



## Authority of Commission of Corruption Eradication in Prosecution of Money Laundering

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### **Abstract**

Commission of Corruption Eradication is an institution that is given attributive authority by Law Number 30 of 2002 and Law Number 19 of 2019 concerning Commission of Corruption Eradication to carry out law enforcement by investigating and prosecuting corruption offence. The authority of this commission in carrying out the law enforcement must be based on statutory regulation which is a form of criminal law policy. However, in the practice of law occurred, the commission prosecutes several cases of money laundering in which the act is not explicitly regulated by law. So that, some of money laundering offences prosecuted by the commission find pros and cons among legal experts, even a dissenting opinion in the Panel of Judges who decide the case. It has become one of legal problems for the commission which must be a serious concern for the government. So that it becomes interested in studying about whether the legal problems Commission of Corruption Eradication in the prosecution of Money Laundering and how the authority Commission of Corruption Eradication in prosecuting cases of Money Laundering Criminal Acts? This research employed normative juridical legal research, which focused on the library research by analyzing the related legal regulations and literatures. The results showed that the legal issue regarding the authority of the commission arises when the provisions require this commission coordinating with the Prosecutor Office when prosecuting, as stipulated in Article 12A of Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 concerning the Commission of Corruption Eradication, which is able to eliminate the independence of the Commission of Corruption Eradication in establishing the law enforcement.

**Keywords:** *Authority; Commission of Corruption Eradication; Prosecution; Money Laundering Offence*

### **Introduction**

In the world of criminology, it is already known the term of *White Collar Crime*. This crime is a classification of crime in which people are intellectual and have important positions in an institution as the main perpetrators and actors behind the scene in crime cases. Sutherland mentioned the term of *White Collar Crime* in his speech in front of the American Sociological Society in 1939, which was later elaborated in his book *Principles of Criminology* which formulated *White Collar Crime* is a crime

committed by person of respectability and high social status in the course of their occupation. According to Sutherland, this theory is actually an attempt to overhaul theories of criminal behavior that has traditionally been stereotyped, which states that the perpetrators are people who come from lower social strata.<sup>1</sup>

Criminals who are categorized as white collar criminals basically use their intelligence to commit crimes. These criminals commit not only crimes against people and property or commit crimes categorized as other forms of general crime but also commit crimes that can harm the country's money laundering by trying to obscure the proceeds of the crime they committed. It has done by having the aim of not being detected by anyone and aiming at making it look like the proceeds of the criminal acts he committed were not the result of an act criminal with various modus operandi of money laundering. Furthermore economy, which is done to benefit themselves or to benefit a group of people. In addition, the criminals with their intelligence also carry out, the proceeds of the crime must first be converted into legal money before the money can be invested or spent by doing money laundering.

Giovanoli believes that money laundering is a process by which "assets", especially cash assets obtained from criminal acts are manipulated in such a way that the assets appear to come from legitimate sources.<sup>2</sup> In addition, the definition of money laundering is also explained by Koers as the Public Prosecutor from the Netherlands who stated that money laundering is a way to circulate the proceeds of crime into a legitimate circulation of money and cover up the origin.<sup>3</sup> Money laundering can also be interpreted as activities that constitute a process carried out by a person or organization of activities against illicit money, that is money originating from a crime, with the intention of hiding the origin of the money into the financial system.<sup>4</sup>

If we look at the elements of Article 3, 4, and 5 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, it can be seen that some of the modus operandi is carried out on the results of criminal acts. So it can be said that the money laundering is not a primary crime that stands alone, but it is a crime that is the impact of other criminal acts as a form of predicate crime. In Article 2, paragraph (1) of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, it is stated that there are several forms of predicate crime in money laundering. One of them mentioned in Article 2, paragraph 1, point a of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering is corruption.

Basically, criminal justice system is an effort to tackle crimes that occur in the society.<sup>5</sup> The criminal justice system is needed and expected to be able to eradicate any form of crimes that will endanger the society and the condition of the country. In order to create the objectives of the criminal justice system, it is certainly expected that each institution can carry out the duties professionally at every level and the appropriate components contained in the criminal justice system have the same vision and mission to avoid the mindset of centric agencies that can damage the criminal justice system.

