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The Nature Criminal Act of Money Laundering in The Criminal Justice System in Indonesia

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Abstract: ***The objectives of this research are: To analyze and discover the essence of criminal punishment of laundering in the criminal justice system, and to analyze and discover the criminalizing practices against money launderers in the criminal justice system, and to know and analyze and find interpretation of judges in punishment of money launderers. The method of this research is normative law research using normative law case study in the form of legal behavior product, for example studying the draft law. The subject of the study is the law that is conceptualized as the norm or rule that prevails in society and becomes the reference of everyone's behavior. Thus normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in conreto, legal system, synchronization level, comparative law, and legal history. The nature of criminalizing money laundering in a clear and detailed manner determines the limits of sentencing and the level of sentencing. The provision in this punishment is reinforced by the determination of the types of sanctions that provide an alternative for the courts to determine the appropriate sanctions for perpetrators based on the degree of crime, the conditions of the perpetrator and other circumstances so that there is no indiscriminately on the imposition of the criminal. The imprisonment or deprivation of independence, although still difficult to be abolished, also began to be a type of sanction that in its application is more selective. The practice of criminalizing money laundering crimes has not necessarily imposed criminal sanctions and measures (double track system), regulated further or better than the regulation of various sanctions of actions currently prescribed in Indonesian positive law, both in the Criminal Code and other laws.***

Keywords: Money Laundering, Criminal Justice System

1. Introduction

Pemidanaan tindak tindak pidana pencucian uang (*money laundering criminal case)*, dalam sistem peradilan pidana sebagaiamana diungkapkan oleh Barda Nawawi Arif [1] that the criminal justice system (SPP) is essentially identical with the criminal law enforcement system. Law enforcement system is basically a system of power / authority to enforce the law. The power / authority to enforce this law can be identified with the judicial authority. Therefore, the SPP (Criminal Justice System) is essentially identical with the judicial system of criminal justice system implemented in 4 (four) sub-systems, namely: Investigation power by the investigating agency, Prosecution power by public prosecutor, Power to adjudicate / adjudicate by the judiciary; The power of enforcing the criminal law by the executing execution apparatus.

The money laundering crime known in the United States in the early 20th century, stems from laundry laundries used by mobsters for bleaching / laundering of money derived from illegal acts by buying laundery companies so as if the money they collected came from a washing business.[2] In general, the perpetrator tries to hide or disguise the origins of wealth which is the result of a crime in various ways so that the wealth of the results of his crime is hard to be traced by law enforcement officers so that freely utilize the wealth for both legitimate and illegitimate activities.[3] In this context Frank Hagan money laundering is a laundering of "dirty" money into "clean" or legal "money.[4]

As communications and transportation progresses, the world becomes narrower, so the concealment of crime and its results becomes easier. The perpetrator has the ability to move places including transferring his wealth to other countries in a matter of days, hours, minutes, even in a matter of seconds. Funds can be transferred from one world financial center to another in real time through online system tools.[5] The need for a search process generally conducted by financial institutions is a logical consequence of the modus operandi of money laundering which the perpetrator tries to conceal or disguise the origin of the property which is the result of a crime. by tracing the offender and the proceeds of a criminal offense, the juridical consequences may be

[1] Barda Nawawi Arif ,2008, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, halaman 19,20,21

[2] Juni Sjafrien Jahja. 2012. *Melawan Money Laundering: Mengenal, Mencegah, & Memberantas Tindak Pidana Pencucian Uang*. Jakarta: Visi Media. Hlm.4

[3] Penjelasan Umum Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

[4] Frank E. Hagan. 1989. *Introduction to Criminology Theories, Methods, and Criminal Behavior*. Illinois: Nelson-Hall Inc Publishers. Hlm.129.

[5] Muhammad Yusuf, Dkk. 2011. *Ikhtisar Ketentuan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*. Jakarta: The Indonesia Netherlands National Reform Program. Hlm.4

determined whether to be confiscated for the state or returned to the rightful.[6]

The Crime of Money Laundering becomes one of the crimes that is currently a scourge for the people of Indonesia is a crime against money laundring criminal case (money laundring criminal case). The crime of money laundering has become a serious threat to every State. Money Laundering (UK: Money Laundering) is an attempt to conceal or disguise the origin of money / funds or Treasury proceeds of crime through various financial transactions in order to make money or Treasury seem to come from legal activities.

