

Strengthening Reversed Authentication for the Money Laundering Act with the Predicate Offense of Corruption in an Effort to Return the State Financial Losses

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Abstract

This dissertation research aims to determine, assess, and analyze the causes of the difficulty of implementation of the system of reversed authentication in the eradication of money laundering with corruption cases substantially, from the aspect of legal system. This study is also prescriptive; to create an optimal model for reversed authentication system in money laundering. This formulation is expected to be a breakthrough in the framework of the law indemnification of state financial. This study is a non-doctrinal legal research. The research approach is the approach of legislation, a comparative approach, and case approach. The data used are primary data and secondary data. Various obstacles encountered in the implementation of this reversed authentication system. Obscurity system settings of reversed authentication, the principle of disobedience and lawlessness events in AML Law, causes ineffective, bias and lead to contradictions in its application. On the other hand, the institutional structure of law enforcement officers do not apply synergistic, particularly in activities exposing the predicate crime, namely corruption, and weak asset tracing, the impact is the lack of indemnification of state. Judicial practice so far, does not give priority to the predicate crime, the charges of money laundering separated from the underlying predicate crime. Asset tracing is also not maximizing in collecting the evidence related to the predicate crime. Legal culture factor also does not yet support the operation of the law enforcement system, due to the low awareness and honesty of society, including law enforcement officers. Related to the constraints encountered, it is submitted recommendations, such as: the approach needs to be formulated *in rem* and *illicit enrichment* in the Law on Money Laundering and the Law on Corruption Eradication. It is extremely beneficial for the process of reversed authentication. In addition, there should be a procedural law governing the procedures, mechanisms and legal consequences in application of reversed authentication, both for the defendant and the public prosecutor. On the institutional aspects of law enforcement, asset tracing function should be empowered with the support of an investigative audit. The existence of clear standards in the coordination and supervision functions performed by the Corruption Eradication Commission (KPK) in the form of uniformity in eradicating money laundering and corruption must be absolutely exist. In terms of strengthening the legal culture against law enforcement officers carried out by applying the function of reward and punishment. As for the public, the socialization and education efforts are continuous and efficient by involving all the relevant elements.

Keywords: strengthening system, reversed authentication, money laundering, return the state financial losses.

A. BACKGROUND

Corruption never stand alone, in addition to being one of the predicate crime of money laundering, corruption is always in need of money laundering (hereinafter referred to as AML) in an attempt to hide the acquisition of the proceeds of corruption. The basic purpose of money laundering is to hide or eliminate the origins of the money from law enforcement.⁴ Money laundering is often associated with organized crime - although it is possible to do individually - carried out by intellectuals (white collar crime) as well as economic crimes.⁵ In terms of territory, money laundering is considered a transnational crime and even international crime, because the *modus operandi* that is typically cross border.

Money laundering is the most dominant type of crime is done mainly through the financial system.

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⁴ Sutan Remy Sjahdeini, *Inside Money Laundering and Financing Terrorism*, Pustaka Utama Grafiti, Jakarta, 2007, p.13.

⁵ The phrase "white collar crime" was first discovered by a criminologist named Edwin H. Sutherland, the concept of "white collar crime" was developed to demonstrate a set of offenses involving monetary and economic action in the broad sense. Sutherland formulated the "white collar crime" as a crime committed by people who have a high social standing and honorable in his work ("crime committed by person of respectability and high social status in the course of Reviews their occupation"). See: Setiono, *Corporate Crime*, Bayumedia, Malang, 2004, p.35

Utilization of financial institutions in money laundering crimes can be like, invested and move money from the proceeds of crime as the proceeds of corruption, bribery, fraud, crime in banking, capital markets and the other in the form of deposits, purchase of traveler checks, stocks, bonds, mutual funds and other financial instruments.¹ Properties derived from the proceeds of crime are hidden or disguised to avoid being recognized its origin. Money laundering as a criminal crime does not stand alone, because the assets were placed, transferred, or transferred by way of the integration derived from the crime, meaning there are other crimes that preceded it (predicate crime).² Between money laundering and predicate crimes, expressed as a separate crime.

The modus and the characteristics of the crime of money laundering are extremely difficult and different from other crimes. Special characteristic that include this crime is a double crime, which consists of a predicate crime and follow up crimes (money laundering).³ Hence the difficulty of eradicating money laundering, it appears the formulation of the application of the shifting burden of proof - commonly called a reversed authentication - in the cases of AML.⁴ The principle reversed authentication is the influence of the globalization of law. This is adaptation from the rules of UNCAC; each participating country is required to make the process of adjustment to the existing rules in the UNCAC. In the UNCAC rule that to speed up the fight against corruption and money laundering, each participant country is advised to enter the principle of reversed authentication. In addition to adjusting the rules of UNCAC, also against the background by setting result of the adoption reversed authentication set forth earlier in the Law of Corruption that has adopted from other countries.

Intent application of inverted authentication is an effort to simplify the process of verification of AML that level of proving is very complex, and based on the negative impact that is very detrimental to society. Through reversed authentication in AML Law is expected to seek indemnification of state funds optimally.⁵ It is based on the approach to follow the money that becoming the strength enactment of AML Law. In case of corruption, then the provisions of the law that can be applied is the provision of anti-corruption and anti-money laundering. Perpetrators of corruption may be liable to two crimes at once (corruption and money laundering). In addition, for those who are not involved in corruption but allowed to hide, enjoy, or receive or any actions⁶ against corruption are to be convicted by anti-money laundering.⁷

Reversed authentication method⁸ in the AML Law is applied in the process of examination in the trial through the determination of the judge or request from the prosecutor to the judge to do so. Application of reversed authentication in the trial was based on the provisions of article 77 and article 78 paragraphs (1) and (2) AML Law.⁹ The system reversed authentication under the provisions of AML Law is expected to prove the

¹ Yunus Husein, "Development Regime Anti Money Laundering in Indonesia and Its Implication to Accounting Profession", paper presented at the Scientific Forum Economic Accounting Studies (FIESTA 2006) and the National Meeting of Student Network Accounting Indonesia (TN-JMAI), organized by the Faculty of Economics, University of Bung Hatta, in Padang, May 8, 2006, p.1.

² Adrian Sutedi, Money Laundering, Citra Aditya Bakti, Bandung, 2008, p.182.

³ The enactment of Law No. 8 of 2010 on the Prevention and Combating of Money Laundering is a new paradigm in preventing and combating crime, through the principle of follow the money, which follows the proceeds of crime are disguised to be - as it were - the money from legitimate, easily detected and traced, even to the intellectual actor.

⁴ Yenti Garnasih, 'Application of Reversal of the Burden of Proof On Money Laundering', Papers on Law Dialogue PERADI, Bogor, April 13, 2013, p.1.

⁵ AML Law is a new paradigm in preventing and combating crime, through the principle of follow the money. In the AML Law, with the known or reasonably suspected to be that the proceeds of crime derived from the predicate crime, is sufficient to meet the formulation of money laundering.

⁶ The formulation as defined in Article 3 AML Law mentioned money laundering is the act of placing, transferring, diverting spending, pay, grant, leave, brought out of the country, changing the shape, exchange of currency or securities or other acts, of assets that is known or reasonably suspected to be the proceeds of crime, with the aim of concealing or disguising the origin of the assets so that seems to be the legitimate wealth. Deeds disguise, conceal or obscure is done so that the wealth earned from the proceeds of crime seemed to be a property that is acquired through activities or acts lawfully, thus not detected that the real wealth is obtained or derived from activities or illegal acts.

