



# LEGAL ANALYSIS OF SYSTEM IMPLEMENTATION REVIEWED EVIDENCE IN CRIMINAL ACTIONS MONEY LAUNDERING

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Keywords	Abstrac
Application	Application is an act of practicing a theory, method, to achieve a
Reverse Proof System	certain goal. In this case the intended application is how to apply
Money Iaundering Crime	the reverse verification system to money iaundering crimes. In general, money iaundering has been classified as a crime and classified as a white-collar crime, and is considered an extraordinary crime or even a serious crime because it has a different and more dangerous modus operandi than conventional crimes known in law. crime in Indonesia. in eradicating money iaundering, the most i mportant thing is ihe process of proof. The process of proving money iaundering is different from examining criminal cases in general, because money laundering is an extraordinary crime. extraordinary efforts as well (extraordinary enforcement). One form of ihis extraordinary effort is i n ihe context of proving money iaundering cases i n court using a limited and balanced mechanism of reversing ihe burden of proof or reversed proof. In this study, normative legal research methods were used, namely legal research carried out by examining literature or secondary data as a basis for research by conducting a search of regulations and literature related io ihe problem io be studied.
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#### 1. INTRODUCTION

Criminal law is part of the overall law that applies to a country. Which regulates what actions can be done and what can't be done, the prohibition of this prohibition has been regulated and determined by the government and if anyone violates it, they will be subject to sanctions that have been set by the government. Along with the development of the more advanced age, followed by the change in human behavior that is increasing. However, the development of the age that occurs like a double-edged sword, on the one hand provides extraordinary benefits in the fields of technology, economics and law. On the other hand, the development of the times itself brings a negative influence on society. Many crimes have occurred in the fields of technology, economics and law as a result of the development of the era itself. First of all, it is necessary to explain whether it is money laundering. If we look at the Black's Law Dictionary, it can be read money laundering. "Tern used to describe investment or other transfers of money flowing from racketing, drug transactions, and other illegal sources into litigation channels so that is original source cannot be traced" (The term is used o describe the investment or other transfer of money flowing from fraud/extortion, drug dealing or other illegal sources to legitimate channels so that the original source cannot be traced.

Money laundering or money laundering is simply defined as a process of making the proceeds of crimes known as dirty money, for example the proceeds from drugs, corruption, tax evasion, gambling, smuggling, etc. converted into a form that appears legitimate for safe use. In other words, money laundering is a process or act that aims to hide or disguise the origin of money or assets obtained from the proceeds of crime which are then converted into assets that appear to originate from legitimate activities. In this definition there is the word "as if", so that even though the money

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laundering process is successful, the assets originating from them are never legalized or whitewashed. Thus the term used is "money laundering" not "money laundering". In Malaysia, the term money laundering is translated as "changing money". Money laundering is always related to assets originating from criminal acts, so there is no money laundering if no crime is committed (No crime no money laundering).

Article 1 point 1 of Law No. 8 of 2010 concerning the prevention and eradication of money laundering (hereinafter abbreviated as the TPPU Law) states that. "Money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law." In this sense the elements referred to are the elements of the perpetrator, the element of the act against the law and the element which is the result of a crime. The reason for applying reverse proof for money laundering crimes is because money laundering is considered a crime that is committed in a complicated way and involves perpetrators who have organized crime networks so that in the process of proving in court sometimes public prosecutors have difficulty proving laundering cases. money in court, coupled with the increasingly sophisticated information technology in finance and banking making it difficult to catch the perpetrators of this crime.

Furthermore, Article 77 of the Money Laundering Law has inspired the reverse burden of proof in Indonesia. However, the concept of the reverse burden of proof is balanced and limited. The meaning of balanced is that the public prosecutor is obliged to prove his charges according to the principle of actori incumbit probation (whoever argues, is obliged to prove). In addition, the meaning of limited is that the use of the reverse burden of proof is limited to certain criminal acts. The implementation of the reverse burden of proof in Indonesia is also not optimal because it conflicts with the principle of presumption of innocence. On the one hand it is used to overcome deadlocks in the legal process of proof to bring corruptors before the criminal justice process, but on the other hand, it is very risky for human rights violations for the accused as guaranteed by the 1945 Constitution which regulates human rights issues, and is a condition for the formation of a state. constitutional democracy, namely the protection of human rights of citizens.