In carrying out full law enforcement, a procedural law that appoints and legitimizes the role of the legal structure in the criminal justice system is necessary, such as the role for conducting initial investigation, investigation and prosecutions regulated in the Criminal Procedure Code (*KUHAP*). However, the Criminal Law implies that through Article 284, paragraph (1) of Criminal Procedure Code, if there is a special regulation that can override the rules contained in the Criminal Law, the rules contained

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<sup>1</sup>Social strata are the stages of life that exist and develop in society. Without being aware, social strata actually affect a person's life and personality in society Muladi and Barda Nawawi Arief, *Criminal Law*, Alumni, Bandung, 1992. page. 1.

<sup>2</sup>*Ibid.* page. 11.

<sup>3</sup>Legal Bureau of Legal Affairs and the Secretariat of Bank Indonesia, "*Money Laundering*", Paper, Jakarta, 2010. page. 1.

<sup>4</sup>*Ibid.*

<sup>5</sup>Abdussalam, DPM Sitompul, *Criminal Justice System*, Restu Agung: Jakarta, 2007. page. 4.

in the Criminal Law is invalid. One of them is the issuance of Law Number 30 of 2002 concerning Commission of Corruption Eradication, which gives the Commission of Corruption Eradication the authority to conduct initial investigation, investigation and prosecutions of criminal acts related to corruption. Besides, the Law Number 30 of 2002 concerning the Commission of Corruption Eradication also legitimizes the initial investigation, investigation and prosecution of corruption.

Based on Article 3 related to Article 11 of Law Number 30 of 2002, the Commission of Corruption Eradication is declared as an independent institution, which one of the authorities is to carry out initial investigation, investigation, and prosecution of corruption. In fact, Commission of the Corruption Eradication has ever acted as an investigator and public prosecutor in a case of money laundering.

In the case of conducting an investigation of a money laundering, the Commission of Corruption Eradication has actually been legitimized to carry out an investigation of a money laundering with predicate crime in a corruption by Article 74 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. However, normatively none of regulation that legitimizes explicitly that the Commission of Corruption Eradication has the authority to prosecute money laundering aimed at recovering assets that has suffered loss.

## **Research Methods**

This research employed a normative method that was doctrinal law research referred to as library research or document study because this research was conducted for aimed only at written regulations or other legal materials.<sup>6</sup> According to Mahmud, legal research is a process of finding legal rules, legal principles, and legal doctrines in order to address the legal issues at hand.<sup>7</sup> In this case, the research was administered by examining the literature data materials consisting of primary legal, secondary legal, and tertiary legal materials. The main focus of this research was the authority of the Commission of Corruption Eradication in the prosecution of money laundering. This authority was very interesting to be discussed because there is no regulation that explicitly and clearly regulate the authority. Due to the problem, it arose dissenting opinion of the judge panel in the trial which becomes the doubt of law enforcement in deciding this case. In this case, this research organized two approaches namely the statute and case approaches.

## **Result and Discussion**

### **A. Legal Problems of Commission of Corruption Eradication in Prosecuting Money Laundering**

The current legal problem of Commission of Corruption Eradication is prosecution on money laundering, which basically no rules allow it. Article 74 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering only legitimizes the authority of Commission of Corruption Eradication to conduct investigation of money laundering with predicate crime in corruption. However, it seems to have been ruled out by the Indonesian Criminal Justice System, when the Panel of Judges at the Central Jakarta Court in decision number 10/PID.SUS/TPK/2014/JKT.PST accepted the public prosecutor's demand of Commission of Corruption Eradication on Defendant, Akil Mochtar, of committing money laundering. Although it has been explained by the Constitutional Court through the Decision of Constitutional Court Number

<sup>6</sup>Soerjono Soekanto and Sri Mamudji, *Normative Legal Research a Brief Review*, Rajawali Press: Jakarta, 2011. page. 14.

<sup>7</sup>Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2011. page. 35.

77/PUU-XII/2014, it is necessary to establish a legal update regarding the authority of the Commission of Corruption Eradication in prosecuting the money laundering.