⁷ Yenti Garnasih, the 4th of astral conjunction MUI Fatwa Commission of Indonesia, Theme "Improving Theologian Respectation In Overcoming the Problems of Nation", Tasikmalaya, 28th until July 2nd, 2012.

⁸ Reasons of reversed authentication on the AML system can be understood as part of efforts to prevent and combat money laundering, considering the two important things: first, the impact has been detrimental to society. Second, the complexity of the modus operandi of AML. Both of these tasks is a good reason that the system of proof is one of the efforts of anti-money laundering activities, especially in the efforts to prove the criminal act that also aims to explore and seize the assets of AML.

⁹ In Article 77 it says: "For the purposes of examination in court, the defendant must demonstrate that wealth is

crime of money laundering easier. However, implementation of the reversed authentication in criminal justice in Indonesia against money laundering related to corruption is still not optimal.

Implementation difficulties of reversed authentication in substance legislation can be seen in the setting of Article 69 AML Law which asserts that in order to do the investigation, prosecution and examination before the court against money laundering "is not obliged" to first prove the predicate crime. The word "not required" often becomes a problem when processing the enforcement of AML. That is, the crime of money laundering (follow up crime) is highly dependent on the occurrence of predicate crime, although this crime is a crime that stands alone (as separate crime).¹

There is also another weakness in AML Law, namely the setting of reversed authentication at this stage of the trial. This provision actually helps the prosecution in terms of the difficulty of proving that the assets derived from crime.² In fact, none of the articles regulating what if the offender cannot prove that his wealth does not come from crime. Difficulties in the practical implementation of the law enforcement authorities, especially police investigators, the Commission (KPK), and the Public Prosecutor have not created coordination, supervision and optimal synergy. To strive for the eradication of AML through the application of ideal reversed authentication, we need a systemic approach to utilize the various resources available.

In this dissertation research, subject matter studied further is as follows:

1. Why is the implementation of reversed authentication in the Money Laundering Act to the main case of Corruption is not yet optimal?
2. How to build a reversed authentication system that can be implemented optimally in Money Laundering with the main case of Corruption?

B. RESEARCH METHODS

This study is a legal non-doctrinal, which aims to study and analyze the factors inhibiting the implementation reversed authentication in eradicating money laundering with corruption as the underlying predicate crime and formulate the ideal implementation of reversed authentication in eradicating money laundering with corruption as predicate crime. This study critically evaluates the rule of law and diagnoses weaknesses legal rules that result in implementation of reversed authentication which is not running optimally. This study does not only see the law as rules but as regularities that occur in everyday life or in the realm of experience. Here the law is a behavior or actions and human interaction are the actual and potential that will be patterned,³ therefore this research requires primary data and secondary data. Seeing from the point of the study forms, this research is including diagnostic⁴ and prescriptive⁵ research category.

The approach used in this study is legislation approach, comparative approach and case approach. The location of research is in the area of Jakarta, the determination of these regions based on a consideration as the center of government which would have a wide range of data required. Respondent selection technique is done in order to obtain all kinds of information related to the research. To get in-depth information as well as to

not the proceeds of crime."

In Article 78 stated:

- (1) In the examination before the court referred to in Article 77, the judge ordered the defendant in order to prove that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1).
- (2) The defendant to prove that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1) by filing enough evidence.

¹ Yenti Garnasih, "Money Laundering: In Theory and Practice", Paper presented at the seminar in the framework of the National Conference and Mahupiki Seminar, held by Mahupiki, Cooperation between Mahupiki and the University of Sebelas Maret, Solo, 8th until 10th September 2013, p. 6.

² In general, the elements that must be proved in the provisions covering anti-money laundering is a subjective element (*mens rea*) and the objective element (*actus reus*). *Mens rea* must be proved that knowledge (know or reasonably suspect) and intended (intention). Secondly it is related to the accused knew the funds were derived from the proceeds of crime and the accused knew about or intent to commit the transaction. Proof of this was difficult, because if the defendant has such great to conceal the proceeds of crime.

³ Setiono, *Understanding the Legal Research Methodology*, University of Sebelas, Surakarta, 2002, p.22.

⁴ Diagnostic because researchers wanted to examine in depth the factors that lead to reversed authentication system has not been able to be an effective instrument for combating money laundering which the criminal act of corruption as an underlying predicate offenses continue to rise. Why law enforcement officers have not been able to use the instruments of reversed authentication system optimally.

⁵ Prescriptive form, because researchers want to formulate an ideal implementation efforts of reversed authentication system that progressive, which is capable of overcoming the AML where corruption as an underlying predicate offenses continues to increase both in quantity and quality.

support the literature data, the field research¹ is conducted.

Data analysis techniques used in this research is the analysis of qualitative data, with inductive logic thinking, which is based on an empirical approach, analysis conducted using an interactive model analysis.

C. RESULT AND DISCUSSION

1. The Implementation Constraints of Reversed Authentication in Money Laundering with Corruption as Predicate Crime.

a. Substance Legislation factor

AML has a very close relationship with the other criminal act including corruption as predicate crime. Predicate crime in money laundering as stipulated in Article 2 (1) of the proceeds of crime, is a property that is derived from the crime there are 26 kinds.² Then Article 69 AML Law states that in order to do the investigation, prosecution and examination before the court against the AML not required to prove the predicate crime first. The word "not required" is often becoming a problem when processing the prosecution of money laundering crimes. Article 69 appears not in line with the principles espoused in the AML Law, namely the crime of money laundering is a crime that is based on double criminality.³ Affirmation of the crime of money laundering dimensionless double criminality can actually be seen in several articles in the formulation of the AML Law. Article 3 AML Law explains that this criminal act has special characteristics that is-a follow-up crime⁴ or supplementary crime,⁵ that crime is a continuation of the existence of a predicate crime that has been done beforehand to acquire wealth. It can be seen that the crime of money laundering is dependent on the occurrence of predicate crime, although this crimes constitute as separate crime.⁶

Applicability of Article 69 AML Law was influenced by the provisions of Article 23 and Article 24 of UNCAC⁷ containing advice or recommendations regarding the forms of handling ever applied to prohibit certain actions relating to the criminalization of money laundering. Even the nature of the independence of money laundering crime is also confirmed, so it does not necessary to prove precede crime derived from criminal acts of others.⁸ The provisions of Article 69 AML Law, contrary to the wording of Article 77 which says, for the purpose of examination in court, the defendant must demonstrate that his asset is not the proceeds of crime. In line with Article 77 of the Article 78 paragraph (1) provides, in the examination before the court referred to in Article 77, the judge ordered the defendant to prove that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1). Then in paragraph (2) stated the defendant prove that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1) by filing sufficient evidence. Then in paragraph (2) stated the defendant prove that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1) by filing sufficient evidence. Not further described, what must be submitted by the defendant concerning proof of possessions is not derived from a criminal crime as charged by the Public Prosecutor.

Problems arise in the prosecution is not simple, with regard to whether it should be proven with

¹ The field data obtained through interviews using a questionnaire as an instrument interview guide to the informant. The author chooses the information that is deemed to know the issues to be studied in the research. Respondent based on the adequacy of the information or the adequacy of the amount of data required.

