draw conclusions and verifications.

Table 2. List of Research Informants

No	Informants	(N)
1.	Judge	1
2.	Head of the Medan City Police Narcotics Unit	1
3.	Medan City Police Investigator	1
4.	North Sumatra Regional Police Investigator	1
5.	Public Prosecutor	1
6.	Member of the House of Representatives	1
7.	Academics	1
8.	Lawyer	1
	Total	9

Results

Evidence for Money Laundering Actors in North Sumatra

In the legal context, the importance of proof is seeking the truth of a legal event. Legal events are events that have legal consequences. A proof is the result of an act of proving or showing evidence, or doing something as truth, and convincing someone about an act or a process. In the context of criminal law, a proof or evidence is the core of a criminal trial, because what is sought in a criminal case is material truth, through this stage of evidence there is a process, method, and act of proving. This is in accordance with the corridors of applicable laws and regulations before showing the right or wrong to the defendant. against a criminal case in court. Evidence has been defined as provisions that contain guidelines on the manner that are justified by the law in proving the guilt and which have been charged against the defendant (Soedirjo, 1985). In proving a guilt, it is also necessary to regulate the evidence that is justified by law which the judge may use in proving the defendant's guilt. The results of the interview with the informant revealed the following:

In fact, in proving this money laundering crime, the police and the prosecutor's office must have sufficient evidence to prosecute the defendant, so that with the completeness of the evidence, it will be easier to assess in court whether the defendant's assets originated from a criminal act." This is because Articles 77 and 78 of the Money Laundering Law also give the defendant the right to prove that his assets are not the proceeds of a crime. So, this is where the burden of proof comes in. (The results of the interview with the Palembang District Court Judge Mr. Fahren Marpaung on June 16, 2021, at 20.30 pm):

This statement by the informant explains that the evidence must justify the legal relationship. For example, if the judge grants the plaintiff's claim, it implies that the judge has concluded that the facts stated by the plaintiff signify the legal relationship between the plaintiff and the defendant as being true. The judge's conclusion is further strengthened with the

condition that the evidence is valid, and the proof is only needed if the things stated by the plaintiff are denied by the defendant. Meanwhile, what is not disproved does not need to be proven.

In principle, the crime of money laundering is act of hiding or disguising the origin of the assets resulting from a crime. The core offense of money laundering crime itself is the existence of an act on the assets resulting from the crime carried out with the aim of hiding or disguising the origin of the assets resulting from the crime. However, the existence of an act carried out with the aim of hiding or disguising the assets resulting from a crime does not necessarily make a person liable to be ensnared as a perpetrator of the crime of money laundering. Additionally, the proceeds of crime whose origins are hidden or disguised by the perpetrators of the crime must come from criminal acts as stated in the provisions of Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

Regarding the proof of offense in the case of money laundering, the Law No. 8 of 2010 regulates 3 (three) possible evidentiary processes. First, the proof of the crime of money laundering which is proven after the predicate offense should be decided and have a permanent legal force. Second, the proof of the crime of money laundering should be proven simultaneously, where the money laundering offenses case be combined with the predicate crime case; and third, the crime of money laundering be proven without first proving the predicate crime.

- *Proof Of the Crime of Money Laundering Committed After the Original Crime Has Permanent Legal Force*

A proof mechanism is defined as a normal condition of proving money laundering offenses through a series of investigations and prosecutions. However, it is essential that the money laundering crime case should have established the crime proceeds having taken place (predicated crime) and that it has a permanent legal force. It is also important that the proof of the crime of money laundering should be presented before the decision on the predicate crime. If such a proof or evidence related to the alleged crime of money laundering is found after the verdict is imposed on the predicate crime, it is quite possible that the alleged existence of money laundering would be suspected. There would be the premise that the proof had existed since the investigation of the predicate crime started. This would also increase the suspicion and would affect the investigation and prosecution of the predicate crime carried out by the Defendant. One of the informants stated:

In proving the act of laundering, if it has a permanent legal force, we will carry out an investigation for the money laundering offense case. Indeed, it can be combined but we have difficulty because it is limited by time, so we use the original crime first and then we trace the wealth, or the term follow the money. Because if we go directly to the money laundering offenses, we will be in trouble. In fact, this authority has been stated in Articles 74 and 75 of Law Number 8 of 2010 concerning Money Laundering. In these Articles, there are rules regarding the authority of investigators.