Basically, Law Number 19 of 2019 concerning Second Amendment to Law Number 30 of 2002 concerning the Commission of Corruption Eradication was formed because of some reasons. They are less effective performance of the Commission of Corruption Eradication, lack of coordination among law enforcers, violations of the ethics by the leadership and staff of Corruption Eradication Commission, and problems in carrying out the duty and authority. The problems are the inappropriate duties and authorities committed by the Commission of Corruption Eradication, lack of coordination with fellow law enforcement officials, wiretapping problem, less coordinated management of initial investigator and investigator, overlapping of authority with various law enforcement agencies, no supervisory agency to oversee the implementation of the duty and authority of the Corruption Eradication Commission so that it can be a chance for the Commission of Corruption Eradication to do cheating in the implementation of the duty and authority.<sup>8</sup>

The formation of Law Number 19 of 2019 is a step in renewing the Criminal Law Policy towards corruption eradication institutions. It can be seen in the sentences of Law Number 19 of 2019 which states that the implementation of the duty and authority of the Commission of Corruption Eradication is different from the provisions of criminal procedural law and there is lack of coordination with fellow law enforcement officers". The consequence of the reasons as stated above is the inclusion of Article 12 A in Law Number 19 of 2019 which states that in carrying out the prosecution, prosecutors at the Commission of Corruption Eradication must coordinate in accordance with the provisions of the legislation. Although Law Number 19 of 2019 does not explicitly explain which institution is the counterpart of the Commission of Corruption Eradication in carrying out prosecutions, but as it is known that in the Criminal Procedure Code (*KUHAP*), institution that has the authority to conduct prosecutions is the Attorney General's Office of the Republic of Indonesia. This implies that the Commission of Corruption Eradication must coordinate when carrying out the duties in the prosecution of corruption. So, it can be concluded that it becomes an obligation for the Commission of Corruption Eradication to coordinate with the Attorney General's Office in prosecuting criminal acts of money laundering resulting from corruption. It can actually be detrimental to the Commission of Corruption Eradication which must go through a long process to prosecute money laundering.

The aforementioned problems, there is a problem that is more urgent, namely the authority of the Commission of Corruption Eradication in prosecuting the money laundering, if the money laundering has a connection with the corruption. This does not seem to be an important issue for legislators by not explicitly regulating the authority of the Commission of Corruption Eradication in prosecuting money laundering. In fact, there have been several cases of money laundering, which in the stage of the prosecution, the Commission of Corruption Eradication played a role as a public prosecutor. Regarding the issue of this institution's authority in prosecuting money laundering, it causes a lot of interpretation for legal experts regarding the authority of prosecuting the money laundering, especially in the money laundering with predicate crime in corruption. The government and legislators should pay attention to the issue so that there is no overlap in authority between the Commission of Corruption Eradication and law enforcement agencies that are legitimized by the Criminal Law to prosecute.

The vagueness of legal policies related to the authority of the Commission of Corruption Eradication in conducting prosecution of money laundering makes the context of the authority of the Commission of Corruption Eradication in prosecuting money laundering resulting from Corruption

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<sup>8</sup>General Explanation of Law Number 19 of 2019 Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission. Which is contained in Supplement to the State Sheet Number 6409.

into the “gray area”, which raises the pros and cons in the minds of legal experts. Until now, debates often occur among legal practitioners and some legal experts with a different mindset towards the authority of the Commission of Corruption Eradication in the prosecution of money laundering. There are those who support that the Commission of Corruption Eradication has the authority in prosecuting money laundering resulted from corruption and there are those who disagree with that authority.

Former Head of the Research and Analysis Center of Financial Transaction (*PPATK*), Husein delivered his argument in the testimony at the trial of the money laundering case, where he was presented as an expert by the Public Prosecutor of the Commission of Corruption Eradication which could be summarized as follows:<sup>9</sup>

