

Analysis Of The Urgency Of Proving Predicate Crime In Money Laundering Cases (Predicate Crime: Human Trafficking Crime)

Kirana Ardhelia Putri¹, Bambang Waluyo²

Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta
Email: 2110611076@mahasiswa.upnvj.ac.id, bambangwaluyo@upnvj.ac.id
*Corresponding author

Article info

Received: Sep 24, 2024

Revised: Nov 5, 2024

Accepted: Dec 15, 2024

DOI: <https://doi.org/10.31599/krtha.v18i3.3183>

Abstract : *Not all crimes use the same evidentiary system, one of which is Money Laundering which uses a reverse evidentiary system and does not require proof of the predicate crime. Proving the predicate crime of Human Trafficking contradicts Article 69, as well as how the evidentiary mechanism in court creates legal uncertainty. The method used is the normative legal research method, with the technique or method of data collection used being library research. The results of this study are that there must be changes regarding the mechanism of proving TPPU, especially in establishing its predicate crime. In the trial process, of course, there is no need to wait until the proof of the predicate crime is completed and decided. The trial process for TPPU cases can still be carried out but does not set aside the tracing and proving of the predicate crime. Proving the predicate crime can also analyze various other financial flows, which cannot be proven or are missed in the proof of the TPPU case. Without proof, it will lead to misuse of Article 69 of Law Number 8 of 2010. The government should be able to change or revoke Article 69 of Law Number 8 of 2010 because it is often misinterpreted by law enforcement officers and used as a loophole by suspects.*

Keywords : *Money Laundering Crime, Human Trafficking Crime, Evidence System*

Abstrak : Tidak semua tindak pidana menggunakan sistem pembuktian yang sama, salah satunya adalah Tindak Pidana Pencucian Uang yang menggunakan sistem pembuktian terbalik, dan tidak mewajibkan pembuktian terhadap *predicate crime*. Pembuktian *predicate crime* Tindak Pidana Perdagangan Orang menjadi berkontradiksi dengan Pasal 69, serta bagaimana mekanisme pembuktiannya di peradilan yang menimbulkan ketidakpastian hukum. Metode yang digunakan adalah metode penelitian hukum normatif, dengan teknik atau cara pengumpulan data yang digunakan adalah dengan studi kepustakaan atau *library research*. Hasil dari penelitian ini adalah harus ada perubahan mengenai mekanisme pembuktian TPPU, terutama dalam pembuktian *predicate crime* nya. Dalam proses peradilannya, tentunya tidak perlu menunggu hingga pembuktian *predicate crime* selesai dan diputus. Proses peradilan kasus TPPU tentunya tetap bisa dapat dijalankan, namun tidak mengesampingkan penelusuran dan pembuktian *predicate crime* nya. Pembuktian tindak pidana asal juga tentunya dapat menganalisis berbagai aliran keuangan yang lain, yang tidak dapat dibuktikan atau luput di dalam pembuktian perkara TPPU. Dengan tidak terbuktinya, justru akan membuat penyalahgunaan Pasal 69 Undang-Undang Nomor 8 Tahun 2010. Pasal 69 Undang-Undang Nomor 8 Tahun 2010 seharusnya bisa pemerintah ubah atau mencabutnya, karena kerap disalahartikan oleh para aparat penegak hukum, dan dijadikan celah oleh para tersangka.

Kata kunci : Tindak Pidana Pencucian Uang, Tindak Pidana Perdagangan Orang, Sistem Pembuktian



I. INTRODUCTION

Law enforcement is willing to find the desires of the way, such as justice, certainty, and the benefits of the way. In this environment, the presence of law and organizations, such as the police, prosecutors, courts, and correctional law, process as facilities to allow these needs. This action is determined by the universe through the agency and its authority. Still, the loss of life has the same victim: finding the images of the enthusiastic way outlines the part in the community's activities.¹

The legal system is everything or anything related to the procedures for how the law is implemented in a country or region. The legal system aims to create order, justice and legal certainty in community life. The legal system as a tool to organize society will have its differences and characteristics in each country. Each country has its legal system, which is developed according to its society's history, culture, and values . Globally, there are two recognized legal systems. Namely the Civil Law legal system and the Common Law legal system. The Common Law legal system adheres to the principle of jurisprudence, which essentially means that judges make their own decisions or previous decisions in similar cases, meaning that the decision must be obeyed or implemented. In contrast to the Common Law legal system, the Civil Law legal system makes laws or regulations the basis for all decisions. Judges in a country with a civil law legal system are only used as mouthpieces for the law.