² Article 2 Paragraph (1) Money Laundering Law states in a limited manner, namely: a) corruption; b) bribery; c) narcotics; d) psychotropic substances; e) smuggling; f) labor; g) Banking; h) in the field of capital markets; i) in the area of insurance; j) customs; k) clearance; l) trafficking in persons; m) illicit arms trafficking; n) terrorism; o) kidnapping; p) theft; q) evasion; r) fraud; s) counterfeiting; t) gambling; u) prostitution; v) in the field of taxation; w) in the field of forestry; x) in the environmental field; y) in the field of marine and fisheries; z) any other criminal offense for imprisonment of 4 (four) years or more, which is carried out in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia and the offense is also a criminal offense under the laws of Indonesia.

³ June Sjafrien John, *Against Money Laundering! Know, Preventing and Combating Money Laundering*, Vision Media, Jakarta, 2014, p 54.

⁴ Yenti Garnasih, "Money Laundering ..." op.cit, p.6.

⁵ Artidjo Alkostar, "Implementation of the Money Laundering law in connection with Predicate Crimes ", Faculty of Law, Univ. Islam Indonesia, Yogyakarta, 2013, p 52.

⁶ Yenti Garnasih, "Money Laundering ..." op.cit, p.6.

⁷ UNCAC is an international organization for combating corruption. In UNCAC rules, each participating country is required to make the process of adjustment to the existing rules in the UNCAC. In the UNCAC rule that to speed up the fight against corruption and money laundering, then each participating country are advised to enter the reversed authentication. It is useful to track money in addition to the proceeds of crime as well as to give an opportunity to the accused to prove that their wealth does not come from a criminal act. Muhammad Nurul Huda, "The Principle of Reversed

⁸ This is evident from the rules of UNCAC, each participating country is required to make the process of adjustment to the existing rules in the UNCAC. In the UNCAC rule that to speed up the fight against corruption and money laundering, then each participating country are advised to enter the reversed authentication . It is useful to track money in addition to the proceeds of crime as well as to give an opportunity to the accused to membuktikan that wealth

evidence both or it is enough to prove money laundering alone without first proving the predicate crime. In the setting of the prosecution case in particular money laundering contained in Article 69 AML Law which regulates the subject in conducting the investigation, prosecution and examination before the court on case of AML, it is not required to prove the predicate crime beforehand. In the *Memorie van Toelichting*, which has been determined AML is an independent crime that does not rely on proving the predicate crime. It is the basis for the establishment of the provisions sets forth in Article 69 of the AML Law, so that it does not necessary to first prove the predicate crime in money laundering case investigation. According Yenti Ganarsih,¹ AML is not a single crime, but a double crime. Demands for an AML require proof of two forms of criminal acts at once, the evidence TPPU itself and proof that such property is illegal.

Problems notch predicate crime also cause problems in the AML Law, with the formulation of "known or reasonably suspected" any property that becomes the object of AML is the result of predicate crime. With a formula like that, then predicate crime is not actually has to exist, simply by suspected that there have been previous predicate crime that generate wealth which is then "washed", then the AML has been shown occurred. Predicate crime does not really have to be a cause occurrence of AML.

Predicate crime of money laundering is the requirement under the AML act, but not an absolute requirement. If the predicate crime exists, then the provision of the first alternative is applied, namely "knowing" of property that becomes the object of money laundering coming from a predicate crime. Conversely, if the predicate crime does not exist, then the second alternative is applied, that wealth is "reasonably suspected" is the result of a predicate crime.

Related to this issue, Romli Atmasasmita said about wealth as an object of AML, there are two important issues that must be discussed, namely: first, the reversed authentication on the defendant wealth is not mutatis mutandis proving the guilt of the accused for his actions. This is due to the wealth reversed authentication on the defendant allegedly derived or obtained from criminal acts aimed at confiscation of assets as a civil based forfeiture; Separate and distinct significantly by proving guilt of the accused to the predicate crime is aimed at finding faults and then seize its assets as criminal based forfeiture. Secondly, it needs to be questioned is, ambiguous provisions of Article 69 in relation to Article 77 and Article 78 AML Law because on one side of predicate crime is not required to be proved by the prosecution, but on the other hand, the defendant have to prove that his assets has not come from or associated with predicate crime are simply presupposed. There is no adequate explanation of the "contradiction substance" of these articles.²

According Yenti Ganarsih, based on judicial practice so far, the AML does not first prove the predicate crime, prosecutors filed charges of money laundering off of this type of predicate crime. Not really proved there has been a criminal crime, but sufficiently proven there has been sufficient preliminary evidence for the occurrence of a crime.³ The provisions of Article 2 AML Law determine a limited manner crime becomes predicate crime of money laundering which is a follow-up crime. This shows that for the first occurrence of money laundering no crime / other crimes that have been committed by the perpetrator as has been determined in a limited manner in article 2.

To decide an AML has occurred and the perpetrator, it first has to prove the existence of predicate crime. However, the provisions would be unclear or contradictory to the provisions of Article 69 which states: "To do the investigation, prosecution and examination before the court against the crime of money laundering is not mandatory to first prove the predicate crime." The provisions of Article 69 results the lack of legal certainty and may be misused by law enforcement officials, because it is clearly that Article 2, Article 3, Article 4 and Article 5 says firmly that for AML must be there is a predicate crime and this must be proved first or at least proven togetherness.

In connection with the reversed authentication as set out in Article 77 and Article 78 also raises ambiguity regulation. Article 77 states: "For the purposes of examination in court, the defendant must demonstrate that wealth is not the proceeds of crime". Furthermore, Article 78 states:

- (1) In the examination before the court referred to in Article 77, the judge ordered the defendant to prove that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1).
- (2) The defendant proves that the assets related to the case are not from or related to the criminal act referred to in Article 2 paragraph (1) by filing enough evidence.

¹ Yenti Ganarsih, "Anti-Money Laundering Strategies To Combat Profit Oriented Crimes", Journal of Law Progressive, PDIH Undip 2006, Semarang, p. 40. does not come from a criminal act.

² Romli Atmasasmita, "Legal Analysis of Law No. 8 of 2010 Concerning the Prevention and Combating of Money Laundering." Paper presented at the National Seminar: "Renewing Criminal Code and the Criminal Procedure Code of No Edge: Questioning The fate of the Draft Criminal Code and the draft Code of Criminal Procedure Assessment of Money Laundering of the Corner Criminal Law theory and Practice ", Faculty of Law, University of Sebelas Maret, Surakarta, 10th September 2013, p.24

³ Interview November 10, 2014.

Both of the aforementioned article also does not regulate the procedure of the judicial, or at least regulate the consequences of the reversed authentication. It should have been strictly regulated, what if the defendant can prove that the property he has not coming from the proceeds of crime. Conversely, what if the defendant cannot prove the wealth he has not coming from the proceeds of crime.

