Assessing the Assurance of Legal Certainty and Equity of the Indonesian Law of Money Laundering

Seno Wibowo Gumbira[*], Umi Khaerah Pati[**], Kukuh Tejomurti[***], Ratna Nurhayati[****]

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Abstract

Law of Money Laundering has a fundamental point to eradicate transnational predicate and serious crimes. Each state has different arrangements to address predicate crime. Indonesia considers predicate crime in the category of ordinary crime consisting of fraud and embezzlement. However, ordinary or conventional crimes may only be subject to the Law under limited circumstances. Article 69 of the Law of Money Laundering remains debatable among criminal law experts due to the relation with Articles 77 and 78 of the Law. The last two articles prescribe that burden of proof on the case of predicate crimes is on defendant, not public prosecutor. Defendant must prove assets that are suspected as result of crime, not acquired from the crime, or related to crime. Currently, there is no elucidation to the articles. This study analyzed two legal issues. Firstly, does the formulation of Article 2, paragraph 1, and Article 69 of the Law of Anti-Money Laundering guarantee legal certainty and fulfil a sense of justice? Secondly, does the Article 2 paragraph 1 letter z of the Law cause ordinary criminal acts to be entangled with the Law on Money Laundering?

Keywords: formulation, money laundering crimes, predicate crimes.

A. Introduction

Crimes have been evolved along with the development of human civilization in the world. The evolution of crimes in forms and quality, particularly the ones that are related to economic, such as money laundering, has a direct and indirect impact on the life of people around world, including Indonesia. As globalization is reaching Indonesia, all types of crimes also penetrate Indonesia.

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[*] Lecturer of Criminal Law, Universitas Terbuka, Pd. Cabe Raya, Pd. Cabe Udik, Kec. Pamulang, South Tangerang, Banten, S.H., M.H (Universitas Terbuka), seno@ecampus.ut.ac.id.

[**] Lecturer of Civil Law, the Faculty of Law, Universitas Sebelas Maret, Kentingan, Jl. Ir Sutami No. 36A, S.H., M.H. (Universitas Sebelas Maret), umi_khaerah@staff.uns.ac.id.

[***] Lecturer of Civil Law, the Faculty of Law, Universitas Sebelas Maret, Kentingan, Jl. Ir Sutami No. 36A, S.H., LL.M. (Universitas Sebelas Maret), kukuhmurtifhuns@staff.uns.ac.id.

[****] Lecturer of Civil Law, Universitas Terbuka, Jl. Jl. Pantura Semarang - Kendal No.Km 14,,5, Mangkang Wetan, Kec. Tugu, Semarang,, S.H., M.Hum (Universitas Terbuka Semarang), anna@ecampus.ut.ac.id.

Article 1 of the United *Nations Convention Against Transnational Organized Crime* 2000 (TOC) stipulates that "*the purpose of the convention is to promote cooperation to prevent and combat transnational organized crime more effectively*". Therefore, the international community concerns current crimes as a global issue. The international community through the UNCATOC is determined to increase cooperation to prevent and eradicate organized transnational crimes.[1]

There have been various efforts to eradicate crimes, including through criminal law enforcement.[2] The enforcement shall regard the criminal law of subsiding function. It constitutes that *criminal* law may be enforced after other efforts have proven ineffective or inappropriate.[3] In criminal law, this term is known as *ultimum remidium*. Money laundering crime is categorized as transnational organized crime. Then, its eradication is not subject to one state jurisdiction. All states must be bound to conduct cooperation and necessary means under regional or multilateral forums to eradicate money laundering crimes.[4]

Indonesia has implemented the regulation on money laundering crimes. Many crimes, including corruption, constitute predicate crimes of money laundering cases. They are simultaneously determined through judicial proceeding. Article 2, Paragraph 1, of the Law Number 8 of 2010 on the Prevention of Money Laundering Crimes states that the result of crimes shall be the assets acquired from the crimes of corruption, bribery, narcotics, psychotropics, labor smuggling, immigrant smuggling, banking crime, capital market crime, insurance crime, customs, excise, human trafficking, trade of illegal fire arm, terrorism, kidnapping, burglary, embezzlement, fraud, money counterfeiting, gambling, prostituting, tax crime, forestry crime, environment crime, marine and fishery crimes, and other crimes can be sentenced to four years or more imprisonment.

On the other hand, many crimes mentioned in Article 2 Paragraph 1 are categorized as types of corruption as stipulated in the Law Number 31 of 1999 in Conjunction with the Law Number 20 of 1002 on the Eradication of Corruption such as bribery, banking crimes, and capital market crimes. This Article raises multiple interpretations due to the broad and varied types of corruption stipulated in the Law.

In addition, the association of money laundering crime with its predicate crime constitutes a violation of the principle of evidentiary. Article 69 of the Law on Money Laundering prescribes that to be eligible to investigate, prosecution, and examination in the trial against money laundering crime, it shall not be obliged to prove the predicate crime before. It implies that the implementation of the article

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1 Nyoman Sarikat Putera Jaya, "Kebijakan Kriminal dalam Penanggulangan Kejahatan Internasional Khususnya Terorisme" (paper presented at Seminar Regional under the theme Perkembangan kejahatan Internasional dan Upaya Penanggulangannya, Universitas Pelita Harapan, Jakarta, 30 May 2012).

2 Supanto, *Kejahatan Ekonomi Global dan Kebijakan Hukum Pidana*, (Bandung: Alumni, 2010), 15.

3 Supanto, 16.

4 Edi Setiadi and Rena Yulia, *Hukum Pidana Ekonomi*, (Bandung: Graha Ilmu, 2010), 146.

enables judicial proceeding without the needs to prove the predicate crime. This implementation raises a juridical issue on the possibility of Human Rights violation to the defendants due to the absence of legal certainty. Moreover, this implementation also violates letter (b) of consideration of the Law that the prevention and countermeasure of money laundering crimes requires a firm legal basis to ensure the legal certainty, effectiveness of law enforcement, the search, and return of the assets acquired from crimes. This article implies that the regulation of money laundering crime shall not be implemented in assets allegedly acquired from unproven crimes. Juridically, the Law on Money Laundering cannot be enforced without the proving of predicate crimes in advance. This implementation will raise multiple interpretations and uncertainty on the definition of money laundering crimes and other predicate crimes publicly.