[\(The results of the interview with Mr. Dekora, Medan Police Investigator on June 11, 2021, at 15.15 pm\)](#)

This statement of the informant is about Law Number 8 of 2010 concerning Money Laundering. It shows that investigators are also given the authority to investigate assets owned by individuals or groups (organizations) in addition to investigating predicate or principal crimes. However, there is a condition that a permission should be obtained as regulated in Article 2 of the Law. This is also in accordance with Article 74 of the Anti-Money Laundering Law which states that there would be an official from an agency such as the police authorized by the law to carry out investigations for the predicate crime. After the predicate crime is determined, the investigator has the right to trace the assets of the suspect.

In addition, the official agency appointed can also carry out investigations by combining the facts related to the crime and the proceeds of the crime, which may be in the form of assets. The Article 2 paragraph (1) of the Money Laundering Law and Article 75 of Law No. 8 of 2010 regulate that the investigator can combine the investigation of the predicate crime with the investigation of the criminal act of money laundering if they find sufficient preliminary evidence of the occurrence of money laundering and predicate crimes. They are also required to inform the Financial Transaction and Reporting Center about the crime. The informant continued his explanation as follows:

However, in the case of narcotics crime, which has been handled before by the Narcotics Unit of the Medan Polrestabes, the investigator can use the authority according to Article 74 and Article 137 of Law no. 35 of 2009 which regulate the proceeds of crime, but in this case, it is not profitable if it is used in terms of punishment and also concerning assets placed in the Bank and also using the name of another person. [\(Results of the interview with Mr. Dekora, Medan Police Investigator on June 11, 2021, at 15.15 pm\)](#)

This law also gives investigators a broad authority to confiscate assets on behalf of suspects and by using the names of other people who are reasonably suspected of having been benefitted by the proceeds of crime, both movable and immovable. In such a case, the confiscation of assets carried out is legal. and the suspect or defendant will prove it later in court. The Article 78 of the Money Laundering Law also mandates that the judge should order the defendant to prove the said assets by submitting sufficient evidence. The obligation of proof can be reversed only if it is carried out in court. The suspect's funds are frozen at all banks, in both individual and joint accounts, and other immovable assets like buildings and land are also attached and blocked.

Proof of money laundering offenses is carried out together with predicate crimes

The second mechanism of evidence is proof of money laundering which is carried out together with the proof of predicate crime. The legal basis for this joint evidence is regulated in the provisions of Article 75 of the Money Laundering Law. If the investigator finds sufficient

preliminary evidence of the occurrence of money laundering and predicate crimes, the investigator can combine the investigation of the predicate crime with the investigation of the criminal act of Money Laundering and inform the Financial Transaction and Reporting Center. These findings are in line with the statement made by an informant in the interview:

If the indictment is compiled in a combined or cumulative form, it is very good because in the law, namely Article 75 of Law no. 8 of 2010 concerning the prevention and eradication of money laundering, there is legal certainty for the defendant as stated in the theory of legal certainty. (Interviews with Mr. Rambo Sinurat, Public Prosecutor of the Medan District Court on June 18, 2021, at 10.00 am).