According to Romli Atmasmita, an error in formulating the terms of reversed authentication contained in Article 77 and Article 78 AML Law. Article 77 of the Act provides that the judge ordered the defendant to prove that their wealth does not come from a criminal act. The formulation of these provisions implies several things. First, the reversed authentication on the defendant's wealth is still associated with predicate crime or focus on the actions of the defendant. Second, the formulation of the provision of reversed authentication in the article in practice cannot be done without predicate crime contained in the criminal prosecution of Public Prosecutions. Third, the success reversed evidence in AML Law relies heavily on proving the predicate crime. Although the provision of Article 68 AML Law confirms that for evidence of money laundering should not be proved the predicate crime beforehand.¹

According Yenti Ganarsih, relating to the application of reversed authentication on cases of AML, it must be understood that there is no money laundering if there is no major crime. This means that these two crimes must be proved, although we apply reversed authentication. In this authentication system, which must be proven in reversed in fact related to the major crime in this case the elements listed in property derived from a crime that the defendant knew or at least suspected the origin of his property.²

In the practice of reversed authentication at trial, after the prosecutor proving first, the defendant merely prove that the assets are not derived from the crime, and the inability reversed authentication by the defendants, the indictment strengthens. Worth mentioning that the most important is that the main crime and money laundering crimes charged in one indictment.³

Furthermore, the complexity of tracking the origin of the assets has not been matched by optimal search by law enforcement officials. According Yenti Ganarsih, asset tracing approach is not practiced to the fullest in the implementation of the eradication of AML, especially at the stage of inquiry and investigation on the predicate crime, such as in the case of corruption. Such situation will cause problems when in the process of proving in court, where prosecutors are also obliged to prove that the defendant's acquisition of assets obtained illegally.⁴

The obligation of defendants to prove the assets which are acquired legally in court did not become profitable information for Prosecution. If the accused is not able to prove the property obtained legally, making an indication that the property is obtained illegally and supports the indictment. The provisions of AML Law do not set such provision, but the judge can make an assessment that the indictment of the Prosecution has the strength of evidence.

From the analysis and discussion of previously known that the system reversed authentication to say half-heartedly, with a fixed charge of evidence to the Public Prosecutor, even if the defendant fails to prove the origin of his assets. Public Prosecutor's obligations related to the problem regarding the position of property that has not been placed separately by money laundering perpetrators as the subject of a criminal act. With such provision, AML Law does not provide a deterrent effect to the perpetrators of money laundering.

b. The structure Factor (Institutional Law Enforcement)

According to Gusti Ayu, law enforcement in its operation is not something that stands alone but rather deals with various aspects. Law enforcement is not only related to the law itself, but also with a human, both law enforcement and the community.⁵ The analysis in this section outlines factors institutional structure of law

¹ Romli Atmasmita, Regarding Indonesia, dated March 7, 2012.

² Interview, dated 10th November 2014

³ This was in accordance with those specified in Article 75 of AML Law, which reads: "In the event that investigators found preliminary evidence sufficient criminal acts of money laundering and predicate offenses, investigators combine the investigation of criminal origin with a criminal investigation of money laundering and notify PPATK. "the explanation that the element property derived from crime must be proven in court, the provisions of Article 69 AML Law, which reads:" To do the investigation, prosecution and examination before the court against the crime of money laundering is not mandatory to first prove the crime of origin ". Certainly that the article is contradictive with the understanding that all of the elements has to be proved in the system of negative authentication as well as reversed authentication.

⁴ Interview, dated 10th November 2014

⁵ I Gusti Ayu Ketut Rachmi Handayani, Factors Influencing on Forest Law Enforcement in Indonesia, EKOSAINS Journal, Vol. IV, No. July 2, 2012, p.7. In this discussion of law enforcement can not be separated from the concept of Lawrence M. Friedman of the three elements of the legal system, namely: legal substance, legal structures and legal culture. See: Lawrence M. Friedman, 2001. American law: An Introduction Second Edition (American law An Introduction), translator of Vishnu Basuki, Tatanusa, Jakarta, p. 7-9. the third element is determining the applicability of the law enforcement in combating money laundering and the implementation of reversed authentication is committed by law enforcement officers. By its nature, the legal system has always been characterized by their sub-legal system. Without subsystem law, there would be no legal system.

enforcement officers in the eradication of money laundering.

With regard to the duties of investigation, Endang Usman said the investigator must obtain evidence that will be submitted to the prosecutor for further disclosed in the trial, and for cases of money laundering is not an easy issue, let alone be associated with the predicate crime.¹In a common practice in the field, disharmony in carrying out their respective roles happens a lot, so it can be detrimental to the enforcement of AML Law itself. For example there has been no common perception between PPATK and national police investigators of suspicious transactions, and between the national police investigators and prosecutors still appears a different perception with respect to the occurrence of money laundering. For example, a case is already enough evidence, but Prosecutor view of insufficient evidence. Thus the biggest obstacle seems to arise from the point of proof that must be done by the Prosecutor.

Case AML with predicate crime of corruption is also not easy to do the proof. It must be subjected to a long process of investigation to complete a minimum of two items of evidence held to go up to the investigation process. In search of expert testimony to prove financial loss to the state is also not easy because the state auditor, BPK and BPKP, that perform calculations must also be thorough and careful in order to achieve the accuracy of the count losses to the state, during which time the suspect can freely hides and blurs of his assets acquired from the proceeds of corruption.

Constraints in evidence also points to a weakness AML prosecutor in proving cases of AML. The problem originated from the demands that were not simple, that AML is a follow up crime so that there is another problem, namely how about the core crime. Based on the mandate of Law, the predicate crime is not necessary to be proven, that means using evidence is enough. As a consequence, the cumulative charges should be drawn up is not an alternative, because the predicate crime and money laundering are two crimes. The act of money laundering should be always associated with the predicate crime, but money laundering is a crime itself. In indicting AML e.g. charges related to Article 3, the predicate crime and the follow-up crime charged at once.

In eradicating money laundering and corruption, law enforcement institutions are required to seek the return of the country's financial losses. The success of seeking indemnification of state financial optimally is a sign of the workings of the law enforcement system. Efforts to recover the financial losses made by the national police, the attorney general, and the Commission is still not encouraging. The perpetrators of corruption are very good at keeping, conceal and divert assets from corruption. Of the tens of trillion rupiah that is corrupted by the perpetrators of corruption only a small portion can be saved by way of asset recovery that are deposited into the state treasury to cover the country's financial losses that have occurred. State financial return through the eradication of corruption is not easy to do. Corruptors have extensive access and difficult to reach in money laundering his corruption.

c. Legal Culture Factor

According to I Gusti Ayu, legal culture is a human attitude toward law and the legal system, beliefs, judgments and expectations of society against the law. Legal culture is anything or anyone who decides to turn on and turn off the engine and to decide how the machines are used. Abstract law is in a state of static and helpless without any human action. Law seemed to do something and interact with each other for their behavior and actions of human beings. The law itself can not behave. Operation of law in society is very dependent on human action. Legal provisions often can not be implemented because of human action.² Legal culture components are important variable in the legal system, the assessment of the legal culture becomes an important focus, because the law is the soul of a society based on the values that live in the community in the form of social life in order to run their lives.

Of the several factors causing corruption, it appears that human factors / community is very dominant in providing opportunities that lead to corruption is flourishing. This proves that the reduction / eradication of corruption depends not only on policy making of laws and regulations governing sanctions against acts of corruption a person, but also needs the support of the behavior of the whole society to no longer behave corruptly. Weak legal culture not only in society, but also can be found in the law enforcement officers who should be an example for the public.

Poor law enforcement also caused by the performance of law enforcement officers who have not demonstrated a professional attitude and high moral integrity. The role of the judiciary in creating an independent judiciary, not influenced by any party, clean and professional, yet functioning as it should. This is not only due to the intervention of the government and the influence of other parties to court decisions, but also because of the quality, professionalism, morality and character of law enforcement officers are still low. As a result of public trust in the institution of justice as the last bastion of justice has declined. On the other hand, the involvement of law enforcement officers in corruption worsened the image of the enforcement of the law in Indonesia. The issue of strengthening the legal culture of law enforcement officers do not provide increased

¹ Interview, dated 10th November 2014

² I Gusti Ayu Ketut Rachmi Handayani, *op.cit*, p. 11.

adherence and compliance in carrying out law enforcement functions are free of corruption collusion and nepotism. As well as any arrangement of legal structures created, but if it is not supported by the strengthening of the legal culture, it is certain that law enforcement will not run optimally.