In general, perpetrators of criminal acts trying to hide or disguise the origin of assets that are the result of criminal acts in various ways so that the wealth of the results of his criminal acts is difficult to be traced by law enforcement officers so that freely utilize these assets for both legitimate and illegitimate activities. Therefore, the crime of Money Laundering not only threatens the stability and integrity of the economic system and financial system, but also can endanger the joints of life in the community, nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In the concept of anti-washing money, perpetrators and proceeds of criminal offense can be known through search for subsequent proceeds of the crime to be seized for the state or returned to the rightful. If assets from proceeds of criminal offenses controlled by a perpetrator or an organization of crime may be seized or confiscated, by themselves may reduce the crime rate. Therefore, efforts to prevent and eradicate money laundering crimes require a strong legal basis to ensure legal certainty, effectiveness of law enforcement and tracking and returning the assets of the proceeds of crime.

2. Formulation of the Problem

Based on the brief description described in the background of the above problem, the following problem formulation is proposed:

1) What is the nature of criminalizing money laundering in the criminal justice system?
2) What is the practice of criminalizing money launderers in the pidanal court system?

3. Theoretical Framework

1) Theory of Penance

It is illegal and contrary to the essence of a state of law, whenever an act is not specified in its regulatory legislation (especially its punishment) but punishes it. In principle, arbitrary or excessive improperly imprisonment is an abomination of human rights.[7] and strongly against the value of the rule of law. Determined in Article 1 paragraph (1) of the Criminal Code is that there is no act to be punished, but rather the criminal power in the previous law rather than the act.

In harmony with the nullum crimen principle, noela poena sine lege praevia. This means that there is no criminal act, no criminal without previous law. The judge can only decide criminal sanctions based on the type and weight of sanctions in accordance with the dosage prescribed by law and judgment is prohibited to state that the defendant commits a criminal act based on unwritten law or customary law. This principle has two functions namely the function of protecting and the function of instrumentation. The function of protecting means that criminal law protects people against the infinite power of the government, while the function of instrumentation means within the limits prescribed by law, the exercise of power by the government is firmly allowed.

Moreover, given the criminal nature is suffering or sorrow. As the meaning of the origin of the Dutch word straf. According to Mulyatno, the term punishment derived from the word straf is a conventional term. Moelyatno uses the unconventional term, namely criminal. Satochid Kartanegara explains that punishment is torture or suffering, which the Criminal Law provides to a person who violates a norm specified by the Criminal Code, and that torture or suffering by a judge's decision is imposed on the person being blamed. In line with Satochid Kartanegara, Simons defines crime as a suffering which the Criminal Law has been associated with a violation of a norm, which with a judge's verdict has been handed down to a guilty person. Meanwhile, Soedarto, giving criminal understanding is suffering deliberately imposed on people who perform acts that meet certain conditions. [8]

2) Criminal Law Policy Theory

Basically legislative or regulatory policy, functionally can be seen as part of crime prevention planning and mechanism, it can even be said as a first step. Policies or efforts to combat crime are essentially an integral part of social protection and social welfare. It can be said that the ultimate goal or the ultimate goal of criminal politics is "the protection of society to achieve the welfare of society". Naturally, if policy or politics of criminal law is also an integral part of social policy or policy (social policy). Social policy (social policy) can be interpreted as a rational effort to achieve the welfare of the community and also includes the protection of society. So in the sense of "social policy" as well as included in it "social welfare" and "social defense policy"[9]

The planning of criminal law policy in coping with crime must be based on careful calculation because considering the nature of this criminal law causes criminal law is considered very cruel so the imposition of harusah is the last effort if other efforts can not to fix the perpetrator of crime. Given the cruel nature of the criminal law, the determination of an act with its legal threats must pay attention to various aspects of humanity. The process of criminalization in this

