

Authorities of The Corruption Eradication Commission to Make Demands On Money Laundering Actions.

(Study at the Corruption Eradication Commission and Central Jakarta Corruption Court).

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ABSTRAC

In this thesis, writer raised the theme based on many of the Crime of Money Laundering which often occurred in Indonesia but there is no regulation that regulated clearly about the Authority of Corruption Eradication Commission to prosecution the Crime of Money Laundering. The writer of this thesis using method of sociological approach and type or research is empirical judicial. Legal materials primer analyzed using analysis technique descriptive and secondary legal material using a technique content analysis. As a population that are Corruption Eradication Commission staff and Corruption Crimes Court. Technique arranging primary data is interview and the secondary data using documentary and inventory. From the result with that method, writer receive the answer from the issue which based on Act of Corruption Eradication Commission has right to conducting the prosecution on Crime of Money Laundering because the predicate crime from money laundering is a corruption and based on Act of Crime of Money Laundering not mention or regulate about the authority of prosecution on Money Laundering but based on Criminal Court terms said that simple, fast and cheap court so Corruption Eradication Commission may be conducting about prosecution.

Key word: Authority, Prosecution, Money Laundering, Corruption Eradication Commission

1. PRELIMINARY

The problems that often occur in Indonesia is the rise of Money Laundering Crime that comes from the Crime of Origin of Corruption. The money laundering sentence was first introduced by US investigators during the Watergate scandal in the 1970s. The sentence was accepted by the international community with the development of such crimes in the field of illegal drugs, especially cocaine from South America in the early 1980s. There is so much money that has never existed before in the world of evil.²

The crime of money laundering is an act committed by the legal subject where the money is derived from the proceeds of crime that the origin of the money is hidden or disguised. A lot of criminal acts originating from Money Laundering Crime, pursuant to Article 2 of Law Number 8 Year 2010 concerning Prevention and Eradication of Money Laundering Act of the State Gazette of the Republic of Indonesia Year 2010 Number 122 (hereinafter referred to as the Law on

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² Schaap Cees, *Fighting Money Laundering*, Kluwer Law International, London, 1998, hlm 9.

Prevention and Eradication of Criminal Acts of Purgatory Money),³ corruption becomes a criminal offense from the Crime of Money Laundering the most important or often occurs. Therefore, the Corruption Eradication Commission or the Corruption Eradication Commission may take over or supervise as stipulated in the Corruption Eradication Commission Law.

The Corruption Eradication Commission Law states that the Corruption Eradication Commission itself can take over investigation or prosecution during circumstances which are based on the consideration of the police or prosecutors, the handling of the Corruption Act is difficult to implement properly and accountable. However, based on the Corruption Eradication Commission Law, it is not clear that the Corruption Eradication Commission is entitled to prosecute in relation to Money Laundering Crime.

Because the Crime of Money Laundering is not limited to the Crime of Corruption but to the Criminal Act of Origin so in the Money Laundering Act itself does not declare that the Corruption Eradication Commission is entitled to prosecute even though the investigation has been conducted by the Corruption Eradication Commission (Komisi Pemberantasan Korupsi). If based on the simple justice principle of light cost then if the investigation is in one hand, then the Public Prosecutor may indicate cumulatively between the crime of origin and the crime of money laundering and submit it simultaneously to the court".⁴

2. FORMULATION OF THE PROBLEMS

1. What is the legal basis of the Corruption Eradication Commission Prosecutor to Prosecute Money Laundering Crime if it is reviewed from the Law of Corruption Eradication Commission and the Law on Money Laundering Crime?
2. What is the basis of consideration that makes the Corruption Court judge reject the defendant's exception?

3. DISCUSSION

This study uses a juridical empirical research that is a direct study conducted by research studies in the field and visiting the location directly to the location of research that is in the office of the Corruption Eradication Commission and Central Jakarta Corruption Court.

In preparing this thesis research, sociological juridical approach is used.

