Evidence Reinforcement of Money Laundering in Criminal Act of Corruption Cases

Dody Witjaksono, Harie Purwadie, Hartiwiningnish

Law Studies, Universitas Sebelas Maret Surakarta, Indonesia

Abstract: - Law enforcement officers should always contribute to combate criminal acts, especially money laundering. One of the law enforcement's participation is enforcing current applicable law in order to achieve the objective of the law itself. One of the actions of law enforcers especially in deciding a money laundering criminal case is by dropping a criminal to the defendant. The result of the verdict by the Panel of Judges then the Prosecutor as the executor working with the Correctional Institution in carrying out the criminal should get more attention because there is no point in the decision issued by the Panel of Judges without any maximum implementation. In terms of the sanctions, the imposition of criminal sanctions on the crime of money laundering as an extraordinary crime at least provide a deterrent effect for the perpetrators who commit money laundering crime. However, the current reality of money laundering crimes stemming from corruption did not provide a deterrent effect to the perpetrators of criminal acts. the increasingly widespread crime of money laundering derived from criminal corruption perpetrated by state officials shows that there is no clarity whether or not the confiction given to the perpetartors of money laundering is effective.

Keywords: Strengthening of Evidence, Money Laundering, Corruption

I. INTRODUCTION

In the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) states that the Indonesia is a legal state. This implies that Indonesia is based on law (Rechtstaat), not based on mere power (Machstaat). Every life in Indonesia is regulated by law, law in the sense of a democratic state based on Pancasila and the 1945 Constitution, which upholds human rights, and guarantees all citizens equally in law and government, and upholds the law and government with no exceptions, as stated in the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (1).

The law determines what must be done or what can be done and what is prohibited. The legal objectives to be addressed are not only people who are obviously acting against the law, but also legal actions that might occur, and to state equipment to act according to the law. The system of working the law is one form of law enforcement¹.

Various crimes, whether committed by individuals or by corporations within the borders of a country or that are carried out across the borders of other countries, are increasing. These crimes include criminal acts of corruption, bribery, goods smuggling, labor smuggling, immigrant smuggling, banking, in capital markets, in the insurance sector, in taxation, in forestry, in environment, in marine and fisheries, black market of narcotics and psychotropic, slaveswomen and children trafficking, illegal arms trafficking, kidnapping, terrorism, theft, peculation, fraud, money laundry, gambling, prostitution and various crimes commonly called white-collar crimes. These crimes have involved or produced vast amounts of assets.

Property derived from various crimes or criminal acts, in general, is not directly spent or used by perpetrators of crime because it will get tracked by law enforcement regarding the source of the obtained assets. Various efforts will be made by doers to cover up, disguise or deceive about the origin of the assets so that the assets are obtained from a legitimate work or methods. In the very first, the perpetrators of crime would try to get the assets obtained from these crimes into the financial system, especially into the banking system. In this way, the origin of the property is expected not to be traceable by law enforcement. Efforts to conceal or disguise the origin of the assets obtained from criminal acts as referred to in the Republic of Indonesia Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

For crime organizations, wealth as a result of crime is like blood runs in one body, in the sense that if the flow of assets through the international banking system is cut, then the crime organization will gradually become weak, reduce its activities, even die. Therefore, wealth is a very important part of a crime organization. For this reason, there is an impetus for crime organizations to do money laundering so that the origin of the much-needed assets is difficult or cannot be traced by law enforcement.

The development and progress of science and technology, especially in the field of communication, has led to the integration of the financial system including the banking system that offers a mechanism for interstate funds that can be carried out in a very short time. In addition to having a positive impact on this situation, it also has a negative impact on people's lives, with increasing national and international criminal acts, using the financial system including the banking system to hide or obscure the origins of money laundering.

Money laundering crimes have recently drawn special attention from various circles, which are not only on a

national scale, but also have been regional and global through cooperation between countries in overcoming and eradicating money laundering crimes. The movement was triggered by the fact that money laundering crimes were progressively widespread and increasing from time to time, so that various international organizations concretely had taken steps to anticipate these crimes.

Unknowingly at very first money laundering crimes were more closely related to drug trafficking and narcotics crimes and other major crimes, but now money laundering crimes are not limited to these major crimes, but have been related to all forms of crime, including those relating to money obtained from the results of corruption and other crimes.

Article 1 number 1 of Act Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Criminal Acts states that money laundering is any kind of action that fulfills the elements of a criminal offense in accordance with the provisions in this law.

Broadly speaking, what can be understood from the opinion of experts can be concluded that money laundering is a process to hide or disguise assets obtained from the proceeds of crime to avoid prosecution and or confiscation.

Indonesia is a "heaven" for criminals as a place to laundry money from crime, and it usually comes from white-collar crime. In Indonesia the proceeds of crime are mainly obtained from criminal acts of corruption, so the crime that is dominant in money laundering is resulting from corruption.