Based on the 1945 Constitution, human rights related to guarantees and protection for defendants are strictly regulated in the 1945 Constitution, especially Article 28D paragraph (1) which emphasizes "everyone has the right to recognition, guarantees, protection, and legal certainty that is fair and equal treatment." equal before the law. The increasingly complex problems of ML have resulted in the weakening of the evidentiary system designed by the Criminal Procedure Code. As a result, many money laundering offenses cases have escaped the law due to the difficult verification system. The presence of the ML Law which tries to apply the reverse burden of proof brings fresh air to the reform of ML enforcement. On the other hand, the reverse burden of proof creates contradictions because it contradicts the principle of the presumption of innocence, the principle of equality before the law.

If you do not use this reverse proof system, it will be difficult for the Public Prosecutor to prove it considering the position and expertise as well as the social strata of the Defendant who are above average in committing offenses so that there will be many money laundering crimes that will escape the law. With a reverse evidentiary system, a person will be afraid of committing a money laundering crime, because it is difficult for him to provide a satisfactory explanation of the source of his wealth, if indeed the wealth was obtained illegally. Therefore the system of proof for money laundering is very different from the system of evidence for other criminal cases. Because the burden of proof lies not only with the public prosecutor but also with the defendant having to prove the charges against him. So with the existence of a reverse proof system for money laundering crimes, it is necessary to analyze how the application of a reverse proof system for this crime of laundering needs to be analyzed.

Based on the background above, the authors are interested in analyzing this problem in a study entitled "Legal Analysis of the Application of the Reverse Evidence System in the Crime of Money Laundering". The aims of this research are: To find out how the mechanism for applying the inverted evidentiary system is money laundering in Indonesia. To find out what obstacles are faced by law enforcement officials in applying the reverse proof system to money laundering crimes (money

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laundering) and how to solve it, To find out how the ideal concept of a proof system in criminal acts future money laundering

## 2. METHOD

This research was carried out referring to secondary data by studying legal principles and positive legal principles derived from literary materials in statutory regulations and existing legal provisions. relating to the system of proof reversed and the crime of money laundering in the implementation of the system of proof reversed in the crime of money laundering (money laundering). Sources of data in this study are secondary legal materials, primary legal materials and tertiary legal materials. Primary legal materials, namely legal materials consisting of laws and regulations, official treatises, court decisions and official state documents. Primary legal materials through library research and documentation studies, namely legal materials as follows: The Criminal Procedure Code, Law Number 8 of 2010 concerning Prevention and Eradication of Acts Money Laundering Crime. To get a source of research material that includes the problems that the writer will analyze, the writer uses several data collection techniques, namely by using Library Engineering, Problem Approach Method. Furthermore, the data that has been collected is processed in the form of qualitative analysis, namely research that refers to legal norms contained in laws and regulations and court decisions as well as norms that live and develop in society. Analysis of data originating from written data, one by one is then systematically arranged so that it can answer existing problems in the form of a thesis.

#### 3. RESULTS AND DISCUSSION

### 1. Application of the Reverse Proof System for Money Laundering Crimes

Is a procedure for how the evidence is used in a trial in accordance with the applicable procedural law. So the function of proof is to confirm the criminal acts that have been committed by the defendant, and also to free himself from unproven charges and convict him based on proven criminal charges. While the function of evidence is to assist the process of proof in court, if in the process of proof without the presence of evidence, the proving program is null and void by law.

In fact, the system of reversing the burden of proof is a system whose position is outside the theoretical norm of proof in universal formal criminal law, both in the Continental European system and the Anglo-Saxon system, which only recognizes evidence that imposes a burden of proof on the Public Prosecutor. It's just that in certain cases (certain cases), application with a differential mechanism is permitted, namely a system of reversing the burden of proof which is referred to as "reversal burden of proof" or "omkering van het bewijlast".