In addition to the two discussions, the provision and elucidation of Article 2, Paragraph 1, letter z, of the Law on Money Laundering states that other crimes of which is sentenced to four years or more of imprisonment. The elucidation only states "self-explanatory". The elucidation contains no detail and explicit limitation. This may raise concerns considering the potentials of criminalization on petty, minor, or traditional crimes by poor people who only aim to fulfil their daily needs, such as theft, fraud, embezzlement, prostitution, etc. On the other hand, the money laundering aims to charge the white color, organized, and transnational crimes.[5] Based on the discussion, this study focused on the formulation of Article 2, Paragraph 1, and Article 69 of the Law Number 8 of 2010 on the Money Laundering Crimes to ensure legal certainty and equity; and Article 2, Paragraph 1, letter z, of the Law Number 8 of 2010 on the Money Laundering Crime may charge an ordinary crime.

B. Legal Certainty and Equity in the formulation of Article 2 Paragraph 1 of the Law on Money Laundering

This section formulates whether Article 2 Paragraph 1 of Money Laundering Crime has provided legal certainty and equity. The legal certainty shall be examined beforehand. Article 2 Paragraph 1 of the Law explicitly mention the type of predicate crimes. However, letter z may raise multiple interpretations and criminalization of minor crimes, considering that poor people generally conduct minor crimes. This issue requires considerations from various points of view. Arief asserts that the eradication of money laundering must aim to cut the chain and significant crimes related to white-collar, organized, and transnational crimes.[6] Notwithstanding, the Law on Money Laundering also considered conventional crimes as predicate crimes. However, Atmasasmita states that amongst the 26 predicate crimes, six of which are categorized as conventional crimes and excluded

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5 Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, (Jakarta: Kencana Prenada Media Grup, 2008), 223.

6 Barda Nawawi Arief, 223.

from serious crimes determined by the United Nations Convention on Organized Transnational Crimes 2000. They are theft, embezzlement, fraud, prostitution, kidnapping by which also regulated in the Criminal Code with a minimum punishment of one day.[7]

Conventional crimes are closely related to the element of sociology. The correlation of conventional crimes with the element of sociology can be discovered in the data from 2008 to 2011 below.

Table 1. Conventional Crimes in the Law on Money Laundering

No	Report (initial)	Brief Description of Cases
1.	LP/787/K/IX/2008/SPK UNIT I TGL 11-09-2008 Report N	PT Bank Dipo Kc. received a fax containing instructions to transfer money eighty million and seventy million rupiahs to BCA Bank Account number xxxxxxx that belongs to H H, which allegedly received money from Drs H A Rp250 million Crime: Fraud and Money Laundering
2.	LP/249/K/I/2009/SPK UNIT I Report E	An Artha Graha Bank employee, S, who worked in the marketing team, conducted an act that against the law by not depositing the customer's money Rp20,5 million to the front teller and purposely not conducted bookkeeping and withdrew the customer's money Rp290 million Crime: Money Laundering and Banking
3.	LP/1594/V/2010/PMJ Dit Sus Report R	Abuse of power of the BPR Branch Chief Crime: Money Laundering, Banking and Corruption

Based on the data from the National Police of Indonesia, the object of crimes in the Law on Money Laundering is a conventional crime involving a tremendous amount of money and or resulting in many victims. Consequently, there are plenty of predicate crimes in the Law. For instance, the Australian Law on Money Laundering only includes narcotics, smuggling and human trafficking as predicate crimes. Then, the Thais Law on Money Laundering contains six types of serious crimes as predicate crimes. The American Law on Money Laundering includes narcotics, finance, and tax crimes as predicate crimes. Compared to the Law in Indonesia, the previous states thoroughly select the crimes to be included as predicate crimes; and corruption is excluded as a predicate crime.

To answer the question whether Article 2 Paragraph 1 of the Indonesian Law on Money Laundering has provided legal certainty, the principle of legality as the

[7] Romli Atmasasmita, *Analisis Hukum Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*, (Bandung: Jurnal Hukum Padjadjaran, 2015), 5.

primary principle of criminal law shall be addressed. The focus of legitimacy in the scope of criminal law is known as "*nullum delictum, nulla poena sine praevia legi poenali"* (no prohibited and punishable by otherwise determined in advance in the legislation). It implies three definitions as follows.

1. No action is prohibited and punished without regulation determined in advance.
2. Determination of crimes shall not use an analogy.
3. Criminal law provisions are non-retroactive.[8]

In general, the principle of legal certainty is the principle in the scope of national or international law stating that subjects of law are entitled to be aware of their rights and obligations to conduct activities with other issues. Matters of law can be certain by ascertaining orientation and assurance of implementation herein the legal norms shall be recognised. The definition is in line with the term "*verba ita sunt intelligenda, ut res magis veleat quam pereat", which* means words must be understood so that the subject matter may be preserved rather than destroyed. Accordingly, ones should write the positive law clearly and coherent, particularly in the formulation. Such effort shall provide applicable regulation and prevent juridical, sociological, and technical issues.

Normatively, there are 26 types of predicate crimes in Article 2, Paragraph 1, of the Indonesian Law on Money Laundering. However, there is no regulation on the categorization of crimes as severe and conventional. The Indonesian Supreme Court has issued the Regulation of the Supreme Court Number 2 of 2012 on the minor crimes in conjunction with the Law Number 16 of 1960 (that regulates minor crimes below Rp2,5 million for theft, fraud, embezzlement, vandalism, fence) that the suspects shall not be detained and a quick trial with a single judge for the cases. The regulation, however, raises debate and differences of opinion amongst criminal law experts. The criminal law expert's views are as follows.

Table 2. The Opinion of Criminal Experts towards Article 2 Paragraph 1 of Indonesian Law on Money Laundering

Atmasasita	Hamzah	Supanto
The Article is significant considering that the 20 crimes are categorized as extraordinary crimes. The remaining six are classified as conventional crimes. The types of predicate crimes in Indonesia are substantial compared to other states or	Predicate crimes are mentioned in Article 2, letter a to z. However, letter z provides no detail on the types of crimes that are punishable for four or more years of imprisonment. Consequently, the number of crimes is unlimited,	Article 2 Paragraph 1 shall be implemented to money laundering crimes, despite of the Regulation of the Supreme Court Number 2 of 2012 on minor offences in conjunction with the Law Number 16 of 1960 (that regulates minor

[8] Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Bina Aksara, 1987), 25.

the provisions of the United *Nations Convention Against Transnational Organized Crime* 2000.	including extortion (Article 368 of Criminal Code) and threat (Article 368 of Criminal Code) that are punishable for four years of imprisonment (nine and four years of imprisonment). This Article is excessive considering that the crimes also include theft, embezzlement, and fraud. The provision of Article 2 Paragraph 1 may imply that theft, embezzlement, and fraud can be charged with money laundering crime. The thief usually hides or covers the result of the robbery. Therefore, theft can be charged with money laundering crime.	crimes below Rp2,5 million for theft, fraud, embezzlement, vandalism, and fence) that the suspects shall not be detained and a quick trial with a single judge for the cases.