Indonesia is a country that adheres to the Civil Law legal system. The Dutch brought This legal system when they colonized Indonesia hundreds of years ago. As a country that adheres to the Civil Law legal system, Indonesia, in carrying out evidence in criminal trials, adheres to a negative statutory evidentiary system (negative wettelijk Bewijsstheorie). According to Prof. Eddy O.S. Hiariej, the law of evidence contains provisions relating to evidence, including evidence, methods of collecting and synthesizing evidence until it is submitted to the court, and the strength of the evidence and the burden of proof. Meanwhile, the criminal law of evidence contains regulations relating to evidence, including evidence, evidence, methods of collecting and collecting evidence to submit evidence to court, the strength of the evidence, and the weight of the evidence in criminal cases.² According to Article 66 of the Criminal Procedure Code,

¹ Amin Rahman, DKK. Penegakan Hukum Terhadap Pelaku Kejahatan Undang-Undang Di Sektor Perasuransian Dalam Perspektif Pencucian Uang (Studi di Pengadilan Negeri Manado) (*KRTHA BHAYANGKARA*, 2024), 215-240.

² Minabari Amir. Beban Pembuktian dalam Perkara Pidana (Kabupaten Banjar: Ruang Karya Bersama, 2023), 180.

commonly abbreviated as KUHAP, "the suspect or defendant does not have the burden of proof", and of course, the burden of proof in the same article belongs to the prosecutor as the public prosecutor. Our legal system applies the principle of presumption of innocence. There is no need to refer to Article 17, paragraph (1) of Law Number 3 of 1971, which stipulates that judges can give authority to provide information for investigation to prove that the defendant is not guilty of committing a crime of corruption.³ The negative evidence system is a combination of the positive and evidence systems based solely on the judge's belief. According to B. Bosch-Kemper, there are two criteria in the negative evidence system. First, the judge can only impose a sentence if he is convinced by the evidence that the defendant committed the act. Second, the judge can only determine the defendant's guilt if there is sufficient evidence, at least as required by law. If little evidence is found, the judge is forced to find the defendant guilty.⁴

As a pluralistic country, Indonesia adheres to various legal principles, including criminal law. Considering that Indonesia is a country of law (*rechtsstaat*), the criminal justice system adheres to multiple principles.⁵ Based on the Criminal Code, Indonesia adheres to the principle of legality in the Indonesian criminal system. In a criminal case, the purpose of the proof is to provide the certainty necessary for assessing some aspects of the facts that are the basis for the assessment. The certainty sought is the physical truth about past events.⁶ To determine the guilt or innocence of the defendant, the defendant must have at least two pieces of evidence, according to Article 183 of the Criminal Procedure Code (KUHAP). Based on this section, it is determined that at least two pieces of relevant evidence can convince the defendant that the crime was committed and that the defendant is guilty of committing the crime.⁷ However, not all crimes use the same evidentiary system.⁸

One of the crimes that has a unique evidentiary system is Money Laundering. Money Laundering itself is defined as any act that fulfills the elements of a crime by the

³ Waluyo, Bambang. *Sistem Pembuktian Dalam Peradilan Indonesia* (Jakarta Timur: Sinar Grafika, 1992), 45.

⁴ Hawasara Wika, Lina Sinaulan Ramlani, Yanuar Candra Tofik. *Penerapan dan Kecenderungan Sistem Pembuktian Yang Dianut Dalam KUHAP (AKSARA: Jurnal Ilmu Pendidikan Nonformal, 2022)*, 587-594.

⁵ Waluyo, Bambang. *Sistem Pembuktian Dalam Peradilan Indonesia* (Jakarta Timur: Sinar Grafika, 1992), 45.

⁶ Minabari Amir. *Beban Pembuktian dalam Perkara Pidana* (Kabupaten Banjar: Ruang Karya Bersama, 2023), 180.