This statement given by the informant echoes the regulation stipulated in Article 75 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Money. This regulation requires that an investigation of predicate crime and money laundering together must meet the requirements set forth by the investigator. Article 75 also reiterates this law provided sufficient preliminary evidence is found by the investigator. It is important to understand what is meant by "sufficient preliminary evidence." There is no definition in the provisions of the Criminal Procedure Code; however, its meaning can be seen in the decision of the Constitutional Court number 21/PUU-XII/2014 in point (3.14) which states that "preliminary evidence", "sufficient preliminary evidence" and sufficient" means that it must be interpreted with at least 2 (two) pieces of evidence. This regulation is also contained in Article 184 paragraph (1) of the Criminal Procedure Code, which mandates that such preliminary evidence must be examined of its potential suspect, except for criminal acts where it is possible to determine the suspect in his absence (in absentia). Based on the decision of the Constitutional Court, the application of Article 75 of the Money Laundering Law also included the requirement of at least 2 (two) pieces of evidence and thus allowed it to be combined in one case file.

- *Proof of Money Laundering Offenses Without Proving The Predicate Crime First*

The third mechanism for proving the crime of money laundering is without first proving the predicate crime. The legal basis for proving money laundering offenses without proving the predicate offense is regulated by the provisions of Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. To be able to carry out an investigation, prosecution, and examination in court against the crime of Money Laundering, it is not necessary to first prove the original crime.

Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering provides an instrument to enable the investigation and prosecution of the crime of money laundering without having to wait for the predicate offense to be proven first. The

phrase "first" does not mean that a predicate crime that produces assets is not mandatory or absolutely does not need to be proven later, but it tends to focus on the time for proving the original crime. It means that the investigation/prosecution can be carried out in cases of money laundering offenses before the predicate crime. The existence of a predicate crime can be known, among others, from sufficient initial evidence (two pieces of evidence), the existence of causality and the relationship between the money laundering offense case and the predicate crime, unlawful acts committed by the defendant, or the flow of funds resulting from a crime. to the defendant. These findings were supported by the informant of the interview:

If the investigation process with "Follow the Money" concept is difficult because in uncovering this concept it will take a long time, especially if there is a combination of predicate crime and money laundering, then prioritizing proof of assets over actions will be difficult because usually the assets of the defendant are disguised and done in an organized way. (Results of an interview with Mr. Rambo Sinurat, Public Prosecutor of the Medan District Court on June 18, 2021, at 10.00 am).

One of the aims of proving money laundering offenses without waiting for the predicate crime to be proven is to accelerate the reach of the Constitutional Court Decision No. 90/PUU-XIII/2015.212 211 against parties who are clearly known or strongly suspected of having received or enjoying the benefits of money laundering crime without having to prove the predicate offense first. This means that in every process of handling cases of money laundering or allegations of assets resulting from crime, law enforcement officers must not be stopped because the main reason for handling cases has not been proven in court, but law enforcement officers should acquire proceeds of crime in handling alleged assets. They must investigate the source of money or whether it was used to commit a crime. The debate that has been going on so far about whether the original crime must be proven or not is no longer a debate. Consistent with this finding, an informant explained:

In finding the perpetrators of this money laundering crime, you don't have to wait for the original criminal to be found. But this is where the role of police professionalism is. We see a lot of things that are suspicious beyond narcotics crimes. Indeed, we need to look at this case of money laundering offenses in two ways: passive money laundering and active money laundering. It means that there are those who do not carry out transactions directly (passive) and others who accept them directly (active). There are other cases besides narcotics, according to my observation where there is a potential for money laundering. For instance, there are cases of land mafias. Buying and selling land amounts to billions as investment. So, it is not possible for money laundering to occur there, and I think it is better to follow the flow of funds if we have found allegations of suspicious transactions. Profiling is necessary for early detection so that the suspicious flow of funds is easily obtained. 'Financial Transaction and Reporting Center'

has data that can be a source of information ([Results of an interview with Mr. Hendro Susanto Chairman of Commission A DPRD North Sumatra, PKS Faction on June 24, 2021, at 13.30 am](#)).