Based on the table, the Regulation of the Supreme Court Number 2 of 2012 on minor offences in conjunction with the Law Number 16 of 1960 (regulating minor crimes amounting Rp2,5 million for theft, fraud, embezzlement, vandalism, fence) that the suspects shall not be detained and a quick trial with a single judge for the cases. According to Article 7, Paragraph 1 and 2 of the Law Number 12 of 2011 on the Formulation of Regulatory, the hierarchy of the current legislation in Indonesia is as follows.

1) The types and hierarchy of regulation consist of
    a. 1945 Constitution of the Republic of Indonesia;
    b. Decree of the People's Consultative Assembly;
    c. Law/Government Regulation In Lieu of Law;
    d. Government Regulation;
    e. Presidential Regulation;
    f. Provincial Regulation;
    g. Regency/Municipality Regulation.
2) The power of regulation conforms to the hierarchy as mentioned in paragraph (1).

In addition to the types of regulation mentioned in Article 7 Paragraph 1 of Law Number 12 of 2011 on the Formulation of Regulation, Article 8 Paragraph (1) and (2) of the same law stipulates other types of regulations as follows.

1. Types of legislation other than those as referred to in Article 7 section (1) include regulations issued by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, state agencies, state institutions, or equivalent commissions established by a Law or by the government by order of a Law, Provincial House of Representatives, Governor, Regency/Municipal House of Representatives, Regent/ Mayor, and Head of Village or equivalent.
2. As referred to in section (1), the regulation is recognized and legally binding if it is ordered by superior legislation or is made by virtue of authority.

According to Article 8 of Law Number 12 of 2011, the Regulation of the Supreme Court Number 2 of 2012 is categorized as one of the regulations. However, the binding force is not equal with Laws and Government Regulations. It shall be addressed whether the authority of the Supreme Court Regulation exceeds Laws. Based on the principle of *lex superior derogat legi inferior*, the hierarchically superior rule trumps the hierarchically inferior. The Regulation of Supreme Court Number 2 of 2012 does not trump the Laws and does not exceed the authority of the Law on Money Laundering. The Regulation of the Supreme Court Number 2 of 2012 adds the type of crimes limitation charged and applied in the Law on Money Laundering. Hence, the issue is whether the Regulation of Supreme Court Number 2 of 2012 binds the Investigator and Prosecutor. Furthermore, the Investigator and Prosecutor have only been implemented the normative law perspective and socio-legal perspective as customary in every case.

Based on the perspective of Criminal Law, Zaidan states that the implementation of criminal law with negative sanction shall be perceived as the final effort or subsidiary, the other type of sanction shall be sentenced beforehand. The implementation of criminal law shall consider prioritizing the light of sanction to be sentenced.[9] Therefore, it can be concluded that the implementation of Law on Money Laundering has limitations and constitutes *the ultimum remedium* to prevent the performance of the law to minor crimes such as fraud, embezzlement, and fence, which are categorized as minor scale loss, considering that the inappropriate implementation of the law may raise overcriminalization. There are two impacts of overcriminalization. Firstly, it is the violation of the rights of individuals. Poernomo mentions that the criminal law and its implementation are required as a mean to achieve the objectives of law towards peace considering the effectiveness of criminal law in eradicating crimes. However, the dimension of absolutism and the tendency of overcriminalization and crime infection may violate the rights of individuals.[10] Secondly, it is an obstacle to the effort of achieving the

[9] M. Ali Zaidan, *Kebijakan Hukum Pidana*, (Jakarta: Sinar Grafika, 2016), 346.

[10] Bambang Poernomo, *Pola Dasar Teori-Asas Umum Hukum Acara Pidana dan Penegakan Hukum Pidana*, (Yogyakarta: Liberty, 1988), 164.

objectives of the law. King states that *"Law and order exist to establish justice, and when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress"*.[11]

However, the Law on Money Laundering shall be implemented to transnational and severe crimes with substantial impact. Suppose the Law is implemented to conventional crimes and evolves into *premium remidium*. In that case, it shall consider the requirements asserted by de Bunt: substantial loss, recidivist, and irreparable loss.[12] The requirements shall be considered to actualize justice. The distinction of crimes in its nature, such as transnational, organized, and conventional or minor offences, is required to provide legal certainty and equity to implement Article 2 Paragraph (1) of the Law on Money Laundering. Radburch (Germany, 1878-1949) states that legal certainty and equity are the pillars of the nation (*rechtsstaat*).

C. Legal Certainty and Equity in the Formulation of Article 69 of Law on Money Laundering

This study conducted an interview combined and compared with the opinions of criminal law experts on Article 69 of the Law on Money Laundering. The results are compiled as follows.

Table 3. The Opinion of Criminal Experts on Article 69 Paragraph 1 of the Indonesian Law on Money Laundering

Atmasasita	Hamzah	Supanto
The legislators have conducted appropriate steps in the formulation of Article 69. However, it can be considered insufficient due to the unavailability of elucidation of Articles 77 and 78. It may raise fallacy in its implementation. The provision implies that if the penal policy in money laundering crimes focuses on the assets allegedly acquired from predicate crime, the origin of proof becomes irrelevant. Moreover, the crimes may be proven based on the evidence	Article 69 violates the principle of equity due to the improbability. An individual shall not be liable for stealing money if the conduct is principally the concursus of the crime. The principle adopted in Article 69 is predominantly like the imposition of Article 480 of the Criminal Code. However, the two Articles are entirely different. Article 480 of the Criminal Code may be charged without proving the predicate crime	Article 69 constitutes the principle of *lex specialis derogat legi generali* from the provision of proof in the harmful law.

[11] Paulion Collins, "Costs of Cooperation Rather than Competition in the Provision of Justice?", *Australian Journal of Public Administration* 64, No. 3, (2005): 1.

[12] Romli Atmasasmita, *Globalisasi & Kejahatan Bisnis*, (Jakarta: Kencana Prenada Media, 2010), 192.

of assets reportedly acquired from *mutatis mutandis* crimes. The Article targets the assets allegedly acquired from crimes mentioned in Article 2 Paragraph 1 of the Law. The uncertainty of Articles 77 and 78 of the Law is constituted from the unnecessary burden of proof for predicate crimes. However, the defendants shall prove the assets allegedly acquired from crimes and not obtained from offences related to the charged offences. The contradiction of the Articles is presently not explained.	in advance. In this case, the Supreme Court has sentenced 3 cases of the fence without proving the predicate crime (theft) (Decision on July 9, 1958). However, the predicate crime of money laundering crime is corruption. The prosecution of theft is difficult to be proven before the evidence of corruption is found. Corruption is generally reported without objective evidence. In the case of corruption associated with money laundering, the prosecutors may charge the defendants with corruption in the first charge and money laundering in the second charge (*concursus realis*). However, the defendants may be proven not guilty if the second charge is not verified and therefore will be released (*ontslaag*).	