The war on corruption is a very significant focus in a country based on law, even becomes degree of the success of a government. A very important element of law enforcement in a country is the war on acute corruption, which damages all the joints of the life of the nation and the state including the economy and planology planning.

In Indonesia, corruption is familiar to the public. Corruption has become disease that spreads to every state apparatus from the lowest to the highest level. Not only officials involved in corruption cases but also law enforcement officials were involved in corruption cases. Corruption is an extraordinary crime as well as a crime without offends because corruption is a very difficult area to penetrate. It is because corruption is an invincible crime that is very difficult to obtain procedural proof, where the modus operandi is systematic and congregating activities.²

Preventing and eradicating corruption is considered insufficient by expanding actions, which are formulated as corruption in conventional ways. Targeting corruptors and imprison them like conventional criminal actors per se murderer and theft. This method will never be satisfying because corruption is a crime that is difficult for perpetrators to find and it is difficult to obtain the verification process.

Satjipto Rahardjo states that prevention and eradication of criminal acts of corruption should not be carried out in a conventional manner yet it must be carried out outside the prevalence of other crime prevention.³ One effort that can be done is to encourage the law to be able to play a role in efforts to create controls to prevent the results of criminal acts of corruption that can be spent by those who commit acts of corruption, in addition to efforts to safeguard asset recovery.

Andrew Haynes said that the new paradigm in preventing crime can be completed by erasing desire and motivation of the perpetrators of crimes, by preventing them from the outcomesof the crimes they commit.⁴ Because the proceeds of crime are life blood of the crime, meaning that the outcome of crime is the blood that supports crime as well as the weakest point of the criminal chain that is most easily detected. Efforts to cut the criminal chain in addition to being relatively easy to do will also eliminate the motivation of perpetrators to commit crimes because the purpose of the perpetrators of crimes to enjoy the proceeds of crime is hindered.

Law enforcers must always take part in eradicating criminal acts, especially criminal acts of money laundering, one of the participation of law enforcers, namely the enforcement of current laws in order to achieve the objectives of the law itself. One of the actions of law enforcers especially in deciding a case of money laundering crime is by imposing a criminal on the defendant. The results of the verdict by the Panel of Judges then the Prosecutor as the executor working with the Correctional Institution in implementing the crime must be given more attention because there is no point in the decision issued by the Panel of Judges without any maximum implementation. Regarding the sanctions, granting criminal sanctions on criminal acts of money laundering as extraordinary crime at least provides a deterrent effect for those who commit money laundering. But on the practice of money laundering crimes originating from corruption does not give significant deterrent effect to perpetrators of crime, the increasingly widespread crime of money laundering originating from criminal acts of corruption committed by state officials shows that there is no clarity regarding whether or not effective punishment is given to money laundering crimes.

Based on the description of the background of the problems mentioned above, the problems in this study are formulated as follows:

- 1. What is the procedure for disclosing money laundering in criminal cases of corruption?
- 2. How is the proof of money laundering crime in a corruption case?
- 3. How to strengthen evidence of money laundering in corruption cases?

II. RESEARCH METHODS

1. Nature of Research

The research carried out was normative legal research, namely research that prioritized library research to obtain secondary data as the main data. Secondary data were data obtained from literature, references or other library materials relevant to research material.⁵

2. Data Types

Based on this, the data needed in this study were secondary data obtained from library research. Library research is research carried out by using legal materials relating to the title and problems studied. The data in this library research were secondary data which were legal materials consisting of:

- a. Primary Law Material is a binding legal material consisting of:⁶
 - 1) The 1945 Constitution of the Republic of Indonesia
 - 2) Criminal Code (KUHP: Kitab Undang-Undang Hukum Pidana)
 - 3) Criminal Code Procedure (KUHAP: Kitab Undang-Undang Hukum Acara Pidana)
 - 4) Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes
 - 5) Law Number 8 of 2010 concerning Amendment to Law Number 25 of 2003 concerning Prevention and Eradication of Money Laundering Crimes
 - 6) Other supporting legislation related to this research.
- b. Secondary Legal Material is legal material which provides instructions and explanations for primary legal materials consisting of literature books, papers, articles, research results and other scientific works related to this research.
- c. Tertiary Legal Material, namely legal material which provides instructions and explanations for primary legal materials and secondary legal materials consisting of:
 - 1) General Dictionary of Indonesian
 - 2) Legal Dictionary
 - 3) English Indonesian Dictionary
 - 4) Encyclopedias

III. DATA COLLECTION TECHNIQUES

In this literature, data collection was conducted by studying documents, namely by studying, reviewing and analyzing legal materials related to this research whereas field research data collection was conducted by interview.

