

Legal Review of the Attorney General's Authority in Carrying Out Asset Recovery of the Proceeds of Money Laundering Crimes

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Abstract: Money laundering is a derivative crime that is frequently associated with corruption and has the potential to cause significant losses to state finances. Efforts to recover assets derived from criminal activities constitute an essential aspect of law enforcement aimed at restoring state losses and creating a deterrent effect for perpetrators. This study aims to analyze the authority of public prosecutors in the investigation of money laundering crimes as well as the mechanisms for state asset recovery based on the authority of the Indonesian Attorney General's Office. The research method employed is normative juridical research using statutory and case approaches. The results of this study indicate that the Attorney General's Office possesses clear and legally valid authority to conduct investigations into money laundering crimes as regulated under Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering and the Law on the Attorney General's Office. Prosecutors are authorized to trace, seize, confiscate, and recover assets derived from criminal acts without first proving the predicate offense. This study further emphasizes that although the authority of the Attorney General's Office has been normatively regulated, in practice, state asset recovery continues to face various obstacles, both in substantive and procedural law, such as inconsistencies in statutory regulations and the suboptimal implementation of non-conviction-based asset forfeiture. Therefore, strengthening regulations and harmonizing legal policies are necessary to ensure that state asset recovery through the handling of money laundering crimes can be carried out more effectively and provide legal certainty.

Keywords: Asset Recovery; Money Laundering Crime; Prosecutor Authority.

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1. Introduction

Indonesia is constitutionally affirmed as a state governed by the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This provision implies that all aspects of state governance must be conducted based on law rather than merely on power. Indonesia's national legal system is the result of the integration of various legal systems that have developed and are implemented based on applicable laws and regulations (Febriansyah, 2016).

As a state founded on Pancasila, Indonesia's legal system must reflect the values of divinity, humanity, unity, democracy, and social justice. Therefore, all forms of law enforcement, including the handling of corruption and money laundering crimes, must be directed toward protecting public interests and ensuring substantive justice. (Sri Novita, 2023).

Corruption is an extraordinary crime that is not only a national issue but also a global problem. This crime has a broad impact on social rights and undermines the foundations of national and state life. Corrupt practices can be found in nearly all sectors of government, including the executive, legislative, and judicial branches, resulting in substantial losses to state finances and the national economy (Susanto et al., 2022).

In its development, corruption is often accompanied by money laundering crimes. Money laundering serves as a means to disguise or conceal the origin of assets obtained unlawfully. Therefore, combating money laundering is an inseparable part of efforts to eradicate corruption. Money laundering crimes are characterized by their complexity and their tendency to evolve in line with technological advancements and modern financial systems. This condition makes the process of proving and tracing criminal assets increasingly difficult. Perpetrators typically employ various methods to distance assets from the reach of law enforcement authorities, including placing assets under the names of third parties or mixing them with legally acquired assets. (Hilal et al., 2022).

Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering provides a legal basis for law enforcement authorities to take action against money laundering perpetrators without first proving the predicate offense. This provision is reinforced by a decision of the Constitutional Court, which affirms that proof of the predicate offense is not an absolute requirement in handling money laundering cases. Nevertheless, in law enforcement practice, various obstacles remain, both in terms of substantive and procedural law. Inconsistencies among provisions within the Money Laundering Law and the suboptimal asset forfeiture mechanisms have resulted in the recovery of state losses not being maximized. This condition indicates the need to strengthen the role of the Attorney General's Office in the investigation and recovery of state assets. (Tuma & Pratt, J. M. (1982).

2. Research Method

This study employs a normative juridical research method, focusing on the examination of legal norms applicable within Indonesia's positive legal system. This approach views law as a set of written rules established by authorized institutions and possessing binding legal force. The approaches used in this research include a statutory approach and a case approach. The statutory approach is conducted by examining various regulations related to the authority of the Attorney General's Office and asset recovery in money laundering crimes. Meanwhile, the case approach is used to analyze the application of legal norms in law enforcement practice.