[6] Artidjo Alkostar. 2013. *Penerapan Undang-Undang Tindak Pidana Pencucian Uang Dalam Hubungannya Dengan Predicate Crimes.* Jurnal Masalah-Masalah Hukum. Jidil 42 Nomor 1 Januari. Hlm.46

[7] Bagir Manan&S.D. Harijanti. 2014. *Memahami Konstitusi: Makna dan Aktualisasi.* Jakarta: Raja Grafindo. Hlm.164-165

[8] Muladi dan Barda Nawawi Arief. 2015. *Teori-Teori Kebijakan Pidana.* Bandung: Alumni. Hlm.2

[9] *Ibid*

case should not be done haphazardly because it concerns the dignity, dignity and human rights to live.

Viewed from the policy point of view, the use or intervention of penal should be done more carefully, carefully, sparingly, selectively and limitatively. In other words, penal means are not always called / used in any legislative product. In using penal means, Nigel Walker once reminded the existence of "limiting principles" ("the limiting principle" which should receive attention, among others:

1) Do not criminal law be used solely for the purpose of retaliation;
2) Do not use criminal law to punish non-harmful / harmful acts;
3) Do not use criminal law to achieve a goal that can be achieved more effectively by other lighter means;
4) Do not use criminal law if the loss / danger arising out of a criminal is greater than the harm / harm of the act / offense itself;
5) The criminal law restrictions do not contain more dangerous properties than the act to be prevented;
6) The criminal law should not contain restrictions that do not receive strong support from the public.

There is a reason that the criminalization of money laundering is indispensable, among others: First, because of its influence on the financial and economic systems is believed to have a negative impact on the world economy, such as the negative impact on the effectiveness of the use of resources and funds. With the practice of money laundering, resources and funds are widely used for illegal activities and can harm the community, disaming the funds are much less utilized optimally. This happens because the proceeds of crime are mainly invested in countries that are perceived to be safe to launder the money, even if the results are low. The money from this criminal act could have switched from a country with good economy to a country with poor economy. Because of its negative influence on financial markets and their impacts can reduce public confidence in the international financial system. Money laundering practices can lead to instability in the international economy, and organized crime that engages in money laundering can also create instability in the national economy. Sharp fluctuations in exchange rates and interest rates may also be a negative result of money laundering. With these negative impacts it is believed that money laundering practices can affect the growth of the world economy. [10]

Thirdly, with the introduction of money laundering as a criminal offense and with the obligation to report suspicious financial transactions for financial service providers, it would make it easier for law enforcers to investigate money laundering cases up to the characters behind them. These figures are difficult to trace and arrest because they are generally not seen in the execution of a crime, but many enjoy the results of criminal acts.

4. Discussion

1. The Nature of Money Laundering Criminal Act

The money laundering crime known in the United States in the early 20th century, stems from laundry laundries used by mobsters for bleaching / laundering of money derived from illegal acts by buying laundery companies so as if the money they collected came from a washing business. In general, the perpetrator tries to hide or disguise the origins of wealth which is the result of a crime in various ways so that the wealth of the results of his crime is hard to be traced by law enforcement officers so that freely utilize the wealth for both legitimate and illegitimate activities. In this context Frank Hagan money laundering is a laundering of "dirty" money into "clean" or legal "money.

The handling of Money Laundering Crime (TPPU) in Indonesia has been started since the enactment of Law Number 15 Year 2002 regarding Money Laundering as amended by Law Number 25 Year 2003 regarding Amendment to Law Number 15 Year 2002 on Criminal Acts of Washing, Money (Act on TPPU), and in 2010 the enactment of General Law Number 8 Year 2010 on Prevention and Eradication of Money Laundering Crime. The issuance of this law has shown a positive direction. This is reflected in the increased awareness of the implementers of the Law on TPPU, such as financial service providers in implementing reporting obligations, Supervisory and Regulatory Institutions in the drafting of regulations, the Financial Transaction Reporting and Analysis Center (PPATK) in analytical activities, and law enforcement in following up the analysis results the imposition of criminal sanctions and / or administrative sanctions. Nevertheless, there are still many cases of TPPU that can escape from the crime of punishment maximally.