1. It is true that Law of money laundering does not mention the authority of the Commission of Corruption Eradication to prosecute money laundering, but Article 75 of Law of Money Laundering instructs that when investigating corruption is found the laundering money, the investigators of Corruption Eradication combine the two as a *concursum realist*, namely corruption and money laundering. In combining investigations, it is natural that the Commission of Corruption Eradication has the authority to prosecute corruption cases and combines the prosecution corruption and money laundering. Aren't the cases of corruption and money laundering that is investigated closely related?
2. If the prosecution of money laundering or the prosecution of corruption and money laundering submitted to the Prosecutor's Office as a Public Prosecutor is contrary to the principles of simple, quick, and low cost as regulated in Law Number 48 of 2009 regarding Judicial Power. The meaning of “simple” is the efficient and effective inspection and adjudication and the meaning of “low cost” is the cost of case that can afforded by the society. Besides, the submission of the prosecution to the Prosecutor's Office requires the Defendant to be adjudicated twice with two files but they are very related, which definitely take a long time and cost and does not provide the legal certainty to the Defendant.
3. Submitting prosecution of money laundering cases to the Prosecutor does not have a strong legal basis. On the contrary, the Commission of Corruption Eradication has the authority to take over a case of corruption that are being handled by the Police or the Prosecutor's Office in accordance with Article 8, paragraph (2) of Law Number 30 of 2002 concerning the Commission of Corruption Eradication.
4. According to Radburch, German legal expert, the purpose of law is justice, expediency, and legal certainty. Of these three elements, justice must take precedence. According to economists, fair law is efficient law and efficiency is the goal of law.
5. Progressive Legal Theory introduced by Satjipto Rahardjo that promotes conscience, justice, and the concept of “law for humans”. This theory is often “beyond in the text” further than the legal text in the regulations. Indeed, if examined in depth the existing legislation as a human creation, there must be deficiencies. Therefore, it must be seen that the existing jurisprudence and interpreted according to conscience to obtain the justice.
6. According to Article 2, paragraph (3) of Law Number 16 of 2004 concerning the Prosecutor's Office, the Prosecutor's Office is one and inseparable in carrying out the task of prosecuting criminal acts and other authorities. The Article 2, paragraph (3) explains that “the Prosecutor's Office is one and inseparable”, which is a foundation in the implementation of the duties and authorities in prosecution aimed at maintaining unity of policy, so that it can display the united characteristics in the mindset, and the work system of Attorney. Thus, the Public Prosecutor in the Prosecutor's Office and at the Commission of Corruption Eradication is a unity. The

<sup>9</sup>Yudi Kristiana, Kristiana, *Eradication of Money Laundering (Perspective of Progressive Law)*, Thafa Media, Yogyakarta, 2015. page. 243.

Commission of Corruption Eradication has never recruited the Public Prosecutor out of the Prosecutor's Office.

Considering that system of anti money laundering is primarily aimed at preventing and combating criminal acts in general including corruption, it is better to prosecute money laundering cases investigated by the Commission of Corruption Eradication, carried out by the Commission of Corruption Eradication which investigates and prosecutes corruption cases. The prosecution by the Commission of Corruption Eradication will further enhance the recovery of assets resulting from corruption because if only the Law of Corruption is used, only money used by corruptors or obtained from corruption can be confiscated for the state as substitute money. From the explanation above, legal certainty is temporarily sacrificed for justice and expediency. Ideally, the authority of the Commission of Corruption Eradication demands the money laundering cases explicitly regulated in the Law of Commission of Corruption Eradication or Law of Money Laundering.

It is true that no Law regulates whether or not to have the authority, but it is not always what is not regulated in the Law that cannot be done and what is not regulated in the Law that can be done. Wismo provides three indicators in determining what is not regulated in the Law, but may be done. These indicators are propriety, public order, and orderly law. In orderly law, because the Court of corruption has the authority to adjudicate the money laundering from corruption, based on the systematic, grammatical and historical interpretation, the Commission of Corruption Eradication has the authority to process from the stage of initial investigation, investigation, and prosecution of the money laundering from corruption.<sup>10</sup>

With a Progressive Judge's ruling by breaking through positivism, law is needed when positive legal norms are deemed inadequate to realize social justice for all humanity. Article 50, paragraph (3) of Law Number 30 of 2002 states: "In the event that the Corruption Eradication Commission has begun investigating cases of Corruption, the Police or the Prosecutor's Office no longer has the authority to conduct an investigation". So that it becomes ineffective and inefficient when the investigation and prosecution of corruption as Predicate Crime of money laundering has been carried out by the Prosecutor at the Commission of Corruption Eradication but then the Prosecution of money laundering was taken over again or prosecuted by the Prosecutor at the Prosecutor's Office.<sup>11</sup>