The juridical approach is an approach to examine issues based on applicable legal principles and regulations. In this research there are regulations relating to the authority of

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

⁴ Marwan Effendy, **Sistem Peradilan Pidana Tinjauan Terhadap Beberapa Perkembangan Hukum Pidana.**, Referensi, Jakarta, 2012, hlm 73

Corruption Eradication Commission to prosecute Money Laundering Crime. The sociological approach is an examination of the problems in this study which cannot be separated from the parties involved in the prosecution of TPPU, so that the data obtained are assessed based on sociological factors that affect. The sociological research will be related to the State Agency in this case is the Corruption Eradication Commission.

The type of data that is used in this study is divided into 2 types: Primary Data is data taken from the field or obtained from the source, also the results of interviews of parties located in the office of the Corruption Eradication Commission related to the authority of the Corruption Eradication Commission to prosecute the Crime of Money Laundry and Corruption Court that rejects the defendant's exception (Yustianti and Roesli 2018). Secondary data is data obtained by examining the decision, the result of research which has been prepared in the form of report, the result of this research which has been arranged in the form of final task either in the form of thesis, dissertation, literature, legal journals, and articles from the internet.

Primary data collection was conducted through interviews with resource persons / respondents / key informants, either structured or unstructured using interview guidelines. Secondary data in empirical law research obtained on the basis of study research reports and scientific papers as described used by the method of documentation and inventory of the various thoughts contained in the report of research results and scientific writing final paper, especially those directly related to the object.

All data, information, and information obtained in the field at the time of this research then analyzed by using 2 (two) method that Primary data obtained from research will be analyzed by using descriptive method of analysis, writer describes data obtained from field, then analyze the data obtained in the field to be drawn a conclusion in accordance with the problems studied. For secondary data obtained from literature materials will be analyzed by using content analysis method, analyzing legal concepts obtained by legal material, as well as describing the applicable legislation and reality related to legal issues studied, then depicted in detail and analyzed so that a conclusion can be drawn.

3.1. The Legal Basis Regarding Prosecutor Of The Corruption Eradication Commission Conducts Money Laundering Prosecution If It Is Reviewed From The Law On Corruption Eradication Commission and the Act on Money Laundering Crime.

Corruption is an act committed by a legal subject based on corruption or unauthorized income, bribery and gratification. Generally, the Corruption Crime will coincide with Money Laundering Criminal which in the mode of implementation is placement, layering and integration. Placement is an action performed by a legal subject related to cash proceeds from a crime that is usually the result of a Criminal Act of Corruption entered into the financial system so that the

origin of the money is difficult to trace or disguise.⁵ After passing the placement, the next mode is layering where through several stages of financial transactions to decide / separate the relationship between the funds stored in the bank and the crime that became the source of the fund. The goal is to hide or disguise the origin of funds.⁶ After passing the layering, the last mode is integration: the effort to use the property that has appeared legally valid, whether to be enjoyed directly, invested in various forms of material and financial wealth, to refinance criminal activities. The unification of money involves the transfer of funds that have passed through the process of coatings examined and then put together with funds derived from legal activities into the flow of such large global funds.⁷ Based on the classification of Articles 3, 4, 5 of the Anti-Money Laundering Prevention and Eradication Act for the purpose of disguising or concealing the origins of assets.

Based on Article 6 of the Corruption Eradication Commission Law, the authorities, duties and obligations of the Corruption Eradication Commission are as coordinator or supervision with the institution having authority to eradicate Corruption, investigate, investigate and prosecute the Corruption Crime, take preventive action or preventing associated with Corruption Crime to monitor the implementation of state administration. From the explanation of Article 6, the authority and duties of the Corruption Eradication Commission are explained more deeply in Article 8 of the Corruption Eradication Commission Law, namely the implementation of supervisory duties as referred to in Article 6, the Corruption Eradication Commission is authorized to conduct supervision, research, or review of the agency performing the duties and its authority concerned with the eradication of criminal acts of corruption, and agencies in the conduct of public services. In exercising the authority as intended, the Corruption Eradication Commission shall also take over the investigation or prosecution of the perpetrators of the criminal acts of corruption perpetrated by the police or the prosecutor's office. In the event that the Corruption Eradication Commission takes over an investigation or prosecution, the police or the prosecutor's office shall submit the suspect and all documents of the case along with the necessary evidence and other documents within 14 (fourteen) working days from the date of receipt of the request of the Corruption Eradication Commission. The submission as intended shall be done by making and signing the minutes of submission so that all duties and authorities of the police or the prosecutor's office at the time of transfer shall be transferred to the Corruption Eradication Commission.⁸

⁵ Aziz Syamsuddin, Op.Cit, hlm 20

⁶ *Ibid.*

⁷ *Ibid, hlm 21*

⁸ Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi.