3. Results and Discussion

Authority of Prosecutors in the Investigation of Corruption and Money Laundering Crimes

The Indonesian Attorney General's Office occupies a strategic position within the constitutional system as a government institution exercising state power in the field of prosecution. Based on Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, the Attorney General's Office is also granted additional authorities regulated by law, including investigative authority over certain criminal offenses. The authority of prosecutors to conduct investigations into corruption and money laundering crimes is reinforced by Article 30 paragraph (1) letter d of the Law on the Attorney General's Office. This provision has undergone constitutional review and has been declared not contrary to the 1945 Constitution by the Constitutional Court, thereby confirming its legal validity. In practice, investigations conducted by the Attorney General's Office begin with a preliminary inquiry through judicial intelligence activities. This stage is carried out confidentially to collect initial data before being elevated to the investigation stage, which is open in nature. This mechanism aims to ensure the existence of sufficient preliminary evidence before further legal actions are undertaken. However, the position of the Attorney General's Office as part of the executive branch presents challenges related to the independence of law enforcement. Structural dependence on the President and institutional relationships with regional governments have the potential to influence objectivity in handling cases, particularly corruption cases involving public officials.

State Asset Recovery in Money Laundering Crimes

Asset recovery is one of the primary objectives in handling money laundering crimes. Law Number 8 of 2010 provides a legal foundation for law enforcement authorities to trace, seize, and confiscate assets derived from criminal activities. Money laundering crimes encompass various acts aimed at concealing or disguising the origin of assets obtained from predicate offenses. These predicate offenses include various crimes such as corruption,

narcotics offenses, human trafficking, and other economic crimes. In the context of asset recovery, several asset forfeiture mechanisms are recognized, namely criminal forfeiture, administrative forfeiture, and civil forfeiture. In addition, the concept of non-conviction-based asset forfeiture has developed, allowing the state to confiscate assets derived from criminal activities without waiting for a criminal conviction against the perpetrator. Although this concept has been recognized in international practice and regulated under the 2003 United Nations Convention Against Corruption, Indonesia has not yet enacted specific regulations that comprehensively govern non-conviction-based asset forfeiture. As a result, efforts to recover state losses through asset forfeiture continue to face various legal obstacles. In the practice of enforcing money laundering laws, the effectiveness of the authority of the Attorney General's Office is determined not only by the legal framework but also by institutional capacity and inter-agency coordination. Tracing assets derived from money laundering crimes requires intensive cooperation among the Attorney General's Office, the Financial Transaction Reports and Analysis Center (PPATK), and financial institutions, given the increasingly complex and cross-sectoral patterns of money laundering. Without optimal coordination, efforts to trace and secure assets may be hindered, thereby reducing the effectiveness of state asset recovery. Furthermore, the application of the reverse burden of proof principle in money laundering cases continues to generate debate in judicial practice. On one hand, this mechanism is necessary to facilitate proof and accelerate asset recovery. On the other hand, its application must continue to uphold human rights protection and the principle of due process of law to avoid injustice to parties acting in good faith. Therefore, prosecutors are required to exercise the reverse burden of proof professionally and proportionally. Moreover, the absence of comprehensive regulation on non-conviction-based asset forfeiture within national law has resulted in suboptimal state asset recovery. This mechanism is particularly relevant in cases where perpetrators flee, pass away, or cannot be criminally prosecuted. This condition underscores the urgency of establishing specific regulations governing asset forfeiture in a more progressive manner while ensuring legal certainty and justice.

4. Conclusion

First, the authority of the Attorney General's Office to investigate corruption and money laundering crimes has been explicitly regulated in statutory provisions. Prosecutors possess legal legitimacy to trace and seize assets suspected of originating from money laundering crimes without first proving the predicate offense. Second, state asset recovery through money laundering mechanisms aims to minimize losses to state finances. However, regulatory limitations and suboptimal asset forfeiture mechanisms have resulted in asset recovery efforts remaining ineffective. Therefore, it is necessary to reform national regulations to accommodate non-conviction-based asset forfeiture mechanisms while ensuring legal certainty and the protection of human rights, so that state asset recovery can be carried out more effectively and efficiently.

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