Based on the normative perspective of the formulation of Article 69 of the Law on Money Laundering and the terms, such as *reasonably alleged*, the Articles that imply assets not required to be proven acquired from crimes are Articles 3, 4 and 5, Paragraph 1 as referred in Article 2 Paragraph 1 of the Law. The term *allegedly* of the assets acquired from crimes is considered sufficient. In fact, normative review shall be conducted in detail to prove the crime.

According to Huda, in relation with Article 69, the term *reasonably alleged* or other terms with similar meaning such as *reasonably allege*, *allegedly, alleging*, shall be able to allege, should have alleged were initially in criminal known to measure *negligence*, constitutes the indicator of blame from the perpetrator. Conduct is negligence if the perpetrator neglects an obligation of a matter herein is *alleging as others are obliged to allege*. Ignoring the obligation can be considered as *negligence* if it results in an unlawful event.

However, the theory and practice of law have revealed the difficulty of proving the *measure* of *if* the obligation has emerged. Saleh mentions that the difficulty in

proving the measure has begun since long time ago. Raad emphasizes that the impact of unlawful allegation is not required to be mentioned in the formal accusation beforehand.[13] The difficulty in determining the existence of objective measure on the obligation to *allege* a matter constitutes the fulfilment of the *shall allege* category if it emerges unlawful event and resulting in disintegration of implementation pattern concerning the penal provision that contains this element.

On the other hand, the determination of *negligence* using other measurement such as the requirement of *knowledge* shall be reviewed based on the perspective of normative by examining the level of education, experiences, and pattern of communication of perpetrator. In the event the element of *to be alleged*, appears the requirement of *speculation* of the perpetrator on a matter, it may be measured by the existence of *knowledge* to ensure the reaction of the perpetrator in facing circumstances. The negligence exists if the perpetrator lacks knowledge. Based on this measure, the determination of failure will be relatively easy by observing when an act conducted by the perpetrator has occurred beyond the community's expectation (*unzumuthbarkeit).* Based on the way of doing conduct or not doing a behavior, the conformity of actions with society's expectation can be identified. Thus, *the requirement of knowledge* implies *objective measure* of *negligence* on the contrary to *reasonably* to *alleging* or *allege* due to insufficient elucidation.

The above idea implies a change on the definition of *negligence*, which was based on the *not alleging as others are required to allege* into the requirement of *carefulness* in conduct. The change of definition is a consequence of encouraging acceptance of risk theory in defining *negligence*. Based on the perspective of "carelessness" in conduct without fear of causing unlawful action. The examination focuses on the behavior, whether it has satisfied the standard measure for *carefulness* rather than the psychological condition of the perpetrator. This definition has been impacting the difficulties in defining the terms *reasonably allege*, *allegedly*, *alleging*, *shall be able to allege*, *should have been alleged*. The difficulties also encompass the scope of theory and practice, thereby gradually changing into a definite term.

The term *should have known* is preferable and rather than the term *reasonably alleges* or *reasonably alleging* by which sufficiently equal with the term *should have known*. The term *should have known* was first introduced in Article 28 of the Rome Statute, implying a person's level of *carefulness* in conduct based on the perspective of a standard measure. In relation with the assets acquired from crime in the scope of money laundering crime, the obligations of transaction such as *placing, transferring, diverting, spending, paying, donating, depositing, bringing abroad, changing the shape, exchanging with currency or security, hiding, covering, accepting,* or *controlling* certain assets shall ensure that the assets are lawfully acquired. Therefore, the requirement of should have known will be satisfied if the

[13] Roeslan Saleh, *Perbuatan Pidana dan Pertanggung Jawaban Pidana*, (Jakarta: Centra, 1968), 28.

perpetrator fails to prove the assurance that the assets are lawfully acquired. Then, the element of reasonably alleged can be satisfied.

On the other hand, various formulations of money laundering crime as referred in Articles 3, 4, and 5, Paragraph (1), of the Law on Money Laundering, includes the terms *known* or *reasonably alleged* to the alternative sequence in defining *assets acquired from crime*. This law construction resulted in two definitions of crimes differently described for some reasons as follows.

First, as referred in Articles 3, 4, and 5, Paragraph (1), of the Law, money laundering is considered "*pro parte dolus pro parte culpa"*. Thereby, the perpetrator can be charged if the element of *intention* and *negligence*. The perpetrator may be charged with the same crime if the element of *intention* and *negligence* are satisfied and result in unlawful conduct. The element of *intention* and *negligence* are known as the types of e*rror* (*Schuld).* It is used as indicators to blame perpetrator, by which one of the indicators shall be satisfied.

Second, money laundering crime, as referred in Articles 3, 4, and 5, Paragraph (1), of the Law, is considered as the crime of *false culpa.* The legislators intended to determine that common requirement of unlawful actions shall include entire conduct which resulted from *intention* can be alleviated through the construction of some elements. It can be considered sufficient if the element of *negligence* is satisfied. In this case, the crime is *intended* if some of the elements are *neglected*. Rammelink states that it includes some of the elements to the influence of intent, while some other elements are objectivated, and the remaining elements are associated with the requirements of *intention*. The alleviation as intended by the legislators is enforced by determining that the elements of intention can be satisfied by the fulfilment of *negligence*.[14] Therefore, *intention* or *negligence* shall not be considered as an alternative. They constitute the types of *false culpa.* The intended crime with some of the elements are deemed satisfied if the negligence is fulfilled.

The second reason inflicts that money laundering crime as referred in Articles 3, 4, and 5, Paragraph (1), of the Law on Money Laundering shall not be regarded as an unlawful act based on the *negligence* or *intention* of perpetrator described in the first reason. The negligence possesses to some elements such as *not alleging while should have to* that the assets are acquired from certain crimes as referred in Article 2 Paragraph 1 of the Law on Money Laundering. Therefore, in this context, the conduct of *placing, transferring, diverting, spending, paying, donating, depositing, bringing abroad, changing the shape, exchanging with currency or security, hiding, covering, accepting,* or *controlling* of certain assets are the actions that can be conducted by the fulfilment of intention. The condition shall apply to

[14] Jan Rammelink, *Hukum Pidana, Komentar Atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana*, (Jakarta: Gramedia Pustaka Utama, 2003), 165.

the assets acquired from the crime that may constitute unlawful if the perpetrator estimates or calculates it.