Based on the Corruption Eradication Commission Law, investigations and prosecutions may be taken over by the Corruption Eradication Commission for reasons described in Article 9 of the Corruption Eradication Commission Law, namely:

- a. Community reports on corruption are not followed up;
- b. The process of handling corruption crime is protracted or delayed for no reason that can be accounted for;
- c. The handling of corruption is aimed at protecting the perpetrators of the true criminal act of corruption;
- d. The handling of corruption acts contains elements of corruption;
- e. Obstacles handling of criminal acts of corruption because the interference of executive, judiciary, or other circumstances of a legislative; or
- f. Which according to police or consideration attorney general's office, handling of criminal acts of corruption is difficult to enforce good and could be accounted for.⁹

When there is a reason that referred to in article 9, the corruption eradication commission be obliged to notify the investigators or the public prosecutor to take over of criminal acts of corruption that is being addressed.

In carrying out tasks the corruption eradication commission as intended under article 6 letter C, the corruption eradication commission authorized conduct an investigation, the perpetrators because police investigations, and prosecution of corruption crimes which are both:

- a. Involving law enforcement officials , organizers of the state , and another person has to do with of criminal acts of corruption conducted by law enforcement officials or state government;
- b. Received the attention that disturbs residents; and / or
- c. Related to losses to the state Rp 1.000.000.000,00 (one billion rupiah) .

Based on article 74 Act of Prevention and Eradication of Criminal of Money Laundering, criminal money laundering investigation conducted by investigators in accordance with the provisions of criminal law and provisions of the event, otherwise determined by this act.¹⁰ In article also said predicate crime determine who is investigating criminal offences relating to money laundering. If predicate corruption is to be examined by the corruption eradication commission and the corruption eradication commission is investigating and vice versa.

Based on article 74 Act of Prevention and Eradication of Criminal of Money Laundering, if the investigator find out enough initial proof that related to money laundering and predicate

⁹ *Ibid.*

¹⁰ Undang-Undang Republik Indonesia Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

crime, then the investigator have right to merging the investigation between money laundering crime and its predicate crime and also compulsory reporting to PPATK.¹¹

Based on article 76 the act of prevention and eradication of criminal acts of money laundering, prosecutors must submit docket crimes money laundering to district court most 30 (thirty) days work as of the date of he received docket that has been declared complete.If public prosecutor has given docket to district court, the head of district court must form the judge in the case more than 3 (three the day work since he received file on the case.¹²

Based on article 74 the act of prevention and eradication of criminal acts of money laundering , investigators crimes money laundering done by investigators of predicate crime or crimes origin in accordance with the provisions law of the event and the provisions of the legislation. In terms of corruption, so investigators derived from corruption eradication commission entitled to combine investigation than a felony money laundering who predicate crime or crimes he was of corruption. Article 75 the act of prevention and eradication of criminal acts of money laundering explained that when investigators found sufficient evidence implicated in criminal money laundering and predicate crime or crimes you , so investigators can and entitled to combine penyidikannya and told ppatk or reporting and analysis financial transactions¹³

From the concept of the articles above, so the corruption eradication commission concluded that clearly the corruption eradication commission have the authority to make the perpetrators because police investigations.¹⁴

Based on article 52 the act of kpk, after prosecutors receive docket by investigators, prosecutors must have file on the case to the district court at least 14 (fourteen) days work as of the date of he received documents. The public prosecutor referred to here is public prosecutor on commission on corruption eradication is raised and discharged by the corruption eradication commission exercising the functions of prosecution of corruption crimes set based on article 51 the act of kpk. In this law there is no information that giving authority the corruption eradication commission to bestow docket investigation findings to public prosecutor out public prosecutor the corruption eradication commission.¹⁵

