



## Limitation of the Investigator's Authority in Investigation on Alleged Money Laundering

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### **Abstract**

This type of research used in this research is normative legal research. In general, *money laundering* is a method for hiding, transferring, and using the proceeds from a criminal act, organizational criminal activity, economic crime, corruption, narcotics trafficking and other activities that constitute criminal activity. Money laundering activities involve very complex money laundering. Basically, this activity consists of three steps, each of which is independent but often carried out together, namely *placement, layering, and integration*. Money laundering can be seen in the provisions in Articles (3), (4), and (5) of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. The point is that the crime of money laundering is a form of crime that is committed either by a person and / or a corporation by deliberately placing, transferring, spending, paying, donating, depositing, taking, abroad, changing forms, exchanging currency or securities or other actions on assets which he knows or should reasonably suspect are the result of a criminal act with the aim of concealing or disguising the origin of the assets, including those who receive and control them. So in fact the principle of proportionality is an alternative solution for Constitutional Court Judges in providing legal certainty to decide what investigators by laying the basis of which authority should take legal action and action against the prevention and eradication of the crime of money laundering.

**Keywords:** *Limitation; Money Laundering*

### **Introduction**

In general, *money laundering* is a method for hiding, transferring, and using the proceeds from a criminal act, organizational criminal activity, economic crime, corruption, narcotics trafficking and other activities that constitute criminal activity.(1) Money laundering activities involve very complex money laundering. Basically, this activity consists of three steps, each of which is independent but often carried out together, namely *placement, layering, and integration*. Money laundering can be seen in the provisions in Articles (3), (4), and (5) of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. The point is that the crime of money laundering is a form of crime that is committed either by a person and / or a corporation by deliberately placing, transferring, spending, paying, donating, depositing, taking, abroad, changing forms, exchanging

currency or securities or other actions on assets which he knows or should reasonably suspect are the result of a criminal act with the aim of concealing or disguising the origin of the assets, including those who receive and control them.(2)

It should be remembered that the crime of money laundering doesn't stand alone because assets placed, transferred, or transferred by way of integration are obtained from criminal acts, meaning that there have been other criminal acts that preceded it. Money laundering activities have the potential to undermine public finances as a result of the large amount of money involved in these activities. The potential for corruption increases with the circulation increases with the circulation of enormous amounts of illicit money. Money laundering reduces government revenue from taxes and indirectly harms honest taxpayers and reduces legitimate employment opportunities.(3)

The development and dynamics of the crime of money laundering at this thime have created new problems related to conflicts of legal norms up to material review at the Constitutional Court, especially requests for judicial review on the explanation of Article 74 of Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of Acts Money Laundering Criminal Against Article 27 Paragraph 1, Article 28 D Paragraph 1 of the 1945 Constitution of the Republic of Indonesia.

This predicate crime investigator refers to officials from agencies that are given the authority to investigate ML, namely the police, the Attorney General's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), the Tax Directorate and the Customes and Excise Directorate of the Ministry of Finance. If it refers to the explanation of 'predicate criminal investigator', then the investigation of ML cases should be adjusted to the existing agency.(4)

### ***Research Method***

This type of research used in this research is normative legal research.(5)

### ***Discussion***

#### ***Conflict of Legal Norms Against the Authority of Investigators in the Prevention of the Crime of Money Laundering***

The role of investigators in eradicating the crime of money laundering has experienced many obstacles, especially the limitation of legal norms that apply in the formation of laws and regulations. This results in a limitation of authority in carrying out criminal acts and acts, especially the prevention of money laundering committed by investigators. Some of the limitations of this authority can be given, for example, Cepi Arifiana. In 2018 he served as a civil servant investigator at the Ministry of Environment and Forestry. At that time he handled cases of allegedly carrying out or assisting in illegal logging or illegal use of forest areas. In handling the case, Cepi found that there was a suspicion of money laundering.(6) However, efforts to follow up on the findings of the alleged crime of money laundering were hampered due to his limited authority as an investigator.(7)

Dedy Hardinianto, served as a civil servant investigator at the Ministry of Environment and Forestry on mining cases in forest areas without ministerial permission committed by PT LM. In the investigation of the case, Dedy saw that there were allegations of money laundering. In his efforts to investigate the alleged money laundering crime, he intended to prove that there were suspicious transactions related to shortcomings and journal posting errors. Accompanied by a request for information from the PPATK regarding the impropriety of the assets owned by PT LM, however, efforts to

investigate the alleged money laundering were hampered because the Attorney General stated that Dedy wasn't authorized to carry out an investigation.(8)