IV. ANALYSIS METHOD

Due to normative juridical type, qualitative analysis which focuses on the substance with reasoning process in drawing conclusions, deductive thinking method was used based on submitting a major premise in the form of a legal rule and submitting a minor premise such as legal facts, from both then drawn conclusions.⁷

V. DISCUSSION

1. Definition of Money Laundering Crimes

Money laundering is a white collar crime in the banking sector. Many countries are still hesitant about to eradicate the money laundering optimally or to certain extent letting the crime of this type of money laundering. This is due to money laundering activities involving large amounts of money so that banks tolerating this activity are on top. One of the banks which stood by using money laundering was Bank of Credit & Commerce International (BCCI), which was forced to close in the middle of 1991 because its activities could not be tolerated anymore. Another example of a bank that was suspected of accommodating money laundering activities was the Dragon Bank International headquartered in Vanuatu, one of the countries that was also the center of money laundering activities.

In Indonesia, the term money laundering is often also translated as "pemutihanuang" or "pencucianuang". This is a reasonable translation considering the word "launder" in English itself means "mencuci". Therefore, laundry means "laundry" in daily terms. The laundered money comes from the proceeds of crime, such as money from the sale and purchase of narcotics or corruption, so that after the laundering the money is expected to be no longer detected as crime money and considered as clean as other distributed money. For this reason, the main thing to do in money laundering activities is to eliminate or to erase the traces and origins of the money. With the process of money laundering activities, money that was originally dirty money is processed to produce dean money/ legitimate money. In this process, the money is channeled through the *imaze*path.

The definition of money laundering given by M. Giovanoli from the Bank for International Settlements (BIS) is a process by which the assets of the perpetrator, especially cash assets obtained from a crime, are manipulated in such a way that the assets appear to originate from legitimate sources. ¹⁰

Furthermore, the definition of money laundering provided by J. Koers, a public prosecutor from the Netherlands, is as a way to circulate the proceeds of crime into a legitimate circulation of money by covering up the origin of the money.¹¹

Another definition of money laundering is as an investment or transactions of money originating from organized crime, illegal transactions of narcoticsactivity, and

other illegal sources, with the purpose of cleaning through legalized channels to deceive the original source of money. So, it is the elimination of the trace is undergone through if someone searches for the origin of the illegal money. 12

In terms of criminal law, what is meant by a money laundering crime is an attempt to save money in a bank or elsewhere, divert or deposit money, reward, invest or withdraw profits from the results that should be known or reasonably suspected to have been obtained from narcotics crime or other criminal acts.

Universal money laundering activities today have been classified as a crime. In fact, because the modus operandi is generally cross-country, the money laundering has been considered as an international crime. Therefore, money laundering crimes are also regulated internationally. As seen in Article 3 paragraph (1) of the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substance (UN convention) which was ratified since December 19, 1988 and began to be effective since November 1990. Indonesia has ratified this convention since January 31 1997 with Law Number 8 of 1996.

Article 3 of the UN convention gives the definition of money laundering comprehensively as follows:

Money laundering means every action that is intentionally carried out in the following matters:

- a. Conversion or transfer of goods, which is known that the item is originated from a criminal activity or participated in the activity, with the aim of hiding the unlawful nature of the good, or helping someone who is seen as an intermediary in the activity to eliminate the consequences the law of the activity.
- b. Conceal the actual condition, source, location of transfer, movement, rights relating to ownership of goods, in which the person concerned knows that the item originates from criminal activity, or participates in the activity.
- c. Obtaining, mastering or utilizing goods, at which time they are received, the person concerned knows that the item originates from a criminal act or participates in the activity.
- d. All acts of participation in activities to carry out, experiments to implement, assist, conspire, facilitate, provide advice on the actions mentioned above.

Money laundering is considered to occur when:

- The existence of money as a result of a particular crime.
- b. The money is used / involved into financial / business transactions.
- c. these transactions are carried out with purpose
 - 1) Continuing criminal activity with the aim of increasing wealth.

- 2) hiding ownership of assets obtained from criminal activities.
- avoid reporting obligations as required by law in certain countries.

According to the Money Laundering Crime Act, which is classified as a money laundering crime, it is any action on the assets resulting from a criminal act specifically mentioned in the law, namely in the form of the following actions:

- a. placing wealth of the proceedsof crime;
- b. transferring wealth of the proceeds of crime;
- paying or spending the wealth of the proceeds of crime;
- d. granting or donating of the proceeds of crime;
- e. entrusting the wealth of the proceeds of crime;
- f. bringing out the wealth of proceeds of crime:
- g. exchanging or other actions for the wealth of proceeds crime;
- h. accepting or mastering the placement, transfer, payment, donation, grant, safekeeping, and exchange of wealth of proceeds crime; and
- i. conducting experiments, assistance, or conspiracy to commit money laundering crimes.