Based on article 141 letter B KUHAP, the merger matter in one indictment for two of a criminal act to wit corruption crimes and money laundering being closely jointed with one and the other, so the allocation of criminal acts money laundering is handed to the court of criminal acts of corruption based on article 53 the act of KPK jo .Article 5 jis .Article 6 the act of a court of

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Hasil Wawancara dengan Pulung Rinandoro, Jaksa Penuntut Umum Komisi Pemberantasan Korupsi, 17 Maret 2015

¹⁴ *Ibid.*

¹⁵ *Ibid.*

criminal acts of corruption and authority of the district court of criminal acts of corruption authorized check, judge, and cut criminal acts of corruption and money laundering is that of a criminal act of criminal acts of corruption .So the merger matter on one indictment is based on article 75 the act of TPPU .¹⁶

Based on article 75 Act of money laundering and the principle of the judiciary of the simple it is quick and the cost of light , the corruption eradication commission felt they had an entitlement to do the prosecution of money laundering but according to the theory of within the authority of the , the corruption eradication commission have the authority to show off on doing outstanding job of delivering the arranged on Act of the corruption eradication commission stipulations based on a joint to article 6 undang-undang of poverty alleviation commission pac , of poverty alleviation commission pac has a duty , powers and obligations which they in:

- a. Coordination with agencies authority who conducting eradication of criminal acts of corruption;
- b. As well as for against the authorized agency conduct eradication of of criminal acts of corruption;
- c. Conduct an investigation , investigation , and prosecute large scale of criminal acts of corruption;
- d. Doing the prevention of corruption; and
- e. Doing the service life of the monitor to monitor the implementation of government of states.

Based on article 8 verse 2, The Act of the Corruption Eradication Commission would have the authority to take over the perpetrators because police investigations or conduct prosecution of by a specific reason enunciated at article 9:

- a. Public reports about of criminal acts of corruption had not been followed up;
- b. Process of handling of criminal acts of corruption in a slow for unacceptable reasons;
- c. Handling of criminal acts of corruption are designated to protect criminal perpetrators corruption verily;
- d. Handling of criminal acts of corruption contains elements of corruption;
- e. Obstacles handling of criminal acts of corruption because the interference of executive, judiciary, or other circumstances of a legislative; or
- f. Which according to police or consideration attorney general s office, handling of criminal acts of corruption is difficult to enforce good and could be accounted for.

¹⁶ *Ibid.*

3.2. Basis of Consideration That Makes Judge Corruption Refuse Exception The Defendant Related To The Prosecution Done By Corruption Eradication Commission Associated With Money Laundering Crimes.

Criminal law enforcement is basically impose a norm criminal law material according to ways set by legislation or criminal law formil in an event has done by a person or persons qualify as a report of criminal.¹⁷ So most requirements for criminal law enforcement there are three components, which is:

1. The regulations that set up;
2. A clear incident done by the subject of a law according to the provisions of a statute that the incidence of was a follow up criminal;
3. The regulations that set relating to imposing the ban to a subject that is referred to by the act of law.¹⁸

Party of criminal law enforcement here is a country and the subject to a law here are individuals or corporation .Hence in the rules relating to criminal law enforcement, there are two aspects what it must and ts by the state and aspects of what it must and ts by the subject of law .In the second aspect is with this is commonly called exception or exceptie in practice judicial called objection.

Exception is an objection from the defendant to the indictment containing the defendant's improper or improper indictment in the form of the indictment as filed and it is not incorrect that the defendant committed the alleged crime. In contrast to pledooi or commonly referred to as defense in judicial practice. The difference between a pledooi or a defense with an exception or an exception or objection is on the purpose, pledooi or defense is basically a self defense whose content is in the form of refusal by proving that he is not committing a criminal act as charged with legal reasons.¹⁹

The exception is essentially a rejection accompanied by reasons and legal arguments that the defendant was not justified in the indictment by making an indictment as the indictment was made and read by the Public Prosecutor. Therefore, to submit an exception, there are no legal facts obtained in the trial.

Based on the exception, there are several types of exceptions when viewed from the point of view of the contents related to the consideration of the Panel of Judges related to the refusal of the exception of the defendant Lutfhi Hasan Ishaq and Akil Muchtar namely to stop the examination of the case onwards.