One of the problems that become obstacles is the existence of different interpretation space and become a legal gap so that the sanction is not appropriate. The level of understanding of the content of each article in the Law on TPPU on the fellow Investigators, Public Prosecutors, and PPATK in applying the TPPU Law has not been harmonious. There are still many who believe that money laundering is not a stand-alone crime. As a result, law enforcement officers in using the TPPU Law are always dependent on the primary crime, both the investigator and the Prosecutor is of the opinion that the principal criminal act is part of the formal and material requirements in an event file, so that if the condition is not provided, the event was considered incomplete and can not be prosecuted.

The law enforcement apparatus tends to be glued to the prevailing legal principle of presumption of innocent which states that any person suspected, arrested, detained and / or faced before a court of law shall be presumed innocent until a court decision declares wrongdoing and has obtaining a permanent legal force. In the practice of judicial embodiment of this principle, it is seen that during the trial process still running (the District Court, the Court of Appeal and the Supreme Court) and have not obtained the permanent legal force (inkracht van gewijsde), the defendant can not be qualified guilty and the perpetrator of the crime so that during the judicial process the criminal is still running then the defendant must obtain his rights as regulated by law. The nature of this principle is quite fundamental in nature in criminal procedure law. This

[10] Muhammad Yusuf, Dkk. *Op Cit.* Hlm.16-17

principle is a shield to a suspect / defendant of a part of human rights that must be respected and protected by law enforcement authorities.

Normatively according to the explanation of Article 3 of the Law on TPPU that to examine the case of TPPU is not mandatory to first prove its original criminal offense. On the other hand, there is not one article of law on TPPU which requires to be proven in advance of the original crime before examining the TPPU case. If the crime of origin must be proven like that then certainly there will be no TPPU cases that will be processed because they have to wait so long, obviously, the original criminal act that gave birth to the TPPU must exist, but not necessarily proven first. The existence of a criminal act of origin can be known, among others, from sufficient initial evidence (two evidences), causal relationship between the TPPU case and the original crime, the unlawful acts committed by the defendant, the proceeds of the criminal proceeds to the defendant.

Basically the concept of TPPU is similar to the concept of criminal act of penalahan that is not necessary to prove it first, prosecute and punish the person who stole before punishing the person who worship. As the Supreme Court's Decision dated July 9, 1958 No. 79K / Kr / 1958 stipulates that there is no claim that requires firstly to prosecute and punish the person who stole before prosecuting and punishing the person who is in charge. There is also a Decision of the Supreme Court of the Republic of Indonesia dated November 29, 1972 Number 126K / Kr / 1969 which determines that the investigation of a criminal act of torture does not have to wait for a verdict on a criminal offense that produces the goods concerned. In this context it can be analogized to Article 480 of the Criminal Code on Penalahan. In order to examine the torture case, it is not necessary for the original offender (eg theft and robbery) to be arrested first.

In relation to law enforcement efforts in handling TPPU with the Law on TPPU is not yet optimal, partly because the existing laws and regulations still provide room for different interpretations, the existence of legal loopholes, the lack of proper sanction, the unfeasibility of shifting the burden of proof , limited access to information, narrow range of reporters and types of reports, and lack of clarity of duties and authorities of the executors. In order to fulfill the national interest and adjust the international standards, finally the Law Number 10 Year 2010 on the Prevention and Eradication of Money Laundering Act (PPTPPU Law) in lieu of Law Number 15 Year 2002 on Money Laundering as amended by Law Number 25 Year 2003 regarding Amendment to Law Number 15 Year 2002 regarding Money Laundering Crime. Content material contained in this Law, among others:

1) Redefining the notion of matters related to Money Laundering crime;
2) Improvement of criminalization of money laundering crime;
3) Regulations on the imposition of criminal sanctions and administrative sanctions;
4) Inauguration of the application of the principle of recognizing the Service User;
5) Expansion of Reporting Parties;
6) Determination of types of reporting by other goods and / or service providers;
7) Structuring on Compliance Oversight;
8) Providing authority to Reporting Parties to suspend Transaction;
9) Extension of authority of the Directorate General of Customs and Excise on the carrying of cash and other payment instruments into or out of customs areas;
10) Provision of authority to the investigator of the original criminal offense to investigate the alleged criminal act of money laundering;
11) Expansion of agencies eligible to receive PPATK analysis or examination results;
12) Reorganization of PPATK institutions;
13) Increase of PPATK authority, including authority to suspend Transaction;
14) Rearrangement of Money Laundering Criminal Procedure Law; and
15) Arrangements concerning confiscation of assets derived from criminal offenses.