According to Law Number 15 of 2002 concerning Money Laundering Crimes, as amended by Law Number 25 of 2003 and later amended by Law Number 8 of 2010, laundered assets which are derived from crime as the following: 13

- a. corruption;
- b. bribery;
- c. smuggling of goods;
- d. labor trafficking;
- e. immigrant trafficking;
- f. banking crime;
- g. capital market crime;
- h. insurance crime;
- i. narcotics;
- j. psychotropic,
- k. human trafficking;
- l. illegal arms trade;
- m. kidnapping;
- n. terrorism;
- o. theft;
- p. embezzlement;
- q. fraud;
- r. money forgery;
- s. gambling;
- t. prostitution;
- u. tax crimes;
- v. forestry crime;
- w. environmental crime;
- x. marine crime;
- y. other crimes that are threatened with imprisonment of 4 (four) years or more, carried out in the territory

or outside the territory of the Republic of Indonesia and also a criminal offense under Indonesian law.

Even though the model of crime that generates dirty money that then laundered is various, but in principle dirty money comes from 3 (three) groups of illegal activities, namely as follows:¹⁴

- a. Money originating from criminal activities. For example, money from theft, robbery, fraud, drug trafficking, corruption or bribery.
- b. Money originating from tax avoidance activities. For example, money avoidance / tax evasion carried out in Cayman Islands and others Tax Heaven Countries.
- c. Money originating from deviation rules. For example, money of exports deviations (such as documents fraud, volume fraud of smuggling goods, or embezzling import duties or export taxes) or money from irregularities in general trade, such as fraud of price, quality, quantity or weight goods, and so on.

2. Report of the INTRAC Analysis as Part of the Evidence in the Prevention of Money Laundering

According to Yenti Ganarsih, the objective of Money Laundering Law is as an initial step for the perpetrators to spend the proceeds of crime and be arrested. Another goal is to prevent financial institutions from being used as a means of money laundering in the national and international scope. ¹⁵ Thus, the principle of law enforcement is not only following the suspect but also following the money. ¹⁶

Suspicious Financial Transaction "(hereinafter at the SFT) is transaction that is deviant from customs or not normal and not always related to certain criminal acts. The term "suspicious transaction report (STR) in anti-money laundering terminology was used first by the Financial Action Task Force on Money Laundering (FATF) in the Forty Recommendations on eradicating money laundering. ¹⁷

Suspicious financial transaction is transaction that deviates from the profile and customers characteristics and habits, including transactions that are reasonably suspected to be carried out with the aim of avoiding the reporting of the relevant transactions that must be carried out by financial service providers (FSP). ¹⁸

SFT does not have particular specifications in the transaction process because this depends on variations and development of existing financial services and instruments. Nevertheless, there are general characteristics of FSP that can be used as references, including:¹⁹

- a. Do not have clear economic and business goals;
- b. Using cash in a relatively large amount and / or done repeatedly in unusual pattern;
- Unusual customer transaction activities.

According to Article 1 number 5 the Suspicious Financial Transaction Law is:

- a. Financial Transactions that deviate from the profile, characteristics, or habits of the Transaction pattern from the relevant User;
- b. Financial Transactions by Service Users that are reasonably suspected to be carried out with the aim of avoiding the reporting of the Transactions concerned which must be carried out by the Reporting Party in accordance with the provisions of this Act:
- Financial Transactions carried out or canceled are conducted by using Assets which are suspected to originate from the proceeds of crime; or
- d. Financial Transactions requested by the INTRAC to be reported by the Reporting Party because it involves Assets which are suspected to originate from the proceeds of crime.

According to the Indonesia Language Dictionary reports are anything reported or in news. 20 Black's law dictionary defines a report is a formal oral or written presentation of a recommendation for action. 21 According to the Criminal Procedure Code, a report is a notification submitted by someone because of their rights or obligations under the law to the authority about whether or not there has been a suspected criminal event. Based on the above definitions, the report is the submission of facts by someone on the basis of their rights and obligations based on the law concerning everything related to criminal events which are alleged to have been occurred, are being occured, and will occur.

Based on Article 184 of the Criminal Procedure Code, valid evidence is witness statements, expert statements, letters, instructions, and defendant statements. Referring to the Article, the report is not proof of evidence. Whereas according to Article 73 of Money Laundering a valid evidence in proof of a Money Laundering crime is: a. evidence as referred to in the Criminal Procedure Code; and / or b. other evidence in the form of information that is uttered, sent, received, or stored electronically with optical devices or similar optical devices and documents. Analysis report as evidence is not regulated in the Money Laundering Law, only an analysis of suspicious financial transaction reports that can be used as guidance for law enforcement officials both the police, prosecutors, and courts. Therefore many parties who disagree with analysis reports asevidence in the money laundering crime.