Indonesia, in order to prevent and eradicate money laundering crimes, has Law Number 15 of 2002 concerning Money Laundering Crimes. However, it is felt that the provisions in this Law have not met international standards and the development of the judicial process for money laundering crimes, so that it needs to be amended so that efforts to prevent and eradicate money laundering crimes can run well and effectively. Therefore it was refined through Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering.

However, over time, it was felt that the provisions of Law Number 15 of 2002 and Law Number 25 of 2003 were no longer in line with developments in law enforcement needs, practices and international standards, so that Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

The methods or modus operandi of money laundering are generally carried out through the following ways:

a. Through Capital Cooperation

Money from the proceeds of crimes that have been committed in cash is taken abroad. The money goes back in the form of joint venture projects. Profits from these investments are reinvested in various other businesses. The other business profits are enjoyed as money that is already clean because it seems that it was processed legally and even has been taxed.

b. Through credit guarantees

The proceeds of money laundering are made in the form of cash and then taken abroad. After

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that, it is deposited in a certain country bank whose banking procedures include soft banking from that bank, transferred to a Swiss bank in the form of a deposit. Then, a loan was made to a bank in Europe with the deposit. The money from the credit is invested back into the country of origin of the illicit money.

c. Through overseas travel

Cash is transferred abroad through foreign banks in the country. Then, the money is disbursed and brought back to its country of origin by a certain person. As if the money came from abroad.

d. Through disguised domestic efforts

With this money, a pseudonym company was set up, it doesn't matter whether the money has generated net money.

e. Through the guise of gambling

With this money a gambling business was established. It doesn't matter whether you win or lose. However, you will win on the basis of the origin of the money. If in Indonesia there were still SDSB, nalo, lotteries, and other similar things, owners of illicit money could be offered the winning numbers at a higher price. Thus, the money gives the impression to the person concerned as the winning result of the gambling activity.

- f. Through disguised documents The money is physically not going anywhere, but its existence is supported by various fake documents or documents that are held, such as making double invoices in buying and selling and export imports. So that there is an impression that the money is the result of foreign activities.
- g. Through foreign loans

Cash is brought abroad in various ways, then the money is put back as a foreign loan. This seems to give the impression that the perpetrators are obtaining credit assistance from abroad.

h. Through engineering foreign loans

The money physically doesn't go anywhere but then a document is made as if there was foreign aid or loans. So, in this case there is absolutely no lender. There are only loan documents, which are most likely fake documents. From the explanation of the various modus operandi of money laundering above, we can see that the large number of counterfeiting activities coupled with technological advances makes it difficult to catch the perpetrators of money laundering crimes. In Article 78, the word "related to a case, places restrictions on the public prosecutor in filing for confiscation of the said assets and also limits for judges in deciding which assets can be confiscated. For this reason, the definition of "related to cases" denotes only assets confiscated assets that can be asked to reverse the burden of proof on the defendant, meaning that since at the investigation level the assets that will be required to be proven before the trial must be confiscated by the investigator, if they are not confiscated it can be interpreted that these assets are not related to the case. related to the case, but has not been confiscated, the defendant still has to prove it because if it has been stated that he is related to the case, even though his assets have not been confiscated or confiscated, the defendant still has to prove it. known by anyone, of course. the defendant would not disclose the assets so that the word "related" indicates that it was always known.