- *The Burden of Reverse Evidence for Perpetrators of Money Laundering with Narcotics Origins in North Sumatra*

Narcotics crime is an act that violates the law and is an organized crime. Referring to this in the findings of this study, there are differences regarding the reverse evidence regulated in regulations like Law Number 8 of 2010; Prevention and Eradication of the Crime of Money Laundering (the defendant's obligation); and Law Number 35 of 2009 concerning Narcotics (carried out on behalf of the defendant). In law enforcement practices there are doubts, even in the process of proving reverse evidence in court trials in crimes of money laundering or crimes of proceeds of narcotics. It is the defendant's obligation to prove his innocence, or the judge has authority to instruct the defendant to prove that his assets or property were not related or the result of a criminal act. On the other hand, the Public Prosecutor is responsible to submit valid evidence to prove and convince the judge that the assets and property confiscated were related or result of a criminal act.

Such things can be seen in court proceedings and decisions on narcotics crime where money is disguised or the origin of assets or property in money laundering crime is hidden. These cases include cases of perpetrators who commit crimes of narcotics and money laundering on behalf of the convict as evident from the decision of the Aceh Bireun District Court, Case No. 62/Pid.Sus/2018/PN Bi and the Medan District Court, Case No. 2425/Pid.Sus/2017/PN Mdn. The judge's decision in both cases were (1) imprisonment for 5 years and a fine of Rp. 3,000,000,000 with the stipulation that if the fine is not paid, it is replaced with imprisonment for 3 months (2) Imprisonment for 20 years and a fine of Rp. 1,000,000,000 with the provision that a fine is not paid, it is replaced with imprisonment for 4 months. These findings were confirmed by an informant during the interview in this study. He said:

In accordance with Article 183 of the Criminal Procedure Code, it is stated that a judge may not impose a sentence on a person unless there are at least 2 valid pieces of evidence; unless the judge believed that a criminal act has occurred, and that the defendant is guilty. Moreover, in the case of money laundering, the evidence is reversed in accordance with Article 77 and Article 78 of Law no. 8 of 2010 concerning the prevention and eradication of the crime of money laundering. Where the prosecutor / public prosecutor convinces the judge that the fact that the wealth was the result of a crime. The next obstacle is that the evidence (wealth) confiscated is usually not in the name of the defendant so that the prosecutor/public prosecutor must really prove that the property belongs to the defendant and was obtained from the crime. ([Results of an interview with Mr. Rambo Sinurat, the Public Prosecutor of the Medan District Court on June 18, 2021, at 10.00 am](#)).

The explanation above emphasizes that the evidence must be based on the conviction of the judge. However, dealing with evidence according to the law in a positive way is proof according to the judge's conviction. It is based on that the evidence in the form of the defendant's own confession that does not always prove the truth. Confessions sometimes do not guarantee that the defendant has committed the act for which he is charged. Based on this premise, it depends upon the judge's belief and his own conscience to determine that the defendant has committed the crime which he is accused for. With this provision of judge's belief, conviction or conscience, punishment is sentenced without based on evidence (Ketaren, 2018).

When a judge decides someone guilty based on his belief or conviction, such a belief or conclusion should also be based on certain evidentiary principles. This theory of evidence is also called free evidence because the judge is free to state the reasons for his belief (*Vrije Bewijs Theorie*) based on logical reasons. All such judgements based on judge's conviction should have at least two valid pieces of evidence. If not, this means that the judge's belief is not enough to impose a sentence on the defendant. It means that, even though the judge is convinced of the defendant's guilt, but if a minimum of two pieces of evidence is not available, the judge cannot impose a sentence on the defendant. In this case, the imposition of a crime against a defendant must meet two absolute conditions, namely sufficient evidence, and the judge's conviction. The Article 183 of the Criminal Procedure Code states that the legislators have made a choice of the most appropriate evidentiary system in law enforcement in Indonesia. This is a negative proof system according to law, for the sake of upholding justice, truth, and legal certainty. Since in the evidentiary system, there is an integration required between the conviction-in-time (a proof system that only relies on the judge's conviction) and a positive proof system according to the law. These provisions of Article 183 of the Criminal Procedure Code are almost identical to the provisions in Article 6 paragraph (2).