Panjta opposes Husein's, the Head of the Research and Analysis Center of Financial Transaction, argument at point 1. Pantja states that the Commission of Corruption Eradication does not have authority in the prosecution of money laundering. Furthermore, according to Mudzakir, related to the issue of authority it must be regulated on a clear normative basis rather than interpretation. Interpretation of experts will not give rise to authority. In other words, Mudzakir believes that experts' interpretations cannot be used as a basis for giving authority to a law enforcement agency.<sup>12</sup>

Huda confirms that the Commission of Corruption Eradication is not authorized to prosecute money laundering resulting from corruption. According to Huda, an expert witness of Akil Mochtar at the trial of criminal case Number 10/PID.SUS/TPK/2014/PN.JKT.PST that at the investigation stage, investigators can combine the corruption and money laundering based on Article 74 of the Law Number 8 of 2010. In the case of corruption money laundering, the Commission of Corruption Eradication has the authority to combine corruption crimes as predicate crime and Money

<sup>10</sup>Decision of the Constitutional Court Number 77 / PUU-XII / 2014, page. 72.

<sup>11</sup>Sigit, Herman Binaji, "Dualism Views of the Prosecution of TPPU", Republic of Indonesia's Supreme Court Edition 5, Legal and Public Relations Bureau of the Supreme Court Administrative Affairs Republic of Indonesia: Jakarta, 2014, page. 58.

<sup>12</sup>*Ibid.* page. 69.

Laundering at the stage of investigation, as if the Commission of Corruption Eradication is also authorized to combine criminal act of corruption and money laundering at the prosecution stage, and the Commission of Corruption Eradication has the authority to prosecute. According to Huda, this argument must be rejected. It is not in accordance with Article 3 of the Criminal Procedure Code which forms the basis of the Procedural Law. Article 3 of the Criminal Procedure Code contains the principle of legality in Procedural Law, which means that the authority of law enforcement officials must be determined by Law. So that the Commission of Corruption Eradication does not have any authority if it is not determined by Law. The Commission of Corruption Eradication does not have the authority to prosecute the criminal act of money laundering resulting from the corruption crime only based on the interpretation of experts by appealing to the principles of Criminal Procedural Law.

Actually, Criminal Procedural Law cannot be interpreted and analogous to one another as the principle of due process of law. If the basis for the authority of the Commission of Corruption Eradication to prosecute money laundering is based on analogies and interpretations of the relation of one Article to another so that it can be concluded that the Commission of Corruption Eradication has the authority to prosecute the cases of corruption money laundering which is certainly not in accordance with the principle of Due Process of Law but a consideration of Teleology. Mudzakir says that when the Law stipulates that the Commission of Corruption Eradication has one, two, and three authorities by Law, no new authority should be born, namely interpretation and the reasons for a fast and inexpensive trial. The authority must still be born from an explicitly written Law because the new authority that is not mentioned in the Law has potential to abuse of power and claims the rights of the suspect.<sup>13</sup>

Some opinions from the experts as described above, it can be concluded that the legal problems of the Commission of Corruption Eradication in the prosecution of criminal acts of laundering from the perspective of criminal law is that there is no single legal policy that legitimizes the Commission of Corruption Eradication to commit criminal act of money laundering. It is also not included in Law Number 19 of 2019 concerning Amendment to Law Number 30 of 2002 concerning the Commission of Corruption Eradication. Therefore, it is necessary to reform the legal policy, which gives the Commission of Corruption Eradication strong legitimacy to prosecute criminal acts of money laundering resulting from corruption. Renewal of criminal law policies related to the authority of the Commission of Corruption Eradication in prosecuting the crime of money laundering be able to facilitate the Commission of Corruption Eradication in eradicating criminal acts of corruption and other criminal acts such as money laundering related to corruption, bearing in mind there is a close relationship between criminal act of corruption and money laundering.

### ***B. The Authority of the Commission of Corruption Eradication in Prosecuting Money Laundering***

Authority is also called formal power, which is the power granted by Law.<sup>14</sup> Every authority possessed by law enforcers must be given by Law. In the State Administrative Law, the authority refers to attributive authority. Article 74 of Law Number 8 of 2010 states that "Investigation of money laundering is carried out by investigators of criminal act of corruption in accordance with the provisions of the Procedural Law and provisions of Statutory Regulation, except determined otherwise according to this Law".