2. Building Optimal Reversed authentication System Against Money Laundering With Principal Case Corruption

a. Comparative Study on Application of reversed authentication and Money Laundering in Several Countries

Based on a review arrangement principle of reversed authentication, and money laundering in some countries, Malaysia is known for wider coverage in reversed authentication system. Besides applies to the recipient, it is also subject to the grantor and expressly state that the provisions of the reversed authentication also apply to the crime of bribery. Malaysia is also more advanced in terms of the application of the precautionary principle which is the counterpart of the principle of reversed authentication to apply it to a benefactor. Benefactor imposed an obligation to prove that the donations are not derived from the crime or does not manipulate donations for the benefit of crime.¹

Evidentiary rules for the implementation of the general crime proof are carried out by the prosecution to prove the guilt of the accused. But against corruption implementation of such evidence shall not apply absolutely and may be excluded if based on certain facts can be proven the guilt of the accused, so that the burden of proof is on the defendant that even though their property is not comparable with the source of the income, the defendant must prove that the property is not the result of criminal act.

Complete and detailed in anti-corruption laws of Malaysia can be seen from the system of reversed authentication to the increasing wealth of a person after there is an excuse from the public prosecutor. If he cannot provide a satisfactory explanation about the excessive amount of property, he can be charged with corruption crime and can be punished. These settings are the same as set out in the Indian state of reversed authentication, where the burden of proof is on the defendant, if there is an increase in wealth that is not comparable with the income source. The defendant must be able to prove that his property is not the proceeds of crime.

b. Aspects of Substance (Completion Regulation Legislation)

1) In Rem Approach in the system of Reversed Authentication

The applicability of a policy principle of criminal law, including acceptance of reversed authentication in corruption depends on a country's legal politics.² Logical ratio of expediency purposes of setting shifts the burden of proof is surely leading to efforts to overcome the obstacles in the process of proving. Basically, the application of reversed authentication system is temporarily believed by legal experts to be able to eliminate the degree of difficulty proving. This is because the AML is not a conventional criminal crime, as well as the perpetrators also tending to be in the category of upper class or white collar crime. We know that the implementation of the system of reversed authentication in actual AML Law is inseparable from the concept of anti-laundering activities stipulated by legislation which aims to explore and seize assets or property derived from criminal acts. One effort that can be maximized to provide easiness in tracking and seizing assets from the proceeds of crime is the application of reversed authentication system.

In order to form an adaptive verification system, it would require a fundamental concept in building a system of reversed authentication which refers to the principle of indemnification of state finances. Referring to Article 3 of UNCAC about assets freezing, surveillance, confiscation and return of assets occurred because of a violation of the convention. Referring to Article 3 UNCAC above, the reversed authentication system which refers to the principle of indemnification of state finances is very effective to be applied in cases of AML with corruption.

Therefore, the asset in AML is an object, so the approach of reversed authentication should also refer to the concept of appropriation of assets to be used. In the confiscation of assets can be distinguished between in personam asset confiscation and in rem asset confiscation. The confiscation of assets in personam, the object of

¹ Law on Anti-Corruption Malaysia is similar to Singapore with the application of reversed authentication. The advantages of anti-corruption regime Singapore is the application of reversed authentication with the application of the principle of know your customer standards on every execution of banking transactions that seemed suspicious. Customers are imposed the obligation to prove that the money used in the transaction is not the proceeds of crime. Not only that, bank officials are required to scour the accuracy of information from such clients. Policy formulation in the legislation of Malaysia and Singapore is similar to the formulation of policies formulated in Indonesia. Every gift would be considered a bribe if the defendant can not prove that this gift is not a bribe.

² Understanding the politics of law can be studied from the etymological perspective and from the perspective of the terminology. From the perspective of the terminology according to Padmo Wahjono, legal politics is the policy of State administrators about what is the criteria to judge anything. In this case the policy can be associated with the formation of law, implementation of the law, and enforcement itself. See: Padmo Wahjono, "Investigate Formation Process Regulations", Forum Keadilan Magazine, No. 29 April 1991, p.65.

appropriation is personam or individual. Confiscation of assets based on of proving guilt of the accused. There must be a nexus between the defendant, the crime, and assets. As for the model of asset confiscation in rem, object confiscation are the assets or in rem. Proof of guilt of the accused is not the basis to seize assets. Deprivation enables efforts with effective reversal of the burden of proving.

In the system of criminalization of corruption, with the element of unlawful enrichment, in general Indonesian criminal law still adheres to retributive justice also known as in personam approach.¹ The use of follow-Corruption Law and the AML Law functioned in parallel with the ultimate goal to restore the country's financial losses while preventing the onset or development of other crimes of money that has been corrupted.² Constraints in the reversed authentication in the Law on Corruption and Money Laundering Law is the lack of clarity of purpose in proving, whether in the context of the criminal to punish the person concerned (in personam) or to confiscate assets (in rem). The procedural law which regulates this verification does not yet exist, so that in its implementation could lead to difficulties in handling cases of AML.³

At issue in the implementation of reversed authentication system that is ordered by the judge to the defendant under Article 78 is how the defendant proving it and the conditions that must exist to declare the defendant succeed to prove and not succeed to prove. In addition, the absence of any provision which states clearly and firmly if the defendant did not heed Judge's orders or the defendant heeds judge's orders, but the proof does not as desired by the provisions as contemplated in Article 78 paragraph (1) of the AML. We know that the role of the judge as the competent authority to assess the verification way committed by the defendants played a key role considering the application of the rules of evidence based on the beliefs of the judge holds a major role. However, if it is not accompanied by an explicit rule then it is feared would bear legal uncertainty in assessing the submission evidence by the defendant. In response to such conditions, it is necessary to further arrangements on the non-compliance judge's orders and submission verification of the defendant who does not comply with the provisions of article 78 Paragraph (1). The author argues, if the state in question occurred in the examination in court, then such property related to money laundering were indicted, and it is a guidance to the judge that the property owned obtained illegally.

2) Reverse Authentication To Improper Increasing Wealth of State Officials.

Of the many problems in law enforcement paradigm "extra ordinary" is the application of reversed authentication. The theory of verification which has been recognized is the burden of proof "beyond reasonable doubt", which is considered not contrary to the principle of term "negative verification" does not easy to implement. Therefore, there is discussion about purely application of reversed authentication. The author argues that a pure of reversed authentication does not conflict with the presumption of innocence, so it is not accurate to say that the prevailing principle is "presumption of guilt". The nature of guilt in a reversed authentication purely is not absolute or limited. Presumption put forward aimed at wealth (in rem) and not the person (in personam). Throughout it can be proven that the assets acquired legitimate, then he is not guilty of corruption or money laundering. Presumption of innocence addressed to the assets allegedly derived from criminal acts of corruption and not directed to the perpetrator.