The second reason is more appropriate in this case. On the contrary, it is inappropriate if money laundering crime, as referred to the articles, is satisfied without fulfilling *intention* in conducting the transactions. A crime is fulfilled (*vooltoid)* if the perpetrator is *able to allege* that the object of the transaction is acquired from crimes. However, the implementation of this formulation has been tended to adopt the first reason, especially in punishing as referred to the articles.

The use of terms *known or reasonably alleged* as an alternative of construction has impacted the crimes as *the crimes charged by intention or negligence*. The implementation of this formulation has resulted in the *degradation* of intent crimes into negligence crimes. The conduct has been *in concreto* criminalized while the legitimate is *in the abstract*. There is an implication that a person is falsely charged with crime. One example of this case was the case of Andika Gumilang.[15] He *did not allege* that the cars he received from his wife, Melinda Dee, were acquired through crimes. Andika Gumilang was deemed negligent in *estimating* that Melinda Dee was a rich middle-aged woman and married her. He should have estimated that the assets of Melinda Dee were acquired through crimes. Due to his negligence, he was sentenced to four years of imprisonment and fined Rp350 million. The same case also happened to Eddies Adelia.[16] She was sentenced to imprisonment and served her punishment in the Greater Jakarta Metropolitan Regional Police prison, after she *did not allege* that the sustenance, she received from her husband was reasonably alleged as a result of crimes. In her case, the crime is satisfied with the fulfilment of *negligence*. She failed to estimate that the sustenance she received from her husband was acquired from fraud and or embezzlement. Then, she was charged with a money laundering provision. The two cases demonstrate that a husband/wife of the perpetrator of crimes referred in Article 2 Paragraph 1 of the Law on Money Laundering can be a perpetrator due to the implementation of term *reasonably allege* and resulting to intention of crimes.

The interpretation of Articles 3, 4, and 5, Paragraph 1, of the Law on Money Laundering as the intention or negligence crimes or "*pro parte dolus pro parte culpa"* stem from the formulation of the respective crime. The misinterpretation conducted by law enforcement officials and the judge is the presumption that this crime is the *real negligence crime*. Misconception occurs due to the absence of straightforward elucidation in the law. In addition, the legislators only adopted some international law instruments such as the *United Nations Model Law on*

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[15] The Jakarta Post. "Husband of Malinda Dee has First Trial Hearing". https://www.thejakartapost.com/news/2011/09/20/husband-malinda-dee-has-first-trial-hearing.html (accessed on December 25, 2021).

[16] Ronny Oktahandika, "Pembuktian Kejahatan Asal (Predicate Crime) Tindak Pidana Pencucian Uang Pada Pelaku Pasif", *JLR-Jurnal Legal Reasoning* 1, No. 2 (2019): 156-157.

Money Laundering and Proceeded of Crime Bill 2003, without understanding the definition appropriately. The legislators might completely disregard this.

It shall be affirmed that the interpretation of Articles 3, 4, and 5, Paragraph 1, of the Law on Money Laundering constitutes *intentional* crime with some of the elements being neglected. Legislation policy is required to change the term *that he knows or reasonably alleged* with the term *known and should have known* to prevent misinterpretation that this crime is satisfied based on the intention or negligence of the perpetrator. Such misinterpretation inflicts abuse of power due to legal uncertainty. The fact is that it is a mandate of the Indonesian Constitution (Article 28D of the 1945 Constitution of the Republic of Indonesia). In this case, there is a possibility to submit a judicial review to the Constitution Court of the Republic of Indonesia.

In addition to the predicate crimes, the efforts of Indonesian authorities in eradicating money-laundering crime include *obstructing* or *ruling out the possibility* of the perpetrator (including corruptor) to enjoy the assets they acquired by crimes as stipulated in the Law on Money Laundering. The policy of double penalty aims to make the perpetrator *unfavorable* due to the action of *placing, transferring, diverting, spending, paying, donating, depositing, bringing abroad, changing the shape, exchanging with currency or security, hiding, covering, accepting,* or *controlling* the assets acquired from predicate crimes that are considered as separated crimes.

Experts and practitioners have not agreed on how the predicate crimes (such as corruption) shall be proven in alleging money laundering crime to perpetrator. There are two groups in this matter, the first states that the predicate crimes are not required to be proven; and the second says that the predicate crimes should be verified, and that money laundering crime shall be indicted in one formal accusation. The statement of the first group is based on Article 69 of the Law on Money Laundering that to be eligible for conducting the investigation, prosecution, and examination in the trial against Money Laundering Crime, to prove the predicate crime in advance is not an obligation. On the other hand, the second group is based their statement on Articles 3, 4, and 5, Paragraph 1, of the Law, which stipulates that the elements or essences (*bestanddel)* are the assets acquired from crimes as referred in Article 2 Paragraph 1 of the crimes. In addition, some states that predicate crime as referred in Article 2 Paragraph 1 of the is the *cause* of money laundering referred in Articles 3, 4, and 5, Paragraph 1, of the Law. It implies that money laundering crime as referred in the articles proves the predicate crimes as referred in Article 2 Paragraph 1 of the Law. Then, the result constitutes as the object of money laundering crime.

Critical examination on this issue is conducted by answering whether the implementation of Article 69 of Law on Money Laundering has implied an effort to actualize *crime does not pay*, and *corruption does not pay*; whether Article 69 of the Law is merely a tool of criminal law to deplete the assets of the perpetrator

such as corruptor and other crimes; whether Article 69 of the Law is implemented to eradicate (to prevent and to proceed) the predicate crimes, including the corruption, or rather the implementation of the article implies distortion to the principle of presumption of innocence in relation to Criminal Procedural Code, (Article 8 Paragraph 1 of Law Number 48 of 2009 concerning Judicial Authority and Article 14 number 2 of International Covenant Civil and Political Right, which has been ratified by the Law Number 12 of 2005). Vice versa, whether the obligation to prove predicate crimes may hinder the effort to actualize *crime does not pay*" and *corruption does not pay*.

The implementation of criminal law on money laundering crime has not been based on *corruption as predicate crime is no longer beneficial*. The performance of the Law on Money Laundering is no longer to eradicate the predicate crime. It rather implies as a tool to deplete the assets of a person *allegedly acquired from corruption*. The implementation of money laundering crime as occurred to the case of Djoko Susilo aims to deplete his assets acquired from corruption.[17] At the same time, he was the Chief of Traffic Corps of the National Police and depleted his entire holdings due to the enactment of the Law on Money Laundering. The trial was conducted without considering that *he was liable on corruption* (prior to being the Chief of the Traffic Corps) until the court declared him guilty. He was not charged with a money laundering crime by the prosecutor of the Commission of Corruption Eradication. Thus, the predicate crime was not proven. Due to the unproven corruption during his term as the Chief of Traffic Corps of the National Police, all his assets acquired prior to his term and after the enactment of the Law on Money Laundering was deemed the results of corruption. The same case happened to the cases of Bahasyim, Wa Ode Nurhayati, Lutfi Hasan Ishaq, Akil Moechtar, Anis Urbaningrum, etc.