<sup>13</sup>Ade Aleandro, News "*Corruption Eradication Commission Has No Authority to Prosecute Money Laundering Crimes*" m.kompasiana.com/adealeandro/KPK-tidak-berwenang-melakukan-penuntutan-perkara-pidana-pencucian- uang\_55281bd6f17e61c4188b458c. Accessed on November 9, 2019 at 22.14 pm.

<sup>14</sup>Ateng Syafrudin, *Towards a Clean and Responsible State Organization*, Pro Justitia Journal, Parahyangan University Bandung, Edition IV, 2000. page. 22.

From the formulation of this Article, it can be concluded that the investigator of predicate crime is able to conduct an investigation on money laundering. In other words, if the predicate crime of money laundering is a corruption. Based on Article 6 in conjunction with Article 11 of Law Number 30 of 2002 in conjunction with Article 74 of Law Number 8 of 2010, the Commission of Corruption Eradication has the authority in conducting investigation on money laundering resulting from criminal act of corruption.

In addition, the Commission of Corruption Eradication also has the authority to combine the cases of corruption, which constitutes predicate crime with money laundering, if it finds sufficient preliminary evidence. It is in accordance with Article 75 of Law Number 8 of 2010. However, it is different from the provisions contained in the Criminal Code. Combining criminal acts can be carried out at the prosecution stage. So that, the Public Prosecutor can combine criminal cases that have a relationship with each other in one indictment. So, How is the prosecution of money laundering? Can the prosecutor combine the cases at the stage of prosecuting money laundering? It is definitely able because the investigation will lead to the prosecution.

Law Number 8 of 2010, particularly in Article 74 clearly and firmly states that investigators of predicate crime can also conduct investigation on money laundering. In the elucidation of Article 74 of Law Number 8 of 2010, it is stated that the investigators of predicate crime include the Indonesian National Police, the Prosecutor's Office, the Commission of Corruption Eradication, the National Narcotics Agency, and the Directorate General of Tax and the Directorate General of Custom and Excise of Ministry of Finance of the Republic of Indonesia.

Problems arise against Law Number 8 of 2010. In Law Number 8 of 2010, it does not mention who authorized to prosecute money laundering. Can a Public Prosecutor of predicate crime in money laundering prosecute a money laundering crime such as the money laundering from corruption. The Commission of Corruption Eradication has the authority to investigate the criminal act of money laundering resulting from the corruption act based on Article 74 of Law Number 8 of 2010 in conjunction with Article 6 in conjunction with 11 of Law Number 30 of 2002. On the other hand, does the Commission of Corruption Eradication have the authority in prosecuting criminal act of money laundering resulting from corruption? This issue becomes ambiguity in law enforcement when investigation on money laundering can be carried out by an investigator of predicate crime. It should be at the stage of prosecution, the General Prosecutor of the predicate crime is authorized to carry out the prosecution of money laundering because the investigation will lead to prosecution.

Nowadays, rejecting authority of the Commission of Corruption Eradication in prosecuting the money laundering resulting from the corruption is increasingly flaring up. This is due to Law Number 8 of 2010 not explicitly regulating who is authorized to commit money laundering. Therefore, the Commission of Corruption Eradication is deemed not to have the authority in prosecuting corruption money laundering because there is no Law regulating.

The will of the formulation of Law Number 8 of 2010 is stated in the general explanation of the Law which states:

“... for this reason, efforts to prevent and eradicate money laundering crimes require a strong legal basis to ensure legal certainty, the effectiveness of law enforcement and the search and return of assets resulting from criminal acts”.

The most crucial point is “the effectiveness of law enforcement”. If the Commission of Corruption Eradication originally has the authority to conduct investigations and combines the cases of money laundering and corruption, the results of the investigation must be delegated to the Public



Prosecutor at the Prosecutor's Office. Is it an effective step in eradicating money laundering? It is certainly ineffective because the step indirectly violates the principle of simple, quick and low cost justice contained in Law Number 48 of 2009. When the Law grants the authority to the Commission of Corruption Eradication in conducting investigations and combining the predicate crime and money laundering, based on *mutatis mutandi* the Commission of Corruption Eradication also has the authority to prosecute the money laundering resulting from the criminal act of corruption.