The Law No. 48 of 2009 concerning Judicial Power states: "No one can be sentenced to a crime, unless the court, because of valid evidence according to the law, is convinced that a person who is considered to be responsible, has been guilty of the act he is accused of". Therefore, the concept of the judge's belief can only be formed based on the existence of valid evidence according to the Criminal Procedure Code. The judge's conviction that will be formed in the end will only consist of two kinds, namely the belief that the defendant is not proven guilty or on the contrary the belief that the defendant is proven guilty. The actualization of the combination of the two concepts in the provisions of Article 183 of the Criminal Procedure Code, can be seen in the standard sentence formulation of each dictum of a criminal case decision which states, "legally and convincingly". The word "legitimate" in this case means that the judge in giving the decision is based on valid evidence as stipulated in the Criminal Procedure Code and other laws and regulations. While the word "convince" in this case means that from the valid evidence, the judge's conviction is formed.

Discussion

- *Law Enforcement Process for Perpetrators of Money Laundering Crimes with Narcotics Origin*

In principle, money laundering can be defined as any form of action that aims to hide or disguise the origin of the assets resulting from a crime (proceeds of crime). The crime, in this case, is a predicate crime as stated in the provisions of Article 2 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. Such a crime results in accumulation of money/wealth from the crime; followed by actions that are carried out to hide or disguise the origin of the money or assets. It is presneted that the money or assets derived from the proceeds of the crime were legal assets and not derived from any crime.

The crime of money laundering itself is a series of actions on assets resulting from criminal acts, where these actions aim to hide or disguise the origin of assets resulting from criminal acts. Essentially, what is at the core of the criminalization offense of money laundering is the act of assets resulting from a crime whose purpose is to hide or disguise the origin of the assets resulting from the crime. In essence, the crime of money laundering is a follow-up action carried out on assets obtained from the proceeds of a crime. Therefore, it is not possible to have money laundering offenses without assets obtained from a criminal act. In this case, the assets must be obtained from criminal acts as stated in the provisions of Article 2 paragraph 1 of the Money Laundering Law.

Therefore, it is not possible to have money laundering offenses without the predicate offense. This statement is also often referred to as a pamphlet in the anti-money laundering regime which states, "No Money laundering without Predicate Offences". Referring to the evidentiary model as regulated in the provisions of Law Number 8 of 2010 concerning the prevention and eradication of the crime of money laundering, it is possible to carry out an investigation or prosecution of the perpetrators of money laundering offenses without proving the original crime first. The existence of provisions in the Money Laundering Law that allows not only proof of money laundering offenses that precedes predicate crime but also the seizure of assets that are strongly suspected to have originated from the proceeds of crime. If such cases go without sentence of punishment to the perpetrators, this becomes an affirmation of money laundering having committed and that the assets were obtained from a criminal act as stated in the provisions of Article 2 paragraph (1) of the Money Laundering Law. In the quo case, the predicate crime in Article 82 of Law Number 3 of 2011 is related to the transfer of funds. The elements of the provisions of this Article are the Beneficiary who intentionally receives or accommodates, either for himself or for another person, a Fund which is known or reasonably suspected to originate from the provisions of Article 2 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Laundering. The crime as mentioned in the provision is a predicate crime, which then results in money/wealth from

the crime. Then the money/wealth obtained from the crime is carried out as actions aimed at hiding or disguising the origin of the money or assets to make the money or assets derived from the proceeds of the crime as if they were legal assets and not come from the proceeds of a crime.

In its decision, the Panel of Judges believed the Defendant was legally and convincingly proven to have committed a criminal act as regulated in the provisions of Article 82 of Law number 3 of 2011 concerning the transfer of funds and Article 5 paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. The judge's decision in the Aquo case affirms that it is imperative that money laundering is always preceded by a predicate crime because predicate crime and money laundering are inseparable things. In principle, this is a manifestation of the characteristics of money laundering offenses as a follow-up crime, where ML is always a follow-up action on assets obtained from the proceeds of a crime. It is impossible for an act aimed at hiding or disguising the origin of the assets resulting from a crime without the proceeds of the crime or the proceeds of the crime itself.