Based on this perspective, Article 69 of the Law on Money Laundering has been falsely interpreted from the basis of sociology and philosophy of law-making. Article 69 of the Law shall be construed as a foundation to conduct investigation, prosecution, and examination before the court. The court is not required to provide a legally binding decision on the predicate crime of money laundering case in advance. This interpretation is based on the word *in advance* following the term *not required to prove*. Hence, the proof during the investigation, prosecution, and examination before the court is conducted *along* with the predicate crimes as the cumulative indictment or in any case as one of the elements of money laundering crime.

The legislators shall not use the term *in advance* if the interpretation of Article 69 of the Law on Money Laundering is interpreted not to require the proof of predicate crime during the investigation, prosecution, and examination before the

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[17] Detiknews. "Aset Sebelum Korupsi Harus Dikembalikan, Ini Harta Djoko Susilo Sitaan KPK". Detik.com. https://news.detik.com/berita/d-5563901/aset-sebelum-korupsi-harus-dikembalikan-ini-harta-djoko-susilo-sitaan-kpk (accessed on December 25, 2021).

court. Herein, the formulation of Article 69 shall be *to conduct investigation, prosecution and examination before the court, the predicate crime of money laundering crime is not required to be proven*, excluding the word *in advance*.

The objective of committing crimes is not hindered by the proving of predicate crimes along with money laundering crime as independent crime in one indictment; or in any case, the predicate crime is proved as one of the elements of money laundering crime as in one predicate crime *no longer beneficial*. Considering that the perpetrator is bound to prove that his assets are legitimately acquired, the unfulfillment of this obligation does not imply the assets are legitimately acquired. In addition, the prosecutor that does not prove the assets were acquired by crime, however *allegedly* acquired by crime, does not constitute that the assets were acquired by crime. In this case, predicate crimes shall be proven if it is related to the assets acquired from the crime and not the assets acquired legitimately.

Based on the discussion, the interpretation of Article 69 of the Law on Money Laundering that *to conduct the investigation, prosecution and examination before the court, the predicate crime of money laundering crime is not required to be proven* with the exclusion of the words *in advance* is an unconstitutional interpretation. It is not in line with the principle of presumption of innocence as a fundamental of law enforcement. In other words, Article 69 of the Law on Money Laundering is constitutional if it is interpreted as *court decision for predicate crime is not required to be proven for investigation, prosecution and examination of money laundering case before the court*. Thus, predicate crimes are proven in any case along with money laundering crimes or as one of the elements. The predicate crime is not required to be confirmed *in advance* in one separate court decision.

On the other hand, Article 77 and 78, Paragraph (1), of the Law on Money Laundering emphasizes the reversal burden of proof in the legal regime of the Law lies on defendants. They are required to prove that the assets related to the cases are not acquired from crime or the crime as referred in Article 2 Paragraph 1 of the Law. The provision shall be interpreted that the defendants are required to prove that the assets *can be qualified as suspicious financial transaction* based on Article 1 Number 5 of the Law. It does not include as assets acquired from crime or not related to the crimes based on Article 2 Paragraph 1 of the Law. Thus, the word *related to the case* in Article 78 Paragraph 1 of the Law is interpreted as the assets that *can be qualified as suspicious financial transaction*, in line with Article 1 Number 5. Therefore, the defendants shall prove the suspicious transaction as the object of the case.

However, the implementation of Article 77 and Article 78 Paragraph 1 of the Law on Money Laundering refers to the obligation of defendants to prove *all assets* that have been confiscated by the prosecutor, police investigators, or investigators of the Corruption Eradication Commission. The cases of Bahasyim, Djoko Susilo,

Gayus H. Tambunan, and Akil Mochtar are the examples of the defendants who asked to prove all the assets that have been confiscated by the investigators.[18]

In a more detailed event, investigators had carried out the investigation and investigation process by confiscating Djoko Soesilo's property before the criminal case. In the simulator case, Inspector General Djoko Susilo, the defendant, objected to the confiscation. The Commission is considered to have violated the law in the confiscations that has no relation to the simulator case. *Wealth that has nothing to do with the predicate crime may not be confiscated*. *However, the Corruption Eradication Commission has openly demonstrated a violation of the law*, according to Djoko's legal adviser, Hotma Sitompul, in an exception at the Corruption Court. The Law on Money Laundering requires that investigators find sufficient evidence to carry out confiscation. They confiscated property whose ownership was obtained before 2011 which had absolutely nothing to do with the simulator case.[19]

For this action, the defendant Djoko Soesilo submitted a legal action, namely a judicial review, to the Supreme Court of the Republic of Indonesia. Then, the Supreme Court stated in its *racio decidendi* as follows.[20]

1. Confiscation of objects that already exist and are used as evidence before the time when the acts of corruption and money laundering are contrary to the law.
2. The reasons for judicial review of the petitioner/convict cannot be justified because both the *judex facti* and *judex juris* considerations are correct and not wrong in the implementation of the law, except for the objections of the judicial review of petitioners/convicts in two cases can be justified.

Therefore, the Supreme Court's Reviews Decision that the confiscation of existing objects and used as evidence before the time of acts of corruption and money laundering is contrary to the law. Therefore, it must be returned to the rightful owner.

Nevertheless, the decision of the Supreme Court also contains dissenting opinion. The Decision of the Constitutional Court Number Constitutional Court No. 77/PUU-XII/2014 states that *the word no in Article 69 is inconsistent and can be interpreted with a meaning that is contrary to the sound in Article 3, Article 4, and Article 5 paragraph (1) of Law 8/2010, which in principle states that for a person to be charged with the crime of money laundering, the assets must be the result of one or several predicate crimes.* In other words, there is no money laundering crime if there are no predicate crimes. Suppose someone is charged with the crime of

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[18] Alvon Kurnia Palma, (et.al.), *Implementasi dan Pengaturan Illicit Enrichment (Peningkatan Kekayaan Secara Tidak Sah) di Indonesia,* (Jakarta: Indonesian Corruption Watch, 2014), 41.

[19] Detik. "Irjen Djoko Susilo Protes Harta Perolehan dari 2003 Ikut Disita KPK". Detik.com. https://news.detik.com/berita/d-2233958/irjen-djoko-susilo-protes-harta-perolehan-dari-2003-ikut-disita-kpk (accessed on December 25, 2021).