In the prosecution of money laundering, which is a form of law enforcement, there needs to be a paradigm shift for law enforcers specifically for the Commission of Corruption Eradication which conducts law enforcement firstly with a "follow the suspect" and then with a "follow the money". It appears because the mindset of money laundering is the result of criminal acts in the form of assets or money. One of the effective ways to eradicate the crime of money laundering is to break the chain of crimes committed by cutting funding of the crime and limiting the use of the crime itself. Then, automatically financing for the next crime will be interrupted.<sup>15</sup>

If the Commission of Corruption Eradication in prosecuting the criminal act of money laundering is still oriented towards the perpetrators, then any policy on state assets that are harmed from the money laundering results can only be carried out after the conviction of predicate crime. As long as there is no conviction for the perpetrators of predicate crime, then all matters relating to assets such as the return of assets cannot be done.<sup>16</sup> In other words, if the Commission of Corruption Eradication in prosecuting money laundering still holds the "follow the suspect" paradigm, it will not be able to return the assets if there is no conviction for the perpetrators of predicate crime.<sup>17</sup>

In fact, return of assets is the main objective in prosecuting corruption and money laundering crimes. Actions to return the assets can not be carried out by law enforcement officials such as the Commission of Corruption Eradication if there is no authority regulating to implement the decisions of the Corruption Court that has permanent legal force (*incraht van gewijsde*). In other words, the Commission of Corruption Eradication cannot deposit the assets which are subject to money laundering cases.

The problem arising is whether the Commission of Corruption Eradication is authorized or not to implement the Court's decision of corruption act on asset recovery. Because there is no normative rule that regulates the authority of the Commission of Corruption Eradication to carry out the implementation of the Court's decision of Corruption which has been considered *incraht van gewijsde*. Meanwhile, Attorney General's Office of the Republic of Indonesia and even the legal standing or legality in the role of the Commission of Corruption Eradication in recovering the assets which is the goal of prosecuting the money laundering from the results of the corruption act, are questioned by the public in viewing the Criminal Justice System in Indonesia.

The Law on the Eradication of Corruption Acts allows the seizure of assets resulting from criminal acts through criminal prosecution. If the Public Prosecutor can prove the Defendant's mistake in committing the corruption and the assets that have been confiscated in the case, it is a criminal offense. It can be seen in Article 38, point b of Law Number 20 of 2001 amending the Law Number 31 of 1999 concerning Eradication of Corruption.

Therefore, it is necessary to create a strict and clear normative regulation on the authority of the Commission of Corruption Eradication in order to prosecute the money laundering in order to achieve asset recovery so that the Commission of Corruption Eradication can more fully recover state

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<sup>15</sup> Yudi Kristiana..., *Loc. Cit.* page. 17.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.* page. 15.

losses or state assets that are objects of money laundering, considering the “follow the money” paradigm which aims at recovering state assets or state finances in eradicating money laundering. It is because the Government’s consideration of establishing the Commission of Corruption Eradication is as a state tool functioning to run the interests of the country to avoid loss of state finances affected by the money laundering resulting from the corruption acts.

## **Conclusion**

After the research on Commission of Corruption Eradication in prosecuting the money laundering is carried out, it can be concluded as follows:

1. The legal problem of the Commission of Corruption Eradication in prosecuting the money laundering lies in the legal policy factor that does not legitimize the Commission of Corruption Eradication in prosecuting the money laundering. It means that the main factor causing the legal problems of the Commission of Corruption Eradication in Prosecuting the money. As the legal issues where there no regulations that legitimize the authority of the Commission of Corruption Eradication in the prosecution of money laundering, this has led to pros and cons of experts and dissenting opinions of Judges so that there are doubts and different arguments by law enforcement in determining the legal standing of the Commission of Corruption Eradication in prosecuting the money laundering.
2. The authority of the Commission of Corruption Eradication in the prosecution of money laundering can be seen in Article 74 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, giving the authority to the Commission of Corruption Eradication to conduct investigations on money laundering, specifically on corruption act as a predicate crime from money laundering. However, there is no normative rule that explicitly and clearly regulates the authority of the Commission of Corruption Eradication in prosecuting money laundering. The authority of the Commission of Corruption Eradication in carrying out prosecutions of money laundering is only based on the interpretation of legal experts stating that each investigation lead to prosecution.

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