System criminalization of corruption, with the element of enrich himself illegally, in general, Indonesia still has in personam approach. This approach is different from enriching illegally using the approach in rem. On the other hand, the international provisions of UNCAC in 2003 have opened up opportunities for the Indonesian legal system to adopt the principles of in rem in the Law on eradicating corruption. An action in rem is an action aimed at the object, not against people. Accordingly, the assets placed as subjects, not objects. This is a logical consequence in rem approach in eradicating corruption. Through the model in rem in eradicating money laundering and corruption will better ensure the return of stolen state financial losses. Against the assets allegedly obtained illegally is conducted rescue action with the seizure of all the assets owned. It is known corruption is related to money laundering, therefore efforts to prevent the transfer of assets from the proceeds of corruption is a must.

Implementation of reversed authentication purely to the defendant also related to the concept of illicit enrichment or illegally acquired wealth. For this purpose, the rules of illicit enrichment in the legislation are considered highly strategic. If the defendant cannot prove the origin of his assets, then the property can be deprived of state. The formulation of the crime may use formal crime which prohibits acts of illicit enrichment, and then the proving is relatively easy. By using material crime, the proving will be difficult.

The concept of illicit enrichment plays an important role in a follow-up function for the Wealth Report of state officials. The parties may be subject to illicit enrichment is only officer / former state officials or other parties that manage the assets of officials / former state officials. Therefore, purely reversed authentication shall be limited, i.e. only to the increasing wealth of the state officials. Against perpetrators' assets that is not proven

¹ Marwan Effendy, *Crime Typology Banking from the Perspective of Criminal Law*, Sumber Ilmu, Jakarta, 2005, p. 113.

² *Ibid*, p.115

³ *Ibid*, p.107

coming from corruption, but could not be proved that these assets are the property of the perpetrators of corruption; it is taken by the state. Illicit enrichment is to minimize the space for corruption by state officials. Corruption is an extraordinary crime so that necessary for extraordinary enforcement and extraordinary measures as well, one of them with the acceptance of reversed authentication system purely to accept the concept of illicit enrichment.

Application of the rules of illicit enrichment can be started from the article 13 of Law No. 30 of 2002 on the Corruption Eradication Commission. The report was an entrance for the application of the rules regarding the acquisition of improper assets of public officials. LHKPN basically becomes a prerequisite for the provision of illicit enrichment can become effective. Assets seized must be proved by the defendant that the property is not obtained illegally. Here applies absolute reversal of the burden of proof. If the defendant cannot prove it, then such property is seized by the state. Proving absolutely should be applied, not as it is today, which is still to be balanced with the obligation of the prosecution to prove. The inability of the property proved by the defendant is only as a postulate to strengthen the prosecution indictment. If it is proven in a court of such property obtained legally and verdict had been inkraht, then all the property seized are returned to the person concerned.

For the purposes of building an effective verification system in eradicating money laundering and corruption, it could be adopted models conducted by Malaysia, Singapore and Hong Kong as a comparison. Malaysia through the Anti-Corruption Act (ACA) of 1997 implements illicit enrichment of wealth which is disproportionate to the income for now and in the past, and all other relevant circumstances. This setting refers to an increase in the assets which is suspected obtained illegally or against the law. This arrangement refers to an increase in the assets of suspected obtained illegally or against the law. If the defendant cannot provide a satisfactory explanation about the excessive amount of treasure to the public prosecutor, he can be indicted for corruption crime and can be punished.

Singapore also adopted a system of reversed authentication that the same as Malaysia. Excess anti-corruption regime Singapore is the application of reversed authentication with the application of the principle of knows your customer standards on every execution of banking transactions deemed suspicious. Customers are imposed the obligation to prove that the money used in the transaction is not the proceeds of crime. Not only that, the Bank Official Bank is required to discover the truth of the information from such clients. Likewise with Hong Kong, sources of income or property disproportionate to his salary at this time or the official income in the past, will commit the crime, unless he can provide a satisfactory explanation to the court as to how he acquired the standard of living.

The regulations stipulated by the anti-corruption system Malaysia, Singapore and Hong Kong clearly adheres reversed authentication system more firmly and clearly, as someone that has a wealth disproportionate to his income declared guilty of corruption, unless it can prove otherwise, that proves his wealth obtained legally. For Indonesia, the system settings of reversed authentication on Money Laundering Law is still incomplete related to consequences for the continuation of the accused to prove on their wealth, whether the reverse authentication is used to strengthen the evidence or is used as a benchmark that the defendant is proven or not proven guilty of money laundering. Legal issues will arise, if the defendant had not proved his assets arising from acquisitions are legitimate, but on the other hand the prosecutor general also failed to prove the other elements of money laundering. Such conditions will have implications for the status of property that cannot be proved by the defendant as a legitimate acquisition. Therefore, the regulation of reversed authentication system on Money Laundering Law should be revised because it is still incomplete and lack of clarity of the system.

Verifying the element 'suspected' for the assets coming from criminal act is proved trough the reversed authentication system. Of course this is not automatically to declare that the defendant is guilty of money laundering, but it is rather a guide for the judge. Guilt of the defendant remains to be proved by its proven for the elements of the other criminal act of AML, for example whoever, transfer, receiving a sum of money, and so on, and the purpose of concealing wealth as the perfection for the occurrence of criminal crime. Reversed authentication system should be used primarily in high-profile cases with the terms, as follows:

1. Civil servants or state officials that alleged to have received bribery (gratification), in a long time and many times.
2. Acceptance of bribery is difficult to prove, for example, when receiving bribery, who giving bribery and how much.
3. Raising or making his wealth increased dramatically, which is not balanced with the salary or other legitimate sources of income.
4. The existence of suspicion and improper transaction.

By more progressive and adaptive in the reversed authentication system, so it is expected to the process of eradicating money laundering and corruption achieving its main objectives, namely the return of the country's financial losses.

c. Structural Aspects (Strengthening Law Enforcement Officials Institution)

The success of law enforcement does not lie in legislation alone but depends also on the presence of law

enforcement officers as a man in motion. Good and poor law enforcement, reflected in the behavior of law enforcement officers themselves, then law enforcement officer is required not only to be able to realize the law of positioning legislation in abstracto becoming in concreto, but should also be prosecuted professionally and proportionately based on wisdom. The following sections describe the institutional model of law enforcement eradicating money laundering with corruption as predicate crime.

1). Building an Adaptive Follow the Money System

The system and mechanism of money laundering enforcement is different from the law enforcement of conventional criminal crime. Disclosure of crime and the perpetrator of money laundering should be more focused on tracking the flow of funds (follow the money) or financial transactions. In other words, tracing the flow of funds through financial transactions is the easiest way to find the type of crime, the perpetrators and the place where the proceeds of crime hidden or disguised.¹ Follow the money, better known as asset tracing or asset tracking.² An asset tracing is not always in the context of disclosure of criminal acts, but also simply to find assets with the proceeds of crime without revealing the crime. Asset tracing is intended to bring investigators, and prosecutors to information on assets resulting from corruption are stored or hidden. It cannot be automatically restored. If the hidden assets are in Indonesia, it will still require a legal process continued as proof of property ownership rights or related assets. Handling cases of corruption and money laundering should be carried out simultaneously and by optimizing the cooperation in tracing the flow of proceeds of corruption tracked with the help of Financial Transaction Analysis and Reporting Center (PPATK) as stipulated in Article 74 in conjunction with Article 90 paragraph (1) of the AML.