⁷ Waluyo, Bambang. *Sistem Pembuktian Dalam Peradilan Indonesia* (Jakarta Timur: Sinar Grafika, 1992), 45.

⁸ Bella Novita Afrillia, Damayanti Riyanto Alvina, Ali H Al Ghifari A Frada. *Teori Pembuktian Dalam Sistem Hukum Nasional (Madani: Jurnal Ilmiah Multidisiplin, 2023)*, 174-183.

provisions of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering.⁹ Money Laundering uses a reverse evidentiary system in its evidence. The reason for implementing the reverse evidentiary system in money laundering is that money laundering is considered a complex crime and involves perpetrators who are members of an organized crime network.

In the crime of money laundering, at least 2 (two) components constitute a crime, namely the basic crime and the crime of money laundering. Viewed from the main crime or crime, this crime is making or collecting illicit assets (dirty money), which is then laundered.¹⁰ The crime of money laundering is a crime that does not stand alone, or it can be said that the crime of money laundering is a follow-up crime. The crime of money laundering as a follow-up crime emerged after the Constitutional Court decision Number 90/PUU-XIII/2015, which stated that money laundering is basically, or in essence, a crime with a continuing basis (follow-up crime). At the same time, the predicate crime is a crime that results in the confiscation of money or property and then an attempt to launder it.¹¹ Although as a follow-up crime, money laundering does not require the predicate crime to be proven first.¹² In its proof, the crime of money laundering emphasises how the defendants can prove that the flow of funds or assets obtained is not the result of a criminal act or what is commonly referred to as reverse proof.¹³

There are 26 types of predicate crimes in the law. One of them is the Crime of Human Trafficking.¹⁴ Human Trafficking is the act of recruiting, transporting, harbouring, sending, transferring, or receiving a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits, to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for exploitation or causing people to be exploited.¹⁵ As a crime that is urgent

⁹ Lihat di Pasal 1 Angka 1 Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

¹⁰ Afdal Yanuar Muhamad. Diskursus Antara Kedudukan Delik Pencucian Uang sebagai Independent Crime dengan sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU-XIII/2015 (*Jurnal Konstitusi*, 2019), 721-739.

¹¹ Afdal Yanuar Muhamad. Diskursus Antara Kedudukan Delik Pencucian Uang sebagai Independent Crime dengan sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU-XIII/2015 (*Jurnal Konstitusi*, 2019), 721-739.

¹² Lihat di Pasal 69 Undang-Undang Nomor 8 Tahun 2010 Tentang Pemberantasan dan Pencegahan Tindak Pidana Pencucian Uang.

¹³ *Ibid* di Pasal 77.

¹⁴ *Ibid* di Pasal 2.

¹⁵ Lihat di Pasal 1 Angka 1 Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang.

for human rights because it is included in the type of extraordinary crime, and means it is also included in crimes against humans, then proving the crime of human trafficking as a predicate crime of money laundering certainly raises legal questions if the case occurs. Is it in the proof that the crime is a crime that has its urgency that must be proven first, and is it contrary to Article 69 of Law Number 8 of 2020 concerning the Eradication and Prevention of Money Laundering Crimes? Or what are the legal implications for proving the predicate crime, both when it is proven and not.

I. RESEARCH METHOD

The discussion that will be examined in this study is about the mechanism of proof in criminal justice, with the case of Money Laundering, which has a predicate crime of Human Trafficking. This study aims to analyze the mechanism of evidence of human trafficking as a predicate crime of money laundering and also to explore the legal implications of whether or not the predicate crime is proven in the context of money laundering with the predicate crime of human trafficking. This study uses a normative legal research method, with the technique or method of data collection used in library research. In comparison, the data analysis technique used is normative legal data analysis techniques. This qualitative method is based on legal norms, both written (laws, regulations) and unwritten (doctrines, legal cases), which exist in legal sources.