The Burden of Reverse Evidence for Money Laundering Actors

In essence, the public prosecutor is burdened with proving that the assets belong to the defendant and are related to the predicate crime charged. On the other hand, the defendant is burdened with proving the origin of the assets, which if the defendant is unable to prove the origin of his assets, the assets can be strongly suspected of originating from a criminal act (Zainal, Akub, & Sofyan, 2019). The evidence in the investigation of cases in court is divided into a system of setting charges by the Public Prosecutor, if compiled cumulatively. Moreover, the ML indictment is prepared after the primary indictment (origin of the crime). Therefore, regarding the technique of proving the public prosecutor to prove the use of the first indictment, the consequence of the cumulative charge setting is that if the accusation against the origin of the criminal act is not proven, the money laundering crime proposed in the second indictment will not be proven.

If the origin of the crime is not proven, the second indictment related to the crime of money laundering is also not proven. Further investigation needs to be carried out whether the assets accused in the crime of money laundering were obtained officially or not and whether it is called a crime. The list of origins of the acts are referred to in Article 2 paragraph (1) and paragraph (2) concerning the Crime of Money Laundering. It should be noted that the indictment of the criminal act of regulating money laundering must be clearly explained regarding the crime of money laundering which is the basis of the origin of assets. Therefore, if the indictment is compiled cumulatively and clearly, then the indictment is not proven and allegations of money laundering are not proven (Mursanto & Mashendra, 2020).

Regarding the indictment, it is also regulated cumulatively that where the origin of the crime is indicted on the first indictment of money laundering, the Article 69 of Law on Money Laundering No. 8 of 2010 states: "In order to allow investigation, prosecution and trial in court for the crime of money laundering, it is not necessary to prove the original crime first." If proven,

then the evidence can be processed to the origin of the crime, which requires a lot of time in the proving process using a single allegation.

To prevent this, the method of proof is not needed because it is inefficient and the main idea of the crime of money laundering is not related to the origin of the crime but rather the legal/official source of wealth or not. The public prosecutor only proves the existence of a causal relationship between the original crime and the consequences of the crime. The system of reversing the burden of proof in the crime of money laundering is absolute and limited, meaning that the burden of proof must be borne by the defendant and limited only to assets related to the crime of money laundering. Therefore, the related evidence considering the fulfillment of the elements of the offense of money laundering must still be proven by the public prosecutor.

The interpretation of the word "mandatory" in Article 77 of the Money Laundering Law has an imperative meaning (coercion). This means that if the defendants cannot prove the origin of the assets that are the object of the crime of money laundering, the legal consequences of these assets can be considered as assets related to the origin of the criminal acts charged to the Defendants. The proof of the Crime of Money Laundering raises several assumptions considering that the rigid procedural law cannot be interpreted. This raises the perception of the burden of proof by the Public Prosecutor in the crime of money laundering. Article 77 and Article 78 of the Law on the Crime of Money Laundering do not remove the authority/burden of the Public Prosecutor in this money laundering crime. The Public Prosecutor can then arrange the indictment based on sufficient evidence and the prosecutor's belief will be formed that the assets accused were related to the criminal act. Nevertheless, the Judge can order the Defendant to prove that the accusation was not related to the origin of the criminal act indicted by the Public Prosecutor ([Irman, 2017](#)).

Conclusion

The inverse burden of proof for perpetrators of money laundering crimes with drug originating crimes in North Sumatra is carried out in accordance with the rules contained in Articles 77 and 78 of the Money Laundering Law, where the defendant is given the authority to prove that his assets do not originate from the proceeds of crime. On the other hand, the public prosecutor must also have strong evidence for his claim at least 2 pieces of evidence including witness statements, expert statements, letters, instructions, and statements from the defendant. Of course, in the case of the reversed burden of proof, it refers to the power of the judiciary in determining whether the defendant is said to be guilty based on judgment and conscience. If the judge is sure that the defendant did what he was accused of doing, the judge can impose a sentence against him, and vice versa. The issue of where the judge gets his conviction is not a problem.

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