Reverse proof in the TPPU Law for which there is no explanation, of course we have to link the acceptance of this reversed proof principle with what has previously been applied in the general explanation as well as Article 37 of the 1999 PTPK Law, which means that the application of the law of proof is carried out by means of proof. reversed with limited or balanced merit, and using a wettelijk overtuiging negative proof system (negative according to law). Not applying pure reverse proof (zuivere omskeering bewijstlast). In the provisions regarding the making of a law, if a principle has been accepted previously, then in subsequent legislation it will be said to be quite clear or there is no explanation. So how is the implementation of the anti-TPPU reverse proof supposed to refer to the PTPK Law except in certain cases it will also deviate from the PTPK Law. Reverse proof of the Corruption Crime Act (UU TPK) No. 31 of 1999 is seen as a right as well as an obligation for the defendant. This can be seen in the provisions of Article 37 paragraphs (1) and (2) namely the

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defendant has the right to prove that he did not commit corruption and this evidence is used by the Court as a basis for declaring that the charges are not proven, if the defendant can prove assets Why does the defendant have to prove and Why does the prosecutor also have to prove? Because in Law No. 8 of 2010 there is no explanation but it is said to be quite clear, then of course because we have been seen as accepting the reverse proof system at the time of the promulgation of Law No. 31 of 1999 concerning the PTPK Law, where in the general explanation and explanation of Article 37 it is very clear and this should be a reference in the next legislation which includes the application of reverse proof.

2. Obstacles Faced By Law Enforcement Officials In Implementing A Reverse Verification System For Money Laundering Crimes

Against the defendant's evidence, the judge will consider everything and the attitude of the judge is free in determining his opinion, that is, the testimony of the accused is only applies only to the defendant himself or if the testimony is proven not to have committed a crime money laundering, then the information is used as personal gain and if the defendant cannot prove the acquisition of his assets, then the defendant's testimony it can be used to strengthen existing evidence that the defendant has committed the crime money laundering crime or in other words the statement has harmed the position defendant. The loss suffered by the defendant was not only in terms of the information given regarding his assets, that the defendant could not prove his assets obtained in the right way. However, the defendant for the crime of money laundering with reversing the burden of proof is also disadvantaged by the hassle of the defendant doing something evidence, this will be different from other criminal defendants who do not use reversal of the burden of proof in the proof, which is sufficient only to make a defense and challenge the existing evidence.

To support this principle of reversing the burden of proof, law enforcement officials have since from the stage of investigation, prosecution to court examination has applied the method tracing and disclosing assets so as to confiscate assets wealth obtained from crime. This was confirmed by a prosecutor at the level the Attorney General's Office that in implementing the reversal of the burden of proof, the apparatus law enforcers must have the ability or readiness of quality resources to use can trace the origin of the assets of the perpetrator, namely through:

a) Asset disclosure

To analyze the opening of assets, it is usually difficult to ensure the results of a financial analysis. Therefore what needs to be done for the initial assets as accurately as possible is an analysis, such as; 1) it is impossible to own a 2009 car in 2007; 2) The Land Agency Office will record a file when a property is acquired; 3) Checking the file of financial traffic numbers on bank accounts. Law enforcement officials must have the ability to prove that these assets were owned at the beginning of their term of office or at a certain time, during their midterm or end of term of office. b) Expenses for living expenses In connection

b) with expenses for living

expenses, this is a matter that is questioned in the entire analysis and is also a matter of things such as a source of income or in the form of a lifestyle that allows them to survive on a modest income. Some things that need to be considered related to living expenses are taxes, electricity and gas, telephone, vehicle registration, insurance, school fees, mortgage/loan repayments, health costs and others. In terms of all these expenses of life, how are they paid? Is it paid cash or check? Where does the money come from? If paid by check, where did the check come from in the bank account? This can lead to previously uncovered bank accounts.

c) Searching for excuses Another

thing that can be done by the perpetrator is to explain his income with a variety of stories, therefore law enforcement officials must pay attention to the circumstances and financial details that are unique in each case. Various variations of this story are seen as making excuses such as: 1) I got it from an inheritance, what law enforcement officials need to ask is who did the inheritance come from? Who is related to the will? If given in cash, you can check the serial number of the money to see if the money was issued before or after the date of death. All documentation must be obtained. If the funds are inherited from abroad, then you need to ask

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- how they received the foreign money? When do they convert it to local money? What bank to use? Law enforcement officials must also obtain a copy of the last will and testament.
- 2. I get from doing business, what needs to be asked is: what is the target of running a cash business? Does the annual account show that the money was withdrawn from the business? Is the business capable of generating large amounts of cash? Does the business do pay taxes? Confirmation can also be made to the bank whether the person has entered all of his business results into the bank or not?
- 3. I got it from a relative/friend, what needs to be asked is what kind of item was received? Is it cash or check? If paid in cash then the following question is why not deposited in the bank? Ask the person concerned where the money is kept?