In conclusion, INTRAC analysis report is not a juridical evidence tool because only information is useful to find the end of a criminal case that can be used by law enforcement officers, especially for investigators to find out whether a suspicious transaction from someone is indicated as a legal action (wedderrechtelijkedaad). ²²INTRAC analysis report is not the final process to become an evidence even though the report is taken with the verification phase of the final assessment of the entire problem identification process, analysis and evaluation conducted independently, objectively, and professionally to be submitted to the investigator.

3. Proof System

The Indonesian Criminal Law System includes material criminal law and formal criminal law. Material criminal law is contained in the Criminal Code and outside the Criminal Code. Formal criminal law comes from Law Number 8 of 1981 concerning the Criminal Code Procedure (State Gazette of 1981 Number 76, Supplement to the State Gazette Number 3209, hereinafter abbreviated to CCP). Therefore, general crimes in the Criminal Code and special criminal offenses outside the Criminal Code as well as criminal acts of corruption recognize the law of proof.

Theoretically, the principle of Criminal Code Procedure Law recognizes 3 (three) theories about proof systems, namely in the form of:

First, the Proof System according to the Positive Act (Positief Wettelijke Bewijs Theorie) with the benchmark of the proof system depends on the existence of evidence which is limitation mentioned in the law. In short, the law has determined the existence of evidence tools that can be used by judges, how the judges must use them, the strength of the evidence and how the judges must decide whether or not the case is being tried.

Second, the Verification System According to the Belief of the Polarization Judge, the judge can make a decision based on mere "belief" by not being bound by Positive Law (iusconstitutum) which regulates Corruption Crimes, including the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI / MPR / 1998 concerning A Clean and Corruption Free, A Clean and Corruption Free, Collusion and Nepotism Government Body (State Gazette of 1999 Number 75, Supplement to State Gazette Number 3851). Then Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (State Gazette of 1999 Number 140, Supplement to State Gazette Number 3874) as amended by Act Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication Corruption Crime (State Gazette of 2001 Number 134, Supplement to State Gazette Number 4150), Law Number 30 of 2002 concerning Eradication Commission for Corruption Crime (State Gazette of 2002 Number 137, Supplement to State Gazette Number 4250), Government Ordinance Number 71 of 2000 concerning Procedures for Implementing Community Participation and Awarding in the Prevention and Eradication of Corruption Crime (State Gazette of 2000 Number 144, Supplement to State Gazette Number 3995), Presidential Decree Number 11 of 2005 concerning the Coordination Team for Eradicating Corruption Crimes, Presidential Instruction Number 5 of 2004 concerning the Acceleration of Corruption Eradication and others as his.

Third, the Proofing System according to Negative Act (Negatief Wettelijke Bewijs Theorie) in which a judge may only impose a sentence on the defendant if the evidence is limited by law and supported by the judge's belief in the

existence of the evidence in question. Indonesia's positive legal provision regarding corruption is regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. In the Act, the provisions concerning proof of corruption cases are contained in Article 12B paragraph (1) letters a and b, Article 37, Article 37 A and Article 38B.

The reversal burden of proof legislation policy began to be legalized in Law Number 24 of 1960 concerning Investigation, Prosecution and Corruption Criminal Investigation. The provisions of Article 5 paragraph (1) of Law Number 24 of 1960 state, "Every suspect must provide information about all his property and the property spouse (s) and child (ren) and the property of a legal entity which is managed, if requested by the Prosecutor". The substance of this article requires the suspect to provide information about all his property if requested by the Prosecutor. Consequently, without a request from the Prosecutor, the suspect do not have the opportunity to give information about all his property.

The legislation policy in Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption (State Gazette of 1971 Number 19, Supplement to the State Gazette Number NA) has explicitly regulated the reversal of the burden of proof. The provisions of Article 17 of Law Number 3 of 1971 is shown as follows:

- 1) A judge may allow the defendant to provide information about proof of innocence to corruption for the purpose of examination
- 2) Information about innocence presented by the defendant as referred to in paragraph (1) is only permitted in the case of:
 - a. if the defendant explains that his actions according to reasonable conviction harms no financial or economic state or
 - b. if the defendant explains that his actions are carried out in the public interest.
- 3) In the event that the defendant can provide information about proof as referred to in paragraph (1), the statement shall be used as a matter which is at least beneficial for him. In this case the Public Prosecutor still has the authority to provide the opposite evidence
- 4) If the defendant is unable to provide information about evidence as referred to in paragraph (1), the statement is seen as something which at least is detrimental to him. In this case the Public Prosecutor is still obliged to provide proof that the defendant is guilty of a criminal act of corruption

Furthermore, the provisions of Article 18 of Law Number 3 of 1971 specifically concerning the ownership of the full assets of the perpetrators read as follows:

1) Each defendant must provide information about all his property and spouse (s), child and every person, as well as an entity that is suspected of having a

- relationship with the case concerned if requested by the judge.
- 2) If the defendant is unable to provide strong information on the court session regarding sources of wealth which areunbalanced with his income or source of additional wealth, then this information can be used to strengthen witness testimony that the defendant has committed a criminal act of corruption.