II. DISCUSSION

A. Mechanism for proving the crime of human trafficking as a predicate crime of money laundering

Money Laundering Crime Co, commonly abbreviated as TPPU, is one of the unique criminal acts. Based on the TPPU Law, what TPPU means is a criminal act that, in practice, violates everything regulated in the TPPU Law, with a maximum prison sentence of 20 years and a maximum fine of 10 billion Rupiah.¹⁶ However, the new Criminal Code has changed the criminal threat to a maximum prison sentence of 15 years and a maximum fine of category VII.¹⁷ In implementing court proceedings, including how to provide evidence, investigations and procedures in court with Money Laundering criminal cases are carried out by investigators of the original Crime by the provisions of

¹⁶ Lihat di Pasal 3 Undang-Undang Nomor 8 Tahun 2010 Tentang Pemberantasan Tindak Pidana Pencucian Uang.

¹⁷ Lihat di Pasal 607 Ayat (1) huruf a Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

the procedural law and provisions of rules and regulations, unless otherwise specified according to the TPPU Law.¹⁸ Therefore, the Criminal Procedure Code, commonly abbreviated as the Criminal Procedure Code, is still the primary reference in proving TPPU cases. The procedures for examination and proof are fully described in the Criminal Procedure Code, except regarding the burden of proof.¹⁹ This is based on the *lex specialis derogat legi generalis* principle, which states that a special law overrides the old law. This is seen to be used to prove the money laundering charge; the prosecutor first submits data related to the defendant's financial records, such as salary, taxes, and evidence of economic transactions that may describe suspicious financial transactions, and the transactions do not match the defendant's financial information.²⁰

The law regulates the mechanism for proving TPPU as an extraordinary crime. TPPU, in its proof, uses a reverse burden of proof system, and the predicate crime of TPPU is not required to be proven first.²¹ The burden of proof in TPPU is expressly regulated in Articles 77 and 78 of Law Number 8 of 2010. Concerning the Eradication and Prevention of Money Laundering. In the reverse burden of proof process, the principle of presumption of innocence does not apply. Still, the principle that regulates the provisions of this type of burden of proof is the principle of presumption of guilt. The presumption of guilt is a principle that considers a person guilty until proven guilty, meaning that the burden of proof is on the suspect or defendant (defendant) and not on the public prosecutor (accuser).²²

The function of proof is vital, and in TPPU cases, it is also a court procedure that can determine the origin of the defendant's assets and become the basis or starting point for the judge's decision. Evidence has a vital function and is the trial's focus, but the provisions in the Criminal Procedure Code are very brief in discussing this.²³ In its mechanism, or practice in court, proof is only based on what has been regulated and stated in Law Number 8 of 2010 concerning the Eradication and Prevention of Money

¹⁸ Lihat di Pasal 74 Undang-Undang Nomor 8 Tahun 2010 Tentang Pemberantasan dan Pencegahan Tindak Pidana Pencucian Uang.

¹⁹ Lihat di Bab XVI Pasal 183-202 Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana.

²⁰ Haswandi. Sistem Pidana Terhadap Pelaku Tindak Pidana Pencucian Uang (Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung, 2017), 115.

²¹ Lihat di Pasal 69 dan 77 Undang-Undang Nomor 8 Tahun 2010 Tentang Pemberantasan dan Pencegahan Tindak Pidana Pencucian Uang.

²² Reza Adiwijana Muhammad. Pembebanan Pembuktian dalam Tindak Pidana Pencucian Uang (*Media Juris*, 2020), 75-88.

²³ Soetarna, Hendar. Hukum Pembuktian dalam Acara Pidana (Bandung: PT. Alumni, 2011), 90.

Laundering Crimes, which is regulated in Law Number 8 of 1981 concerning Criminal Procedure Law. Proving the origin of unreasonable assets or wealth can be done minimally while still paying attention to the defendant's human rights. If the public prosecutor first proves that the goods or assets belong to the defendant, then the defendant proves the halal origin of the assets. Proving that the defendant's assets are an obligation determined by law, not a right that may or may not be used.²⁴

In addition to the reverse burden of proof, the mechanism of proof in TPPU cases is that the predicate crime in TPPU cases does not need to be proven first. In practice, using this article is very beneficial and makes it easier to resolve TPPU cases. Article 69 of Law Number 8 of 2010 contradicts the urgency of investigating predicate crimes in TPPU cases or analyzing the flow of funds. Predicate crimes are commonly referred to as following the money and the suspect concepts. According to the Financial Action Task Force (FATF) or the Financial Action Working Group for Money Laundering, it states that the state, as the holder of power, must ensure that the responsible authorities immediately identify, monitor and take action to freeze and seize assets that are confiscated or suspected of being the result of a crime, in the follow the money concept. Countries must also use, if necessary, permanent or temporary multidisciplinary teams dedicated to conducting financial investigations.