¹⁷ Adami Chazawi, **Kemahiran dan Keterampilan Praktik Hukum Pidana**, Bayumedia, Malang, 2007, hlm 103

¹⁸ *Ibid.*

¹⁹ *Ibid, hlm 104*

The objection or exception submitted by the defendant's attorney in relation to the authority of the Corruption Court in the Central Jakarta District Court, which disputes the Corruption or Corruption Court is not authorized to examine and try the case because there is no decision by the Supreme Court as the basis for the operation of the Corruption Court.²⁰

The principles of the Corruption Court are relatively the same as those stipulated in the Criminal Procedure Code, namely independent, simple, fast, transparent and accountable. The purpose of being independent here is that the Corruption Court is impartial and able to be an important role in the effort to realize a just, honest and responsible governance procedure, apart from the intervention of other institutions both directly and indirectly.²¹

4. CONCLUSION

Based on research that has been carried out in the form of data, observation, documentation and supported interviews so that the results obtained as stated in the previous chapters, so conclusions are drawn:

In its prosecution, the Corruption Eradication Commission is authorized to conduct Money Laundering Prosecution pursuant to the Law of Prevention and Eradication of Money Laundering Crime namely Article 75 in connection with the merger of investigation examined by the Corruption Eradication Commission between predicate crime and Money Laundering Crime and based on Article 49 of the Corruption Eradication Commission Law, namely when the investigation process is sufficient or completed, the investigator makes an investigation report and submitted to the head of the Corruption Eradication Commission (KPK) for immediate action. The investigators referred to herein are investigators of the Corruption Eradication Commission appointed and dismissed by the Corruption Eradication Commission which carries out the function of corruption criminal investigation established under Article 45 of the KPK Law. Under Article 52 of the Corruption Eradication Commission Law, after the prosecutor receives a case file from the investigator, the claimant shall submit the case file to the District Court no later than 14 (fourteen) working days from the date of receipt of the file. The public prosecutor referred to here is the public prosecutor of the Corruption Eradication Commission appointed and dismissed by the Corruption Eradication Commission which carries out the function of prosecuting the criminal act of corruption stipulated under Article 51 of the Corruption Eradication Commission Law. In the KPK Law there is no information which gives the authority of the Corruption Eradication Commission to delegate the file of investigation case to the public prosecutor outside the Corruption Eradication Commission prosecutor.

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²¹ Terdakwa Akil MUchtar, **Putusan Nomor: 10/Pid.Sus_TPK/2014/PN.JKT.PST**, hlm 1062

The reason the Panel of Judges rejected the exception of the defendant Lutfhi Hasan Ishaq and Akil Muchtar in relation to the authority of the Corruption Eradication Commission against the prosecution of Money Laundering Crime which is not explicitly regulated in the Criminal Act of Money Laundering as well as the Court of Corruption Court in relation to the trial examining and prosecute the defendant is the principle of Corruption Court said that should be simple and fast, so the process of handling the case can be completed in an uncomplicated way. That is where the Panel of Judges assumes that the defendant's accusation that the Public Prosecutor of the Corruption Eradication Commission is not authorized to prosecute is rejected because it is not in line with the principles of Corruption Court and also in the Law on Prevention and Eradication of Money Laundering does not mention that the Public Prosecutor originating from the Corruption Eradication Commission is not authorized to prosecute, the Panel of Judges is of the opinion that the Public Prosecutor of the Corruption Eradication Commission shall have the right to conduct investigations and prosecution of the Crime of Money Laundering as well as in relation to the authority of the Corruption Court not to be submitted to the Decree of the Chief Justice, -Dream. As Article 2 of the Corruption Court Act stating that as a Special Court residing in the District Court is authorized to examine and hear.

4.1. ADVICE

1. For Government

For the government, it is requested to revise the Law on the Prevention and Eradication of Money Laundering related to the clarity of prosecutions carried out by the Public Prosecutor.

2. For Corruption Eradication Commission

For the Corruption Eradication Commission to further improve the performance in eradicating Corruption Crimes, both in the form of Bribery, Gratification and Money Laundering.

3. For Corruption Court

For the Corruption Court to further improve performance in the examination so that the law in Indonesia can be more fair and honest in its application.

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