Reversal of the burden of proof also remains regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. The provisions of Article 37 read as follows:

- 1) The defendant has the right to prove that he has not committed a crime 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 for stating that the indictment is not proven.

Then the authentic explanation of the provisions of Article 37 determines that:

Paragraph (1) This article is a balanced consequence of the application of reverse evidence to the defendant. The defendant still requires balanced legal protection for violations of fundamental rights related to the presumption of innocence and self-incrimination principles.

Paragraph (2) This provision does not adhere to a system of negative verification according to the law (negatiefwettelijk)

In essence the provisions of this article constitute a reversal of the burden of proof which is devoted to the seizure of property allegedly originating from criminal acts of corruption. However, this deprivation of property does not apply to the provisions of Article 12B paragraph (1) letter a of Law Number 20 of 2001, but against perpetrators who are accused of committing a basic crime.

Reversal of the burden of proof as in the provisions of Law Number 20 of 2001 is acknowledged for the mistakes of people suspected of committing corruption as stipulated in Article 12B and Article 37 of Law 20 of 2001. Then the ownership of the assets of the alleged perpetrators is the result of corruption regulated in the provisions of Article 37A and Article 38B paragraph (2) of Law Number 20 of 2001.

Based on observation, the Act on corruption acts classifies verification into 3 (three) systems. First, the reversal of the burden of proof is charged to the defendant to prove that he has not committed a crime of corruption. Reversal of the burden of proof is valid for bribery receiving gratuities in the amount of Rp. 10,000,000.00 (ten million) rupiahs or more (Article 12B paragraph (1) letter a) and for property that has not been indicted that has to do with corruption (Article 38B).

If it follows the law decision making as a legislation policy, there are some strict restrictions on the application of the burden of proof reversal associated with reasonable gifts for officials. These restrictions are oriented to aspects only applied to gratification in bribery, the gratification is in the amount of Rp. 10,000,000.00 or more, related to the position (in zijnbediening) and obligations violence doer (in strijd me zijnplicht) and must report to the Corruption Eradication Commission (CEC). Second, the reversal of the burden of proof which is semi-reversed or inversely balanced is state where the burden of proof is placed both on the defendant and the public prosecutor in a balanced manner against the object of evidence that is different in contrast (Article 37A). Third, the conventional system where proof of criminal acts of corruption and the mistakes of defendants of corruption is fully borne to the Public Prosecutor. This aspect is carried out on bribery receiving gratuities which value is less than Rp. 10,000,000.00 (ten million) rupiahs (Article 12B paragraph (1) letter b) and principal corruption.

The Indonesian criminal law system in particular against the burden of proof in criminal acts of corruption normatively recognizes the principle of reversal of the burden of proof aimed at mistakes (Article 12 B paragraph (1), Article 37 Law Number 31 of 1999 jo Law Number 20 Year 2001) and ownership of assets the object of the defendant (Article 37A, Article 38 B of Law Number 31 of 1999 jo with Law Number 20 of 2001).

Explicitly the provisions of Article 12 B of Law Number 20 of 2001 is as follows:

- 1) Every gratuity to a civil servant or state administrator is deemed to be giving a bribe when it relates to his position and which is contrary to his obligations or duties, with the following conditions:
 - a. with value of Rp. 10,000,000.00 (ten million rupiahs) or more, proving that the gratuity is not a bribe carried out by the recipient of gratuity;
 - b. with value of less than Rp. 10,000,000.00 (ten million rupiahs), proving that bribery is carried out by public prosecutors.
- 2) Criminal charges for civil servants or state administrators as referred to in paragraph (1) are imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a criminal fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and at most Rp. 1,000,000,000.00 (one billion rupiah).

In glimpse, the philosophical dimension of the reason the legislation policy implies the existence of reversal of the burden of proof in criminal acts of corruption is caused by difficulties in the Indonesian criminal law system to prove the offender's assets if carried out using the theory of negative evidence. As a result, there is a need for extraordinary

juridical aspects and extraordinary legal instruments in the form of a system of reversing the burden of proof so that it continues to uphold the presumption of innocence by still paying attention to Human Rights.

According to Indriyanto Seno Adji, the system of reversing the burden of proof in Indonesia's corruption law, was adopted from the criminal proof law of corruption cases in Anglo Saxon countries, such as Britain, Singapore and Malaysia. The burden of proof reversal system is only applied to criminal acts relating to gratification relating to bribery.