This follow-the-money approach or concept is inseparable from the opinion that the proceeds of crime, meaning that the assets resulting from the laundering, become the mainstay of the crime as well as the weak point in the chain of crime that is most easily detected, and by tracking the financial trail, it can also reveal and prosecute the original crime.²⁵ The money tracing method aims to find money/property/other property that can be used as evidence (object of the crime). This differs from the traditional approach, which focuses on finding the author when the first evidence is found. Therefore, proof is provided by proving whether the perpetrator is involved in money laundering. Thus, if the lifeblood of the crime can be detected and seized by the state, the opportunity to reduce the crime rate will be even higher. Regarding the authority to confiscate and

²⁴ Lasmadi Sahuri, Elly Sudarti. PEMBUKTIAN TERBALIK PADA TINDAK PIDANA PENCUCIAN UANG (*Refleksi Hukum*, 2021), 199-218.

²⁵ Setiadi Edi, Andriasari Dian. The Correlation and Cohesion of Criminal Act of Money Laundering (TPPU) and Criminal Act of Human Trafficking (TPPO) Perceived from the Perspective of Criminal Law Reform in Indonesia (*Atlantis Press*, 2020), 553-556.

analyze financial flows, the prosecutor, as the case manager (*dominus litis*), is the law enforcement officer with this authority.²⁶

In addition to the concept of following the money, the proof in money laundering cases most contradictory to Article 69 of Law Number 8 of 2010 is regarding the evidence of the predicate crime or the concept of following the suspect. The ideal investigation formulates the elements of the criminal event and finds the criminal event. There is a sentence that TPPU does not require prior proof of the origin of the violation, and its provisions contradict the essence of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. This is a genetic crime. In this case, the follow-the-suspect approach is needed, which focuses on the perpetrator trying to punish the predicate crime. Articles 3, 4 and 5 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering emphasize that money laundering is a derivative crime. The sanctions referred to here are criminal sanctions against all activities related to real estate that cannot be carried out due to a crime. That is, if the perpetrator-centred view persists unless the underlying perpetrator of the crime has been punished, then it will not be allowed to be covered up, stored up, punished, etc..²⁷

The person will be excluded before the sentence for the underlying crime is imposed. This is separate from the criminal charge and requires proof that the property is contaminated.²⁸ The mechanism for proving TPPU, which is uniform in not establishing the predicate crime first, ends up looking as if it allows the original crime of TPPU to be ignored. In fact, in the context of the Crime of Human Trafficking or what is commonly called TPPO, which is an extraordinary crime because it is included in crimes against humans, it should be with the concept of following the money and following the suspect. There must be a change regarding the mechanism for proving TPPU, especially in establishing the predicate crime. In the trial process, there is no need to wait until the proof of the predicate crime is completed and decided. The trial process for TPPU cases can still be carried out, but the tracing and proof of the predicate crime must be set aside.

B. Legal implications of whether or not a predicate crime is proven in the context of Money Laundering with the predicate crime of Human Trafficking

²⁶ Garnasih, Yenti. *Penegakan Hukum Anti Pencucian Uang dan Permasalahannya di Indonesia* (Depok: Rajawali Pers, 2017), 112.

²⁷ Priskilia Ginting Yuni. *Pemberantasan Pencucian Uang dengan Pendekatan Follow the Money dan Follow the Suspect* (*Mulawarman Law Review*, 2021), 105-114.

²⁸ Putra Rusdianto Andy, Yudianto Otto. *Urgensi Pengaturan yang Mewajibkan Pembuktian Tindak Pidana Asal dalam Tindak Pidana Pencucian Uang* (*Civilia*, 2022).