[20] Media Indonesia. "Mahkamah Agung Beberkan Alasan Dikabulkannya PK Djoko Susilo". Media Indonesia. https://mediaindonesia.com/politik-dan-hukum/403873/ma-beberkan-alasan-dikabulkannya-pk-djoko-susilo (accessed on December 25, 2021).

money laundering, it does not refer to or is not based on the fact that a predicate crime or predicate offence has been proven to be contrary to the principle of presumption of innocence as described in the General Elucidation of the Criminal Procedure Code point 3rd letter c and Article 8 paragraph (1) of the Law on Judicial Power. It was later reaffirmed by Harahap that suspects must be placed in human positions that have the essence of dignity.[21] the person should be judged as a subject, not an object. Those examined are not human suspects. The criminal act becomes the object of examination. The suspect must be considered innocent, in accordance with the principle of the presumption of innocence, until a court decision has permanent legal binding force. Thus, a legal and democratic state must uphold the principle of the presumption of innocence based on in Article 1 paragraph (3) of the 1945 Constitution.

The instrument of proof of Article 69 of the Crime of Money Laundering needs improvement, in both regulation and implementation. For example, the Dutch legal system does not explicitly acknowledge the reversal of the burden of proof because it is still considered as a violation of the principles of *non-self-incrimination*,[22] *presumption of innocence*, and violates *privacy rights*. Stevens has stated that the reverse evidence only relates to the origin of the proceeds of crime for confiscation and is not mutatis mutandis to prove the guilt.[23] The confiscation is usually carried out after the defendant is found guilty (*in personam forfeiture*). To be more effective in confiscation of assets in proving money laundering, the Dutch has implemented a *proportionality test*, which is called a *partial reversal of the burden of proof*, in which the prosecution and the defendant are each required to prove the origin of the legality of assets suspected of originating from criminal acts. The practice in the Netherlands has been proven to be carried out in examining corruption cases with indications of the crime of money laundering. By imposing evidence on the public prosecutor and the defendant, in the Netherlands, this practice uses the *balanced probability principle*. In this case, the presumption of innocence doctrine is still inherent in the judicial process.

The implementation and substance of Article 69 of the Law on the Crime of Laundering, which is currently in effect, is very illogical. They are all asked to prove something that may have been obtained in a relatively long time. It is even possible that the wealth was obtained from various incomes. When a person cannot prove that it is not the result of a criminal act of corruption or is not related to an illegal act of corruption, and the public prosecutor also does not prove otherwise of what the defendants have confirmed, the assets are immediately considered the

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21 Rustam DKA Harahap, "LGBT di Indonesia: Perspektif Hukum Islam, HAM, Psikologi dan Pendekatan Maṣlaḥah", *Al-Ahkam* 26, No. 2 (2016): 226.

22 Goran Sluiter, "Implementation of the ICC Statute in the Dutch Legal Order", *Journal of International Criminal Justice* 2, No. 1 (2004): 158.

23 Jason Bainbridge, "Discovering the Law Again: John Grisham, Ed Stevens, and the Postmaterial Lawyer." *Australian Journal of Communication* 30, No. 2 (2003): 15-17.

proceeds of the criminal act based on Article 2, paragraph (1) of the Law on Money Laundering. This construction can occur because the norms of Articles 77 and 78 paragraph (1) of the Law. There are words *related to cases*, which are mentioned in Article 78 paragraph (1). They are very vague (*vaagennormen*), so they do not provide guarantees. Legal certainty is mandated in Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Previously, normative studies from different perspectives are based on the Decree of the Constitutional Court of the Republic of Indonesia Number 77/PUU-XII/2014 that rejects the petition submitted by Akil Mochtar,[24] the former chairperson of the Constitutional Court of the Republic of Indonesia. In the consideration, the Constitutional Court states that Article 69 of the Law on Money Laundering does not require predicate crimes to be proven in advance. According to the Constitutional Court, if the perpetrator of the predicate crime dies, the case will be void, and the recipient of money laundering cannot be prosecuted. This implementation constitutes injustice for certain individuals who have been charged with money laundering crimes. In advance, the public will assume that specific individuals have been released from money laundering investigation due to unproven predicate crime.

Furthermore, the consideration also mentions that Article 69 of the Law on Money Laundering is principally intended for certain individuals who acquired the assets by crime. Therefore, the state has the authority to take over the investigations, prosecutions, and public court examinations. In the criminal proceedings, the person who controls the alleged assets acquired by crime is allowed to prove that the assets were legitimately acquired. Thus, based on the principle of enforcement, Article 69 of the Law does not contradict Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Article 69 of the Law constitutes the provision to enforce the rule of law, particularly the repayment of assets acquired from disguised and covered crimes. This regard affirms that money laundering crime is an independent crime.

The decision of the Constitutional Court binds all stakeholders involved in the case, including the people and state institutions. Safa'at states that ordinary court decisions only bind the parties. However, the Constitutional Court's judicial review decision binds all related state components and the people[25] (*erga omnes* principle). The Constitutional Court and the principle of *erga omnes* are inseparable, considering that the principle contains the power to legally bind all

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[24] Simon Butt, Melissa Crouch, and Rosalind Dixon, "The First Decade of Indonesia's Constitutional Court", *Australian Journal of Asian Law* 16, No. 2 (2016): 115-116.

[25] Muchamad Ali Safa'at. "Kekuatan Mengikat Dan Pelaksanaan Putusan MK". Safaat Lecture UB. http://safaat.lecture.ub.ac.id/files/2014/03/Kekuatan-Mengikat-dan-Pelaksanaan-Putusan-MK.pdf (accessed on May 5, 2021). See also Muchamad Ali Safa'at. "Penafsiran Konstitusi". Safaat Lecture UB. http://safaat.lecture.ub.ac.id/2011/11/penafsiran-konstitusi/ (accessed on May 5, 2021).

components of the people. It constitutes a final and binding decision.[26] On the other hand, judicial review is conducted towards abstract rules and binds the public. The foundation of judicial review in violation of a constitutional right is deemed representing the public interest.[27] Thus, based on the decision of the Constitutional Court, Article 69 of the Law shall be implemented and adopted the decision as contained in the consideration.

D. Article 2 Paragraph 1 letter Z of the Law on Money Laundering may Inflict Minor Crimes to be Indicted by Money Laundering Provision

Article 2 paragraph (1) letter Z of the Law on Money Laundering states that the result of a crime is assets obtained from crimes of corruption, bribery, narcotics, psychotropics, labor smuggling, immigrant smuggling, banking crime, capital market crime, insurance crime, customs, excise, human trafficking, trade of illegal fire arm, terrorism, kidnapping, burglary, embezzlement, fraud, money counterfeiting, gambling, prostituting, tax crime, forestry crime, environment crime, marine and fishery crime and other crimes of which is sentenced to four years or more imprisonment. All types of predicate crimes in letters (a) to (y) are particular crimes in the economic field, known as economic criminal law. Hamzah even states that financial crime is a criminal law that has its style in the economic field.[28] Thus, economic criminal law has an equal position as an addition to criminal law.