In what denomination is the money kept? How long will it take to collect the money. And if the money is stored for how many years, ask whether the money has ever been exchanged or not? Check the serial numbers on the date the funds were deposited. By going through the technique of tracing the defendant's assets, this will assist the prosecutor in proving the elements of the crime of laundering, such as first, the elements of placing, transferring, diverting, spending, paying, granting, deposit, take abroad, change shape, exchange with currency or letters valuable or other actions on assets that he knows or reasonably suspects is the result of a crime.

# **3.** The ideal concept of a proof system in money laundering crimes (money laundering) forward

The evidentiary system in the crime of money laundering in Indonesia currently uses a limited and balanced inverted evidentiary system where the burden of proof is not only borne by the public prosecutor but the accused must also prove what he has been charged with, if the defendant cannot prove his indictment then he is declared proven to have committed a crime of money laundering. Conversely, if the defendant can prove that the charges are not necessarily acquitted, it is the duty of the public prosecutor to prove all that they have charged the defendant with.

Therefore it is necessary to increase individual abilities in the process of eradicating and proving money laundering crimes and also increasing the synergy of law enforcement officials involved in it. As explained by the head of PPATK Ivan Yustivandana in his presentation, "PPATK has been active for 2 decades since April 17 2002. During that time, PPATK focused on preventing and eradicating ML and TF in various cases in society. Furthermore, there are several things that PPATK will do in the future. In addition to strengthening the quality of human resources in line with the development of digital technology, PPATK is also trying as soon as possible to realize Indonesia's full membership in the Financial Action Task Force on Money Laundering (FATF). The goal is to increase positive perceptions of Indonesia's investment climate and financial system and strengthen confidence and trust in Indonesia in international business," he said. "In accordance with the theme of Synergy to Build the Country and Prevent Crime from Dominating the Country, PPATK together with all APUPPT stakeholders will not tolerate even the slightest act of money laundering and financing of terrorism in this country, especially green financial crime." Therefore, Ivan added, to ensure that this can be implemented, PPATK must strengthen synergies for all AAUPPT stakeholders such as the Supreme Court, the Attorney General's Office, the National Police, the Corruption Eradication Commission, the Financial Services Authority, Bank Indonesia, and the National Narcotics Agency, the Ministry of Finance, Reporting Parties. (Financial Services Providers and Goods and Services Providers) and other stakeholders.

Talking about the effectiveness of the law means discussing the working power of the law in regulating and or forcing people to obey the law. The law can be effective if the factors that influence the law can function as well as possible. The effective measure of whether or not an applicable law and regulation can be seen from people's behavior. A law or legislation will be effective if members of the public behave in accordance with what is expected or desired by or the legislation achieves the desired goal, then the effectiveness of the law or legislation has been achieved.





# 4. CONCLUSION

Basically, in the formal criminal law system in Indonesia, the burden to prove whether or not a crime has occurred lies with the Public Prosecutor. This is as implied in Article 66 of the Criminal Procedure Code (KUHAP), that a suspect or defendant is not burdened with the obligation to prove. However, this is very clearly different from the evidentiary system used in Law Number 8 of 2010 concerning the prevention and eradication of money laundering. Why is the system of proof for money laundering different from the system of proof for criminal acts in general? Money laundering is an extraordinary crime (Extra Ordinary Crime), so an extraordinary evidentiary system must also be used in the process of proving money laundering. The purpose of reverse proof is that the burden of proof in the trial process is on the defendant. Thank you to my lecturer Mr. Dr. Dani Sintara, SH., MH who has assisted in carrying out the research and writing of this article and to the Al-Washliyah Medan Muslim University Campus which has supported the author in developing the article so that it can be published and read by many people.

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