When viewed from the point of view of what the defendant must prove, the reverse proof is only valid and applied to 2 (two) objects of proof, namely:

- a. First, corruption in bribery receives gratuities that are worth Rp. 10 million or more. Reverse proof of corruption in bribery accepts gratuity, where the defendant is burdened with obligations (not rights) to prove that he does not commit corruption and receives gratification, can be called a pure reverse proof burden system. Because the object that must be proven by the defendant is directly to the elements (the opposite) of the charged crime (in the main case), which contains direct legal consequences for the exemption or otherwise the conviction of the defendant or the release of the lawsuits.
- b. Second, on the defendant's assets which have not been indicted. The defendant's obligation to prove that it is reversed (vice versa) is not against the crime (the elements) that is charged. The legal consequences of a successful or unsuccessful defendant prove that the defendant's property is obtained from corruption or legal, does not determine whether he is acquitted or accused of committing corruption in the main case, but merely to show the crime of seizure in the event the defendant fail to prove the property as legalized property. Or vice versa to not impose a criminal offense in the event that the defendant successfully proves his property as lawful property.

VI. CONCLUSION

The process of dealing with money laundering is based on the provisions of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. The law stipulates that in the context of preventing and eradicating laundering crime established by the Indonesian Financial Transaction Reports and Analysis Center/INTRAC, which has the task of collecting, storing, analyzing, evaluating financial transactions. Regarding financial transactions that indicate money laundering, INTRAC then submits the results of the analysis to investigators for investigation. Then the process of investigation, prosecution and examination in court proceedings is carried out based on the provisions of the Criminal Procedure Code.

The existence of an original criminal offense as stipulated in a limited manner in Article 2 of Act Number 8 of 2010 concerning alleged money laundering crimes, does not need to be proven in advance, enough if there is knowledge or suspicion that the money originates from criminal acts of corruption, for example, with a note if there are two evidences as proof of the beginning. Proof of money laundering itself is still experiencing difficulties or difficulties, given that the modus operandi in addition to requiring complete and sophisticated facilities / infrastructure, as well as criminological money laundering crimes are qualified as White Collar Crime, which is difficult to prove . Even though the much needed role and function of the Indonesian Financial Transaction Reports and Analysis Center/INTRAC has been expanded to assist investigators in the use of reverse proof methods to uncover cases in the field of money laundering. However, in its implementation, the use of reverse proof methods is still very dependent on the willingness of the judge to implement it.

FOOTNOTE

¹Sudarto, 1981, *Hukumdan Hukum Pidana*, Alumni, Bandung, p. 36

 2 Mien Rukmini, 2009, Aspek
Hukum Pidana Dan Kriminologi (Sebuah Bunga Rampai), Alumni, Bandung, p
.2

³Satjipto Rahardjo, 2006, *Membedah Hukum Progresif*, Kompas, Jakarta, p.127

⁴Quoted from paer of Indonesia delegation on 47th session of the commission on narcotic drugs held in Vienna March 15th-22nd, 2004, p. 2

⁵Mukti Fajardan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, p. 156

⁶SoerjonoSoekantodan Sri Mamudji, 2003, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, PT Raja Grafindo Persada, Jakarta, p. 13

⁷Philipus M. Hadjon, Law Argumentation Paper Faculty of Law Airlangga University, Basic of Law and Legal Opinion (Legal Memo), June 18th, 2004

⁸MunirFuady, 2001, Hukum Perbankan Modern, Buku Kedua, PT. Citra Aditya Bakti, Bandung, p. 147

⁹*Ibid*, hlm 148

¹⁰M. Giovannolias quoted by Sutan Remy Syahdeini, in Jurnal Hukum Bisnis Yayasan Pengembangan Hukum Bisnis, Volume 3, Jakarta, p. 5

11 Ibio

¹²Munir Fuady, Op. Cit., p. 149

¹³*Ibid*, hlm. 151

14 Ibid

¹⁵YentiGanarsih, 2003, Kriminalisasi Pencucian Uang (Money Laundering), Postgraduate Program University of Indonesia, Jakarta, p. 66

¹⁶Fithriadi Muslim & Edi Nasution, 2011, *Menjerat Koruptor Dengan Undang-Undang Tindak Pidana Pencucian Uang*, This paper was presented on National Seminar and Interactive dialogue entitled "What and Why Corruption and Money Laundering Crime is mushrooming" presented by Community Services Organization Padang State University in cooperation with Pro Justitia Institute Jakarta and Singgalang Daily News in Pangeran Beach Hotel, Padang November 19th, 2011, p. 4