When viewed from the point of view of the theory of authority, in fact the investigator's authority in the case level above the researcher analysis is that it's permissible to take legal actions and actions in taking action against allegations of money laundering committed by certain individuals in the case mentioned above, therefore as in theory. Authority is the power of government organs to exercise their authority, both in the field of public law and private law.(9)

### ***Legal Certainty of the Authority of Investigators in the Prevention and Eradication of the Crime of Money Laundering***

If you look closely, the researcher tries to describe the explanation of each of the laws and regulations in question and later a normative legal analysis will be found, as shown below:

No.	Legislation	Article and Explanation	Description
1.	RI Law No. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering.	<p>Article 74: <i>“Investigation of predicate offenses is in accordance with the provisions of the procedural law and the provisions of statutory regulations, unless otherwise stipulated in accordance with this law.</i></p> <p>Elucidation of Article 74: <i>“What is meant by ‘predicate criminal investigator’ is an official from an agency that is authorized by law to carry out investigations, namely the Indonesian National Police, the Attorney General’s Office, the Corruption Eradication Commission, the National Narcotics Agency (BNN) and the Directorate General. Taxes and the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia”.</i></p>	<p>First, Article 74 and the explanation of Article 74 of the TPPU Law are contradictory. On the one hand, investigators of predicate crimes aren't only the National Police, but other Civil Servant Investigators (PPNS) in accordance with their respective sectoral laws. “Such as criminal acts in the forestry sector where the investigator is forest ranger or criminal acts in the fisheries sector whose investigators are from the Ministry of Marine Affairs and Fisheries and the Navy. On the other hand, the elucidation of Article 74 limits predicate criminal investigators to only the Police, the Attorney General’s Office, the KPK, BNN, the Directorate General of Taxation and the Directorate General of Customs and Excise.</p> <p>Second, Article 74 of the TPPU Law and its explanation isn't only a matter of legal certainty in the sense that there is a contradiction between articles and explanations, but more than that, it will bring disorder in law</p>

			enforcement. Because technically it's juridical if a crime in the forestry or fisheries sector occurs as a crime of origin of money laundering, the investigation is considered invalid if it's carried out by the PPNS of the two agencies because their legality as PPNS isn't recognized by the explanation of Article 7
2.	The 1945 Constitution of the Republic of Indonesia (UUD 1945)	Article 27 paragraph (1) of the 1945 Constitution of the Republic Indonesia: <i>All citizens shall have the same position before the law and government and are obliged to uphold the law and government without exception.</i>	If you look at this legal basis, then every citizen has the same position in carrying out their duties in accordance with their respective authorities both in governmental and non-governmental aspects. Thus, being an investigator in carrying out an investigation is a form of state duty and authority that has been mandated by the government in upholding and enforcing the applicable legal rules in accordance with statutory regulations.
		Article 28 D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia: <i>Everyone has the right to recognition of guarantees, protection and legal certainty that is just and equal treatment before the law.</i>	As investigators, of course they must be treated the same, because as in the Criminal Procedure Code, investigators are also part of the police and carry out their authority in accordance with the law. This needs to be taken into account when investigators carry out their duties there is limited authority, especially in the prevention and eradication of money laundering.

Based on the table above, it actually reflects the investigator's duties and authority in implementing the laws and regulations according to proportionality, but in reality there are still obstacles that are deemed inconsistent with what the authorized official said. The recognition that an investigator is said to be an investigator according to the Criminal Procedure Code (KUHP) is clear and definite as part of the institutional unit of the Indonesian National Police, the extent to which the investigator acknowledges in carrying out his duties on several cases related to the prevention and eradication of the crime of money laundering and in the end there is legal uncertainty regarding the recognition of investigators in carrying out their duties. Investigation on the aspects of legal action as well as criminal law actions and criminal procedures.(10)

## Conclusion

So in fact the principle of proportionality is an alternative solution for Constitutional Court Judges in providing legal certainty to decide what investigators by laying the basis of which authority should take legal action and action against the prevention and eradication of the crime of money laundering. As an investigator is an inseparable part of the Indonesian National Police in exercising its rights and obligations, therefore of course it must receive fair and prudent treatment in carrying out its investigative duties.

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