Article 2 paragraph (1) letter z of the Law on Money Laundering stipulates that another crime punishable by *four years or more imprisonment*. The formulation does not explicitly mention the types of crimes. However, it is examined and connected to the initial sentence of the provision *the result of a crime is assets obtained from crimes and associated with mentioning crimes punishable by four years or more imprisonment*. The type of crime acquiring wealth or containing an economic value is punishable by of four years or more imprisonment. This formulation implies that the legislators consider that the development of crimes may continue to transform, thereby providing provision to charge new types of crime in the future. Thus, the legislators established a formulation completed with criminal provisions that can be set with the Law on Money Laundering in the future (*ius constituendem*).

However, it is necessary to learn from the results of normative reviews of various existing laws (*ius costitutum*) that do not include crimes in the field of electronic transactions as stipulated in the Law Number 11 of 2008 on the Electronic Information and Transactions, considering that around first three weeks

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[26] Syukri Asy'ari, Meyrinda Rahmawaty Hilipito, and Mohammad Mahrus Ali, "Model dan Implementasi Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang (Studi Putusan tahun 2003-2012)", *Jurnal Konstitusi* 10, No. 4 (November 2013): 27.

[27] Muchamad Ali Safa'at. "Kekuatan Mengikat Dan Pelaksanaan Putusan MK".

[28] Andi Hamzah, *Pengantar Hukum Acara Pidana*, (Jakarta: Sinar Grafika, 1985), 11.

of January 2010, the customer of banking services in Indonesia was shocked by the broadcasts from electronic and mass media. There had been illegal transactions of almost all banks in Bali. The banks are, among others, BCA, Bank Mandiri, BNI, and Bank Permata in Denpasar and the surrounding areas.[29] There were an estimation that the theft generated billions of rupiah[30] with various hi-tech modus operandi. Therefore, Article 34 of the Law stipulates the following.

1) Any person who knowingly and without authority or unlawfully produces, sells, causes to be used, imports, distributes, provides, or owns:
   a) Computer hardware or software that is designed or specifically developed to facilitate acts as intended by Article 27 through Article 33;
   b) Computer passwords, Access Codes, or the like to make Electronic Systems accessible with the intent to facilitate acts as intended by Article 27 through Article 33.
2) As intended by paragraph (1), acts are not criminal acts if aimed at carrying out research activities, testing electronic systems, and protecting electronic systems themselves legally and lawfully.

Article 34 contains a subjective element. The perpetrator referred to in this article is a person who commits a crime, or the perpetrator that fulfil the part of intention, without rights or permission, and violates the law in committing the act. The objective element includes acts of producing, selling, procuring for use, importing, distributing, providing, or possessing computer hardware or software that is designed or specifically developed to facilitate the actions as referred to in Article 27 to 33 and Password via Computer, Access Code, or things similar to intended to make the Electronic System accessible to facilitate the actions as referred to in Article 27 to 33. Such provisions may be subject to the formulation of the Law due to the critical impact caused by the crime.

The Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 does not require perpetrators of minor crimes in conjunction with the Law Number 16 of 1960 (which stipulates the limit of minor crimes is Rp2.5 million in cases of theft, fraud, embezzlement, vandalism, fence) to be detained. It also regulates that the perpetrators can have a quick procedure with single judge. based on legislation, minor crimes such as theft, fraud, confiscation, destruction, embezzlement worth Rp2.5 million are not subject to Article 2 paragraph (1) letter Z of the Law on Money Laundering. This formulation considers the principle of cost and benefits in processing cases that all sub-criminal systems to be funded by the government. The Chief of Indonesian National Police, Badruddin Haiti, states that Rp2 million has been allocated for criminal investigation cases with low difficulty; Rp5 million for criminal investigation cases with the intermediate test; and Rp9

[29] AA. Oka Dharmawan, "Dampak Illegal Transction Bank Lewat ATM", *Jurnal Hukum Bisnis* 29, No. 1 (2010): 10.

[30] Tempo. "Pembobolan ATM di Bali Lebih Dari Rp 4 Miliar". Tempo. https://nasional.tempo.co/read/220409/pembobolan-atm-di-bali-lebih-dari-rp-4-miliar (accessed on December 25, 2021).

million for criminal investigation cases with severe difficulty.[31] One of the reasons is that Article 2 paragraph (1) of the Law on Money Laundering is not implemented for minor or conventional crimes such as theft, fraud, confiscation, destruction, and embezzlement worth Rp2.5 million. From the observations at the court and the criminal subsystem office, this study finds no minor crime worth Rp2,5 million that is prosecuted based on the Law on Money Laundering.

E. Conclusion

The formulation of Article 2 paragraph (1) in the Law Number 8 of 2010 on the Money Laundering Crimes for the types of predicate crimes has been stated explicitly (*lex certa*) in letters (a) to (y). it is correlated to Article 69 of the Law that has problems in its application because there is an ambiguity of norms. It is not sufficient because there is no explanation of Article 77 and Article 78 of the 2010 Law on Money Laundering. It leads to errors in practice. This provision implies that once the criminal policy in the case of money laundering is placed on assets suspected of originating from the predicate crime, the proof of the predicate crime becomes irrelevant. Furthermore, it can be concluded that the assets suspected from a criminal act are not mutatis mutandis. It proves the defendant is guilty. Therefore, the problem to implement these provisions has not been completed with the requirements of the procedural law of evidence. Article 2 paragraph 1 of the Law is related to conventional criminal acts. There is no limit set on the amount of loss due to the predicate crime in Article 2 paragraph 1 of the Law. It can be applied to the Law on Money Laundering and the need to use a proportionality test, namely the so-called partial reversal of the burden of proof, in which the prosecutor and the defendant are each required to prove the legal origin of assets suspected from criminal acts. Then, investigator do not confiscate the property of the suspect, the defendant, arbitrarily, such as the case of confiscation of property in the case of the defendant Djoko Soesilo. The seizure of the apparatus of the property before the crime was declared against the law in the decision of the Supreme Court of the Republic of Indonesia. The decision of the Supreme Court of the Republic of Indonesia is evidence of the strengthening of the dissenting opinion of one of the judges of the Constitutional Court of the Republic of Indonesia in the Decree Number 77/PUU-XII/2014.

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