It should be noted that the PPTPPU Law is about improving the criminalization of TPPU and giving authority to the investigators of the crime of origin to investigate the alleged criminal act of Money Laundering. According to Article 69 of Law no. 8 Year 2010 of the PPTTPU Law stating "to be able to conduct investigation, prosecution and examination in Trial Session against Money Laundering Criminal Not required to be proven in advance of criminal act of origin". With regard to the construction of such provisions according to Artidjo Alkostar, due to the highly sophisticated money laundering process in disguising dirty money, a legal basis is required to apply the shifting burden of proof in Article 69 of the PPTPPU Law which is essentially a criminal offense or predicate crime not mandatory fir.

The existence of the provisions of Article 69 is supported by the provision of Article 77 of the PP Law on TPPU stipulating that for the purposes of court examination, the defendant must prove that his assets are not the proceeds of a crime. The explanation of this clause is quite clear, so the legal construction of this law mandates that the defendant is no longer "given a chance" in the reverse proof, but "obliged" to do so. This is the new money laundering law over the old law. Comparatively, the anti-money laundering regime in almost all countries places money laundering as a crime that does not depend on original crime in the case of a money laundering probe.

There is no need to prove the predicate crime first in the crime of money laundering, on the one hand has deviated from the principle of presumption of innosence and the principle of non-self incriminatiation. The defendant / defendant of TPPU is as if it has been deemed guilty of money laundering with proven crime of origin without first having its faults marked by a verdict of judge which has a permanent legal force. The waiver of this principle may lead to a violation of the interests and principal rights of the author / perpetrator (suspect / defendant) so as to potentially violate human rights which in fact is one of the basic fundamentals of law enforcement. In this context, the constitutionality becomes questionable, especially in relation to Article 28D paragraph 1 of the 1945 Constitution which

states that "everyone is entitled to the recognition, guarantee, protection, and fair legal certainty and equal treatment before the law".

In the case of Akil Mochtar applying for the regulation of TPPU regulation in the PPTPPU Law, there are 9 (nine) articles in it that are challenged by its constitutionality. He challenges the constitutionality of Article 2 Paragraph (2), Article 3, Article 4, Article 5 Paragraph (1), Article 69, Article 76, Article 77, Article 78 Paragraph (1) and Article 95. In addition to questioning the non- criminal origin, is also questioned the legality of the authority of the Prosecutor of the Corruption Eradication Commission in investigating and prosecuting the TPPU. He asked the Constitutional Court to cancel and ask for the interpretation of those articles. The application of these articles is considered to be multiple interpretations, which leads to legal uncertainty and injustice to the applicant, especially when assets that are not significantly related to corruption are confiscated and their deprivation seized for the state. Upon the filing of this case, the Constitutional Court in its decision Number 77 / PUU-XII / 2014 decided to refuse the petitioner's petition completely. In this ruling, there are dissenting opinions from Constitutional Justice Aswanto and Maria Farida Idrati who argue that the applicant's petition should be related to the necessity of a decision of the original criminal offense before proceeding to the TPPU is granted.

After the lawsuit of Akil Muchtar rejected by the Constitutional Court Decision Number 77 / PUU-XII / 2014, R.J. Soehandoyo filed a re-examination of Article 69 of the PPTPPU Law with different test stones and reasons for the petition. The constitutionality issue of the petition No. 77 / PUU-XII / 2014 is different from the petition of R.J. Soehandoyo. In the petition Number 77 / PUU-XII / 2014 the position of Akil Mochtar as the Petitioner is as a suspect in the criminal offense at once in the TPPU. Whereas in this petition, the Petitioner's position as Suspect in the case of TPPU is not as a perpetrator of his original criminal offense. Therefore, according to the Constitutional Court, the petition of the Petitioners is not contradictory to Article 60 of the Constitutional Court Law so that it can be petitioned for re-examination. The Constitutional Court through its Decision Number 90 / PUU-XIII / 2015 decided to reject the application with one of the legal considerations that the provision of Article 69 which provides that investigation, prosecution and examination in the court of TPPU shall not be proven in advance of the criminal offense of origin not contradictory to the 1945 Constitution and has also corresponded to the spirit of eradication of organized crime.