¹⁷ INTRAC, 2003, PedomanIdentifikasi Transaksi Keuangan Mencurigakanbagi Penyedia Jasa Keuangan, INTRAC, Jakarta, p. 3

- ¹⁸ http://repository.usu.ac.id/bitstream/123456789/35146/3/Chapter%20II.pdf, accessed in March 13th,2018
- ¹⁹INTRAC, 2003, Op. Cit, p. 3-4
- ²⁰ http://kbbi.web.id/lapor, accessed in March 13th, 2018
- ²¹ Henry Black Campbell, 2009, *Black's law Dictionary*, 9th edition, West Publishing Co., St. Paul-Minnessota, p. 1414
- ²² W.A. Engelbrecht, 1954, De Wetboeken Wettenen Verorderingen Benevensi De Voorlopige Grondwet van de Republiek Indonesië, A.W. Sijthoff's Uitgeversmij N.V., Leiden, pp. 366 and 1048
- ²³Indriyanto Seno Adji, *Sistem Pembuktian Terbalik: Meminimalisasi Korupsi di Indonesia*, Artikel in *Jurnal Keadilan*, Vol. I, No. 2 June 2002
- ²⁴AdamiChazawi, 1998, Hukum Pembuktian Tindak Pidana Korupsi, Alumni, Bandung, p. 114

REFERENCES

- [1]. Adami Chazawi, 1998, Hukum Pembuktian Tindak Pidana Korupsi, Alumni, Bandung
- [2]. Dikutipdari paper untukmendukungdelegasi RI padaforthy-seventh session of the comision on narcotic drugs, yang diselenggarakan di Wina 15-22 Maret 2004
- Fithriadi Muslim & Edi Nasution, 2011, Menjerat Koruptor Dengan Undang-Undang Tindak Pidana Pencucian Uang, Makalahinidisampaikanpada Seminar Nasional dan Dialog "Apadan Mengapa Interaktifdengantema Tindak Pidana Korupsidan Pencucian Uang Merajalela" yang diselenggarakanoleh Lembaga Pengabdian Kepada Masyarakat (LPKM) Universitas Negeri Padang bekerjasamadengan Pro Justitia Institute Jakarta dan Harian Umum Singgalang di Hotel Pangeran Beach, Padang padatanggal 19 November 2011

- [4]. Henry Black Campbell, 2009, Black's law Dictionary, 9th edition, West Publishing Co., St. Paul-Minnessota
- [5]. http://kbbi.web.id/lapor, diakses 13 Maret 2018
- [6]. http://repository.usu.ac.id/bitstream/123456789/35146/3/Chapter %20II.pdf, diakses 13 Maret 2018
- [7]. Indriyanto Seno Adji, Sistem Pembuktian Terbalik: Meminimalisasi Korupsi di Indonesia, Artikeldalam Jurnal Keadilan, Vol. I, No. 2 Juni 2002
- [8]. M. Giovannolisebagaimanadikutipoleh Sutan Remy Syahdeini, dalm Jurnal Hukum Bisnis Yayasan Pengembangan Hukum Bisnis, Volume 3, Jakarta
- [9]. Mien Rukmini, 2009, Aspek Hukum Pidana Dan Kriminologi (Sebuah Bunga Rampai), Alumni, Bandung
- [10] Mukti Fajardan Yulianto Achmad, 2010, Dualisme Penelitian Hukum Normatif & Empiris, Pustaka Pelajar, Yogyakarta
- [11]. Munir Fuady, 2001, Hukum Perbankan Modern, Buku Kedua, PT. Citra Aditya Bakti, Bandung
- [12] Philipus M. Hadjon, Makalah Pelatihan Argumentasi Hukum Fakultas Hukum Universitas Airlangga, Dasar Argumentasi Hukumdan Legal Opinion (Legal Memo), 18 Juni 2004
- [13] PPATK, 2003, Pedoman Identifikasi Transaksi Keuangan Mencurigakanbagi Penyedia Jasa Keuangan, PPATK, Jakarta
- [14]. Satjipto Rahardjo, 2006, Membedah Hukum Progresif, Kompas, Jakarta
- [15]. Soerjono Soekantodan Sri Mamudji, 2003, Penelitian Hukum Normatif, Suatu Tinjauan Singkat, PT Raja Grafindo Persada, Jakarta
- [16]. Sudarto, 1981, Hukumdan Hukum Pidana, Alumni, Bandung
- [17]. W.A. Engelbrecht, 1954, De Wetboeken Wettenen Verorderingen Benevensi De Voorlopige Grondwet van de Republiek Indonesië, A.W. Sijthoff's Uitgeversmij N.V., Leiden
- [18]. Yenti Ganarsih, 2003, Kriminalisasi Pencucian Uang (Money Laundering), Program Pasca Sarjana Universitas Indonesia, Jakarta