Corruption is a crime that is difficult to find the perpetrator (crime without offenders), because of corruption is in areas that difficult to penetrate. It is said so, because corruption is referred to as invisible crime, which is very difficult to obtain the proving procedural. Here we need PPATK³ to be able to analyze the transactions ever carried out by corruptors in order to disguise or hide the proceeds of corruption, starting from the main actors until the perpetrators took part in the corruption.⁴

Although PPATK is independent, but its function is severely limited as administrative functions only. In Indonesia, PPATK is in charge of collecting and processing information relating to suspicions or indications of money laundering. PPATK serves as a driving force to analyze the suspicion of money laundering, especially through early detection of the suspicious transaction flow. However, the institution remains in the status of doing very early stages of the investigation and is very limited in helping police. The analysis of the transaction or suspicion of money laundering and then handed over to investigators who turned out by the investigators still do more investigation and then followed up with an inquiry and subsequent processes. This means that the results of the analysis of PPATK not as evidence because they must be followed up in inquiries. Between PPATK and investigators should be established good coordination. Active communication should be realized that in any investigation or inquiries of corruption and in tracing corruptor's assets accordance with the expectations.⁵ In the context of indemnification of the state, activities of this asset tracking is one of the stages that is essential to obtain evidence for the presence or absence of money laundering related to predicate crime.

2) Carrying Capacity of The Investigative Audit Role

Judicially, the perpetrator and the results of money laundering, actually can be determined through some tracing by other institutions / authorities, and then processed in accordance with the applicable legislation.

¹ In many countries, the need to build anti money laundering regime is both urgent, partly because the approach to follow the money (trace the flow of money) is offered by the anti money laundering regime facilitating law enforcement authorities to uncover the perpetrators, criminal offenses committed and also seize proceeds -the crime. In Indonesia, the approach to follow the money stipulated in Law No. 15 of 2002 as amended by Act No. 25 of 2003 on the Amendment of Act No. 15 of 2002 on Money Laundering, and refined in the Act no.8 of 2010 on the Prevention and Combating of Money Laundering.

² The understanding of asset tracing is unknown to the civil law and the Code of Criminal Procedure. Within the framework of the criminal procedure law, tracking activity has a close connection with the inquiry and investigation actions though not mentioned. The term return on assets is also not set explicitly in the Act No. 17 of 2003 on State Finance and Law No. 1 of 2004 on State Treasury or in Law No. 31 of 1999 as amended by Act No 20 of 2001 on the Eradication of Corruption. In fact, it is not regulated in Law Number 15 of 2002 as amended by Act No. 25 of 2003 on Money Laundering, the latter with Law No. 8 of 2010 on the Prevention and Combating of Money Laundering. These six laws only recognize or acknowledge the term "State Finance". Return on assets is a new nomenclature and its own, apart from the term "State Finance". This term clearly indicates explicitly that the assets of the proceeds of corruption is not necessarily the wealth of the country.

³ Through its function, PPATK can detect the corruption that became the predicate offense of money laundering. PPATK can perform its function to analyze or examine any reports submitted by PJK, where the report potentially lead to money laundering, even more than that, PJK can detect other criminal offenses. Halif, "Prevention and Eradication of Corruption Through the Money Laundering Act", Journal of Anti-Corruption, Vol. 2 No. 2 November 2012, p.78.

⁴ Ibid.

⁵ Interview with Usman Endang, Criminal Investigation Board, Indonesia Police Headquarters, December 10th 2015.

Generally, tracing proceeds of corruption assets is done by the financial institution through mechanism which is regulated in legislation. The financial institution has important role in implementing recognized principle of service users and report certain transactions to the authorities (financial Intelligence unit) for analysis and is submitted to the investigators as inquiry materials.¹ The audit function is very important to know the value of state losses that occurred based on audit evidence available.

In the disclosure of the existence of state losses in corruption, there needs to be more specialized and in-depth audit through the forensic accounting and investigative audits.² Audit investigation is directed against the practice of fraud, which is to establish absolute terms whether fraud had actually occurred regardless of whether the fraud is material or not, done with a very high degree of skepticism, by increasing the testing carefully from all the evidence and the various sources of information relating to a matter in question. Audit investigation against fraud is generally carried out through the forensic accounting which are the auditors already have special training in the field of fraud investigation and litigation, both civil and criminal.³

3) Synergy Optimization of Institutional Law Enforcer

Associated with the predicate crimes such as corruption, there needs to be a system of synergistic investigation and inquiry between the parties involved. According to the theory of synergy⁴, the relationship between the two parties can produce a level of communication that is confronted with the elements of cooperation and trust.⁵ The synergy appoints to the system and governance, both to each institution and the relation with the other institution. To determine the effectiveness of the institutional synergy, there must be some conditions that must be realized as a parameter of success. Money laundering law enforcement as a system can work optimally, when there is unity in diversity, although each subsystem has its own authority, but it should provide input for other subsystems. Therefore, the output of a subsystem is input to another subsystem, so that the continuity of a system is not like dominoes, but an entity such as a chain, that coherence in the system must be created from upstream to downstream.⁶

In the implementation of returning indemnification of state financial, identification and classification system is absolutely necessary. Identification and classification of assets associated with the asset tracing process that is performed on the stage of inquiry and investigation of corruption later becomes the basis for the enactment of reversed authentication system. In the process of investigation, there should be evidence of where the treasure is suspected as a result of predicate crime. This means that from this process, investigators would find evidence of predicate crimes and that result of predicate crimes is associated with money laundering act, whether it is Article 3, Article 4 or Article 5. So in the prosecution and trial, there must be evidences of predicate crime and will be proven along with money laundering. Any evidence of predicate crime which has been prepared by the investigator and then proven by the General Prosecutor in the trial is important, because how it is possible to prove the existence of money laundering as contained in Article 3, Article 4 and Article 5 if one part of the core of the crime is not proven, that is, the assets are known or reasonably suspected derived from criminal acts as referred in article 2 paragraph (1).

With regard to the duties of investigation, the investigator must obtain evidence that will be submitted to the prosecutor that subsequently disclosed at trial. For verification of money laundering cases is not easy, because it must be associated with the predicate crime. Investigators had to find the facts to be proved by the prosecution that includes subjective elements and objective elements. Both elements are bound to an element of the accused "knew that the funds are the proceeds of crime" and "the accused knew about or purpose of conducting transactions". Coordinating and holding predicate crime need to be intensified in the inquiry stage in order to obtain the understanding and same interpretation in preparing the juridical construction that will be applied in money laundering cases being handled together. If it can be disclosed in the inquiry for the existence

¹ Interview, dated 5th December 2015.

² Theodore M. Tuanakotta, *Forensic Accounting and Investigative Audit*, Publisher Faculty of Economics UI, Depok, 2007, p.1.

³ Suradi, *Corruption in Government and Private Sector*, Gava Media, Yogyakarta, 2006, p. 121 - 122. See also the opinion T.M. Tuanakotta stating that the forensic accounting term stems from the application of accounting for solving legal issues. for example in the calculation of damages either within the context of the country's financial and between parties in civil disputes. Some are using the term forensic audit for the audit investigation, T.M. Tuanakotta. *Forensic Accounting and Investigative Audit*, op.cit, p.10.

⁴ The word synergy comes from the Greek "Synergos" which means working together to achieve the overall meaning greater than the sum of each part. Digest synergies strength lies in the difference in the values of mutual respect to build strengths and compensate for weaknesses. Precisely because of the diversity, synergy is possible to happen. From the unique differences, then it is established creative cooperation that produces a third alternative that provides optimal benefits for the parties in synergy. Mohammad N Yamien, "Communications of Synergistic". <https://moehyamien.wordpress.com>. Downloaded dated August 3, 2015, Time: 17:50 pm.