2. Money Laundering Crime Preparedness

In the law enforcement practice of TPPU, law enforcement logic that to be able to process money laundering crime, need to be proved in advance the existence of crime of origin, so in prosecution phase of public prosecutor have to make cumulative indictment. In the case of TPPU whose criminal offense is corruption can be exemplified the case of Bahasyim Assifie which by the Public Prosecutor is charged: First: Primair: Article 12 Sub-Article a Law No.20 of 2001 Jo. Law Number 31 Year 1999 concerning the Eradication of Corruption (Anti Corruption Law); Subsidair: Article 12 Sub-Article e of Corruption Law; More Subsidair: Article 12 B Paragraph (1) Corruption Law; Moreover Subsidair: Article 11 Article 12 B Paragraph (1) of Corruption Law; and Second: Primair: Article letter a Law on TPPU; Subsidair: Article 3 Sub-Article b of the TPPU Law; More Subsidair: Article 3 Sub-Article c of the TPPU Law. Decision of the Jakarta High Court. 08 / Pid / TPK / 2011 / PT.DKI dated May 19, 2011 canceled the decision of South Jakarta District Court. 1252 / Pid.B / 2010 / PN.Jkt.Sel February 2, 2011.

Supreme Court Decision No. 1454 K / Pid.Sus / 2011 stating the defendant is proven legally and convincingly guilty of committing corruption and money laundering with legal considerations that regardless of the reasons cassation of judex facti is wrong to apply the law, because in the a quo case the indictment is prepared alternatively and cumulative. And it turns out judex facti argues that proved to be a corruption indictment. the verdict was overturned by judex juris, on the grounds that the first indictment of subsidair that is threatened with crime is not the same and must be viewed individually because it must be viewed separately because it must be applied the provisions of Article 66 of the Criminal Code. In other considerations it is stated that even if the predicate crime is not proven, the money laundering is still checked and proven in court. And the defendant can not prove that the confiscated property is not the result of corruption.

In connection with the case of Bahasyim Assifie above, there is a link between corruption as a predicate crime with TPPU as supplementary crimes. In this case both types of criminal offenses are essentially charged on a cumulative basis. The criminal act of corruption on the first indictment with money laundering crime in the second indictment thus becomes the duty of the Prosecutor and Judge to prove the two indictments. The pattern with the cumulative indictment against the TPPU charged with the crime of origin is quite common, such as Akil Mochtar and Gayus Tambunan also apply the same thing. In addition to the cumulative indictment, there are also applied alternative charges, such as the case with the defendant Ahmad Sidik Mauladi Iskandarsinata aka Dicky Iskandardinata.

Dicky Iskandardinata was charged with the type of alternative indictment, namely First: Article 2 paragraph (1) Jo. Article 18 Law on Corruption Jo. Article 55 paragraph (1) to 1 Jo. Pasla 64 paragraph (1) of the Criminal Code; or Second: Article 3 paragraph (1) Sub a, b, c, Law on TPPU Jo. Article 55 paragraph (1) to the 1 Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code. South Jakarta District Court Decision. 114 / Pid.B / 2006 / PN.Jak.Sel dated June 20, 2006 stated that the defendant was proven legally and convincingly guilty of committing a joint and continuing criminal act of corruption. To impose a criminal therefore by imprisonment for 20 (twenty) years; Dropped a fine of Rp. 500,000,000, - (five hundred million rupiah) subsidies 5 (five) months in jail. High Court Judgment No. 175 / Pid / 2006 / PT.DKI dated October 2, 2006 amarnya strengthen the decision of the District Court. The Supreme Court's decision. 181 K / Pid / 2007 dated January 20, 2007 amarnya refused the defendant's appeal.