As a further criminal act and as an extraordinary crime, TPPU, in its judicial process, must be carried out immediately. If it is proven that the violation originated from TPPU, law enforcement officers can take legal action against TPPU. Indeed, the basic requirements for criminalizing money laundering have been met: the existence of assets originating from the original crime. Proof of the potential for crime will provide a solid legal basis for prosecuting perpetrators of dual crimes (TPPO and TPPU), thus expanding the scope of prosecution and potential fines. As long as the crime has been committed, there is a predicate crime, and the prosecutor, as *dominus litis*, can continue the TPPU case. Predicate crimes can be tried separately. In the context of TPPO, if it is detected as a predicate crime of a TPPU case, then an investigation into TPPO can be carried out. TPPO itself as an extraordinary crime certainly requires immediate investigation to eradicate this crime.

Proving the predicate crime can also analyze various other financial flows, which cannot be proven or missed in proving the TPPU case because investigators, public prosecutors, or judges have the authority to order financial service providers to block the assets of any person suspected or charged with committing the crime of human trafficking. When the blocking is carried out, law enforcement officers can investigate other possible flows of funds that were missed during the TPPU examination. When human traffickers and money launderers exploit the financial system to commit crimes, good and effective cooperation between law enforcement and financial service providers can help trace the origins of their crimes. User knowledge guidelines and suspect indicator reporting systems enable financial analysis. Ultimately, both of these systems can be used to prove that a money laundering crime has occurred. This helps identify the perpetrators and related crimes. Money launderers can be considered a threat that comes from outside the bank. In this case, the best way for banks to protect themselves from threats is to investigate and understand each customer and everything about their accounts as closely as possible. This is an essential protective step for banks to prevent criminals from using them for money laundering purposes.²⁹

The proof and trial of predicate crimes can be carried out separately in its mechanism. When there is a TPPU case with the predicate crime TPPO, the judge can order the prosecutor to follow up on the predicate crime case separately. With this, it will not delay the trial of the TPPU case. Then, suppose the crime is not proven to exist. In

²⁹ Rahmat Kurniawan Wan, Hadiyanto Alwan, Ciptono Ciptono. Tindak Pidana Perdagangan Orang Dalam Perspektif Tindak Pidana Pencucian Uang di Indonesia (*USM Law Review*, 2024), 688-698.

that case, the TPPU case can still be continued and tried if the flow of financial transactions in the case is considered unreasonable and follows the provisions of Law Number 8 of 2010 concerning the Eradication and Prevention of Money Laundering. Of course, this is following the Priority Principle in the criminal justice system, which states that the criminal justice system must prioritize certain cases, especially cases that can endanger society or that are the needs of society.³⁰ And, of course, in line with the urgency of TPPO. TPPO certainly has its urgency because this crime is related to humans and Human Rights. This crime of human trafficking is included in the classification of crimes, citing the Criminal Code, which classifies crimes into two groups, namely minor violations and violations of the law. Human trafficking can also be considered a type of organized crime that is difficult to eradicate. Organized crime is global and involves an exhaustive and systematic network, sometimes using sophisticated technology.³¹ So, with evidence, TPPO can be traced, and the crime chain can be immediately broken.

When the predicate crime cannot be proven, the legal implications that can arise are more significant and more detrimental. It would be a problem if Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering stipulates that providing evidence of poor quality is optional first to determine whether the crime exists. If there is no underlying crime, then it is possible to be sure that there is no money laundering crime. However, Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering stipulates in the editorial that the article contradicts this hypothesis. Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering also stipulates that to prove the crime of money laundering, it is not necessary to establish the perpetrator (predicate crime). It is not impossible that some legal implications will harm the implementation of this law in the future in the context of the increasing number of money laundering crimes. Hence, the enforcement of anti-money laundering laws and regulations is still weak. A problem that frequently arises and is proven by several legal facts is an indication of the impact of the problem.

Several real cases have occurred, one of which is the case with the Surabaya Court Decision Number 3361/Pid.Sus/2018/PN.Sby. If the perpetrator of the crime of money

³⁰ Effendi, Tolib. *Sistem Peradilan Pidana: Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Berbagai Negara* (Yogyakarta: Pustaka Yustisia, 2013), 170.