In other practice, TPPU does not have to be proved before its predicate crime because money laundering is a stand-

alone crime. The Prosecutor's Office filed a charge of money laundering from its original criminal offense. Even if someone escaped from predicate crime does not mean to get away from money laundering allegations. As long as the predicate crime has not expired for prosecution and the elements of the offense have been met, the AGO can still prosecute. One of the relevant court rulings is a verdict against the auditor of the Directorate General of Taxes at the Karawang District Court. The judges of Karawang District Court sentenced Yudi Hermawan, Agi Sugiono, and Raden Handaru Ismoyojati to violate the law on TPPU without first proving the crime of origin. Yudi was sentenced to 8 years, Agi was sentenced to 6 years in prison, and Handaru was sentenced to 5 years in prison. This case stems from the suspicion of PPATK over the jumbo account of Yudi, the official of the DGT II D. The billions of rupiah money is allegedly derived from the gratuities of a company.

In addition, there is also a criminalization of TPPU without the need to be proven in advance of the crime of origin such as TPPU case on behalf of defendant Tonny Chaidir Martawinata in South Jakarta District Court, with case of position: defendant in 2003 and 2004 has received payment of wealth which he knows or suspect is proceeds of criminal offense as regulated and threatened with crime in Article 6 paragraph (1) subparagraph c of the TPPU Law, namely the defendant has received from PT. Kharisma International Hotel money worth Rp. 2.660.000.000, - (two billion six hundred sixty million rupiah), which is part of the funds owned by PT. Pusri Palembang (pension fund Pusri - Dapensri) amounting to Rp.31.000.000.000, - (thirty one billion rupiah), which on 5 September 2003 has been transferred from Bank Mandiri Pusri Palembang branch to Dapensri deposit account at KCP Bank Internasional Indonesia (BII) Senen Jakarta, then on the same day and date, without the knowledge and approval of the Board of Directors of Dapensri, the funds are transferred to the account on behalf of PT. Kharisma Internasional Hotel. the Decision of the South Jakarta District Court Number 956 / Pid.B / 2005 / PN.Jak.Sel dated September 21, 2005, has imposed a prison sentence of 8 (eight) years and a fine of Rp. 1,000,000,000.- (one billion rupiah) subsidiair 6 (six) months of confinement (the decision has permanent legal force),

The development of the problem of the existence of the punishment system against the perpetrators of TPPU, whether as perpetrators of criminal acts of origin or non-perpetrators of the original criminal act was quite dynamic. In practice, law enforcement against TPPU still has a good obstacle in terms of interpretation of substantive law (material law) as well as in its procedural law (formal law). The constraint in question is related to the proof of the predicate offense in which there is a contradiction between Article 2, 3, 4 and 5 with Article 69. There is a doubt as to whether the KPK is authorized to prosecute money laundering. Contradictive between Articles 3, 4 and 5 with the explanation of Article 5 paragraph (1) regarding the element of intent or negligence (culpa) and relating to the non-regulation of proving reversed and its consequences. The obstacles above are quite disturbing in practice to make law enforcers and judge giddy to conduct the criminal proceedings against the perpetrators of TPPU.

Thus money laundering is called by the term money laundering in English is money which means money and laundering means washing. The term money laundering is known since 1930 in the United States, when the mafia buys legitimate and official companies as one of its strategies. The biggest investment is a laundry company or called laundromats which was then famous in the United States. This washing business progressed and various proceeds of criminal proceeds such as from other business branches were invested in this laundry company, such as illegal liquor, gambling and prostitution. But it seems that not all agree with the origin of the term money laundering associated with the story of the mafia. As Jeffrey Robinson discloses that the myth of the mafia is a mere article, while the term money laundering itself is used because the term correctly describes the process, ie unauthorized (dirty) money placed through the transaction cycles (washed), so the outcome becomes legitimate money (net).