³¹ Carolin Annisa, Harefa Beniharmoni. *URGENSI PENANGGULANGAN TINDAK PIDANA PERDAGANGAN ANAK DI INDONESIA MELALUI UPAYA HUKUM PENAL DAN NON PENAL* (*Justitia*, 2021), 525-539.

laundering is known not to have committed the crime of money laundering because the basis of the crime has not been proven. Therefore, a money laundering case that is tried without first confirming the existence of an underlying crime will have legal consequences because it violates the basic principles of criminal procedure law, especially the principle of the presumption of innocence. Or in the case of the Cikarang Court Decision Number 501/Pid.Sus/2023/PN Ckr., The TPPU case was sidelined, but the predicate crime was tried instead, even though the first report came in because of the alleged TPPU with the predicate crime of TPPO.

The uncertainty and contradictions resulting from Article 69 of Law Number 8 of 2010 must be resolved immediately because there will be more and more neglect of criminal acts as long as they are not prosecuted and investigated further. Based on data from the Financial Transaction Reports and Analysis Center, abbreviated as PPATK, TPPU cases suspected of originating from TPPO from 2019 to 2023 have often increased, which amounted to 3 cases in 2019 and increased to 13 cases in 2023. Of course, this increase proves that PPATK has succeeded in tracing and analyzing the predicate crime of TPPU. What if the proof of the predicate crime is proven and addressed based on Article 69? Then, there will be more and more predicate crime cases that will be kept secret. Therefore, in the law enforcement process, law enforcement officers, including the Corruption Eradication Commission, police, prosecutors, and judges, must prove that the violation is a criminal act before considering money laundering a predicate crime. Because the proof of the existence of money laundering is closely related to the location of the crime, to prove that the crime is the origin of the crime, how can the crime of money laundering occur if it is not done or done? This is the first time this has happened. First, the object of money laundering is property obtained by committing the underlying crime. In other words, the crime of money laundering will not be possible if it is not preceded by the original crime (predicate crime).³²

Evidence related to the elements that constitute the crime of money laundering, especially the element of "wealth known or reasonably suspected to arise from a crime as referred to in Article 2 paragraph (1) of Law Number 2 of 2010", cannot be proven. If the original crime is not proven at the first level, then the underlying crime cannot be proven by the judge if the underlying crime is not charged with the TPPU crime. Article 69 of Law Number 8 of 2010 should be able to be changed or revoked by the government

³² Herman, dkk. Kedudukan Hukum (Legal Standing) Tindak Pidana Pencucian Uang Tanpa Pembuktian Tindak Pidana Asal (Predicate Crime) (*Halu Oleo Legal Research*, 2024), 283-298.

because it is often misinterpreted by law enforcement officers and used as a loophole by suspects. Unfortunately, Law Number 1 of 2023 concerning the Criminal Code does not consider this article. There needs to be an update to the regulations governing money laundering. This change is undoubtedly because Law Number 8 of 2010 has been in effect for 14 years, especially the amendment to Article 69.

III. CONCLUSION

The evidentiary system adopted by Indonesia as a civil law country is negative. However, not all crimes use the same evidentiary system; TPPU, as an extraordinary crime, has its evidentiary system. TPPU adopts a reverse evidentiary system and, in its mechanism, does not require proof of the original crime (predicate crime). Article 69 of Law Number 8 of 2010 needs to be more consistent and give the impression that predicate crimes are not traced and tried. TPPU cannot stand alone in practice and theory because it is a follow-up crime. The mechanisms of following the money and following the suspect in proving TPPU cases need to continue to be used in the TPPU justice system. With these two concepts, tracing predicate crimes can provide justice and break the chain of predicate crimes.

The proof of predicate crimes, especially in the context of TPPO, will provide legal certainty for the enforcement of cases related to crimes against humanity. Tracing predicate crimes also fulfils the principle of priority adopted in the criminal justice system. On the other hand, if it is not proven, it will create legal uncertainty because TPPU, as a follow-up crime, must have a predicate crime. Like the actual case in the Surabaya Court Decision Number 3361/Pid.Sus/2018/PN.Sby, where the perpetrator was free because the crime predicated in the TPPU case was not proven. Several legal implications may harm the implementation of this law in the future in the context of increasing money laundering crimes. Hence, enforcing anti-money laundering laws and regulations still needs to be stronger. Several defendants can use Article 69 to escape the clutches of the law.

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Book

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