5. Conclusion

1) The nature of criminalizing money laundering in a clear and detailed manner determines the limits of sentencing and the level of sentencing. The provision in this punishment is reinforced by the determination of the types of sanctions that provide an alternative for the courts to determine the appropriate sanctions for the perpetrators based on the degree of crime, the conditions of the perpetrator and other circumstances so that there is no indiscriminately on the imposition of a criminal. The imprisonment or deprivation of independence, although still difficult to be abolished, also began to be a type of sanction that in its application is more selective.
2) The practice of criminalizing money laundering crimes has not necessarily imposed criminal sanctions and measures (double track system), regulated further or better than the regulation of various sanctions of actions currently prescribed in Indonesian positive law, both in the Criminal Code and other laws.

References

[1] Achmad Ali, 1998, **Menjelajah Kajian Empiris Terhadap Hukum**, Penerbit PT.Yarsif Watampone, Jakarta
[2] .----------, 2009, ***Menguak Teori Hukum dan Teori Pengadilan***, Penerbit Kencana Prenada Media Group, Jakarta.
[3] Adrian Sutedi, 2008, ***Tindak Pidana Pencucian Uang***, Penerbit Citra Aditya Bakti, Bandung.
[4] Agus Santoso. 2012. ***Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum***, Penerbit Prenada Media Group, Jakarta.
[5] Ahmad Rifai. 2011. ***Penemuan Hukum oleh Hakim Dalam Persfektif Hukum Progresif***, Penerbit Sinar Grafika, Jakarta.
[6] Amrullah M. Arief, 2004, ***Tindak Pidana Pencucian Uang Money Laundering***, Penerbit Bayumedya, Malang.
[7] Andre Ata Ujan. 2001, ***Keadilan & Demokrasi; Telaah Filosofis Politik John Rawls,*** Cetakan V, Penerbit Kanisius, Bandung.

[8] Andi Hamzah, 2007, ***Terminologi Hukum Pidana***, Penerbit Sinar Grafika, Jakarta.
[9] Andi Zainal Abidin Farid, 1995, ***Hukum Pidana I***. Penerbit Sinar Grafika, Jakarta.
[10] Andi Zainal Abidin Farid dan Rachmad Baro, 1997, ***Perbandingan Azas-Azas Hukum Adat Pidana Eropa***, Penerbit PT. Umitoha Ikhuwah Grafika, Ujung Pandang.
[11] Bambang Sutiyoso. 2010. ***Reformasi Keadilan Dan Penegakan Hukum Di Indonesia,*** Dilengkapi Undang-undang Peradilan Tahun **2009.** Penerbit UII Press Yogyakarta (anggota IKAPI).
[12] Barda Nawawi Arif, 2008, ***Kebijakan Hukum Pidana***, Penerbit Kencana Prenan Media Group, Jakarta.
[13] _____, 2008, ***Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan***, Penerbit Kencana Prenada Media Group, Jakarta.
[14] _____, 1991, ***Upaya Non Penal dalam Kebijakan Penanggu-langan Kejahatan***, Bahan Seminar Kriminologi VI, Semarang.
[15] George Ritzer. 1992. ***Sociological Theory***. New York: Mc Graw-Hill Press.
[16] Germann, A.C, 1978, ***Introduction to Law Enforcement and Criminal Justice***, Bannerstone House Publisher, Ilionis U.S.A
[17] G.P. Hoefnagels, 1973, ***The Other Side Of Criminology***, Kluwer, Deventer Press, Holland.
[18] Hans Kelsen. 2011. ***Teori Hukum Murni***, Dasar-dasar Ilmu Hukum Normatif, Penerbit Nusa Media, Bandung.
[19] H.L.A. Hart. 2011. ***Konsep Hukum, The Concept Of Law***, Cetakan V, Penerbit Nusa Media, Bandung.
[20] H.L. Packer, 1968, ***The Limits Of Criminal Sanction***, Stanford California-Stanfort University Press.
[21] La Ode Husen, 2009, Negara Hukum, Demokrasi dan Pemisahan Kekuasaan, UMI-Toha Makassar
[22] H.R.Otje Salman. 2009. ***Filsafat Hukum (Perkembangan & Dinamika Masalah)***, Penerbit PT.Refika Aditama, Bandung
[23] James. M. Henslin, 2002. ***Essential of Sociology***, A Down to Earth Approach Fourth Edition. Boston: Allyn and Bacon Press.