⁵ <http://Indonesia2013.blogspot.com>. Downloaded dated August 3, 2015, Time: 17:50 pm.

⁶ Luhut M.P. Pangaribuan, *Lay Judges and Judges Ad Hoc, A Theoretical Study of the Criminal Justice System Regarding Indonesia*, Papas Sinar Harapan, Jakarta, 2009, p. 44.

of predicate crime, at the end of the case file resume (BAP) should close with the following sentences:

That the suspect has violated:

- 1) Law of predicate crime, Article etc.
- 2) Law of money laundering, Article etc.

If investigators find enough preliminary evidence for the existence of money laundering and predicate crime, then the investigator can combine the inquiry of predicate crime and the inquiry of money laundering and then notify them to PPATK.¹

Related to the principle, if there are cases of AML which follow the predicate crime means both must be proven, it is not appropriate that predicate crime is not proven as stated in Article 69 which states: "For the investigation, prosecution and examination before the court against money laundering is not mandatory to first prove the predicate crime." To accuse someone to do the AML can use "prejudice" only, it means that the predicate crime has not proven yet, but if state will convict someone then it cannot only be based on the prejudice so that the predicate crime must be proven first. Predicate crime and money laundering are indicted in one indictment. General attorney must be able to eliminate hesitations in implementing the provisions of AML Law. Not too difficult for the judge to gain confidence in deciding the guilt of the accused if the predicate crime is quite clear. Implicitly, the system of reversed authentication associated with the purpose of the law is a manifestation of the purpose of law, that is expediency, that provides benefits such as creating a welfare to the community, because of the reversed authentication system can ease the process of evidence of money laundering that also implicates to ease in convicting the perpetrators of money laundering.

4) Role of Judges in Deciding Cases In Money Laundering

With regard to the unique characteristics of money laundering, the role of judges is crucial for the purposes of eradicating this crime. Judges must have visionary characteristic that is based on the understanding that proving this crime is very difficult, because it must prove two crimes at once. The professionalism of the judge is indispensable to follow the court proceedings that the system cannot be separated from various avoidance efforts by the offender. To achieve adequate professionalism and innovative, it is required some extensive knowledge especially in studying the theory of proving that has been done in various countries that have a lot of experience in the disclosure of money laundering cases in court. For example, relating to proving with the intent to conceal or disguise the assets that known or reasonably suspected of criminal proceeds are also relatively difficult, it must be developed circumstantial evidence. If the property can be proved derived from crime, the transactions that occur must be regarded as intended to conceal or disguise. This means that there is a habit of the perpetrator, and then there is a treasure that is suspected to be seen as mutually supportive for money laundering.

5) Establishment of the Ad-Hoc Institution

It is necessary to prepare strategy to improve coordination among law enforcement agencies to form a kind of task force. Some cases will be carried out jointly by the KPK, the Prosecutor and the Indonesian National Police. These task force investigations in the model can be done together. For example, an investigation by KPK investigators later confirmed by the police, and vice versa, thus the prosecution as prosecutors will be better prepared to draw up the charges and demands. The process of the handling of a case will run faster. The nature of this task force are ad hoc, meaning only to handle a case together, after the case was submitted to the court, it is considered complete and the task force was declared dissolved. Task Force established as part of the functions of coordination and supervision of the Commission with the police and prosecutors in eradicating money laundering and corruption. Task Force functions in handling complex cases that require cooperation the Trident of law enforcement. The goal is to form of institutional synergy of law enforcement in handling cases of money laundering and corruption act as objects and subjects. In the criminal justice system, the role of law enforcement officials, particularly investigators, is very strategic. Investigators are the main gateway for the commencement in finding the material truth. Law enforcement efforts begin from the inquiry process. Therefore, the authority to conduct an inquiry of a crime should be clear, not only related institutions were authorized to inquiry but also the extent of the authority carried out, to avoid the appearance of a potential fight of authority caused the violation of the public's sense of justice.

d. Legal Culture Aspect (Strengthening Public Legal Culture and Law Enforcement Officials)

In the framework of the AML law enforcement and corruption occurring so widespread and systematic, the role of legal culture is very significant. One of the moral renewals that stand out to get noticed is moral honesty. Honest attitude can actually be used as one means or tools to refrain from corruptive attitude. Therefore, the culture of dishonesty must be faced with "cultural strategy", i.e. to foster a culture of honesty and simultaneously integralities religious moral quality from law enforcement. Building a culture of anti-corruption efforts, must begin to build character / honest nature of society and law enforcement officials. Good will or seriousness of law enforcement in eradicating money laundering and corruption reinforces the legal culture of society. People who obey the law will also encourage the seriousness of officials in law enforcement that, corruption-free.

¹ See: Article 75 AML Law.

Society is a factor that effecting law because rules are made to the public so that the public awareness necessary to comply with a rule of law. The degree of public adherence to the law is one indicator of the functioning of the law concerned. Increasing public awareness of the necessary legal counseling regular, gives a good example from officers in the framework of legal compliance and respect for the law and the planned and purposeful¹ institutionalization. Legal cultural education should be the government policy agenda is conducted continuously, not only in formal education, but also in the form of non-formal education. Socialization which is done on a massive scale also is an educational part of the legal culture. Legal awareness is a key element that must be taken into account in the functioning of the law effectively in society. If the public awareness of law is high in carrying out the provisions that have been governed by the law then the law can be already said effective. Conversely, if the provision of the law is ignored by society, the rule of law was called ineffective because of the low legal awareness from the public.

D. CLOSURE

1. Conclusion

From the research that has been done, then the conclusion can be presented as an answer to the problems of research, as follows:

- 1) Causative factor for non-optimal implementation of reversed authentication in the case of money laundering as corruption as predicate crime refers to not working of the law in society. Various problems encountered in the implementation of the reversed system authentication, either from the substance of the legislation, the institutional structure of law enforcement and cultural factors. Substance factor which becomes an obstacle to implementation of authentication reversed due to the formulation of Article 69 AML Law. The formulation of this article is inconsistent with the understanding that all of the elements must be proven in the reversed system authentication. It also resulted in difficulties for the general prosecutor in proving, given the inquiry conducted has not been optimal in supporting the collection of evidence related to the predicate crime. In addition, the law has not arranged specifically reversed authentication events in AML Law provisions, such as what if the defendant can prove that the property does not come from the proceeds of crime. Factor institutional structure of law enforcement has not been synergistically in supporting the implementation of reversed authentication. Asset tracing has not yet maximized in collecting some evidences related to predicate crime. Though asset tracing is very supportive in revealing predicate crime. This condition is also related to the provisions of Article 69 AML Law. Then observing in efforts to recover state losses is relative low, it shows that the law enforcement efforts against money laundering and corruption is still weak in terms of asset recovery. This is caused by a system that has not been good on asset tracing by the investigating authorities. The weakness in legal culture and even the absence of legal culture makes the law powerless. The weakness of law enforcement is also caused the performance of law enforcement that has not shown a professional attitude and high moral integrity.
- 2) Implementation of reversed authentication in AML with corruption as predicate crime being optimal is determined by substance factor (legislation), structure (law enforcement officials) and culture (society culture), and also facilities and infrastructure. Those are conducted with systemic approach. In substance aspect, in rem approach is strategic to use in maximizing implementation of reversed authentication. Because of the asset in AML is object so the reversed authentication approach must refer to the concept of expropriation asset used. Related to in rem concept, the AML law and Corruption law need illicit enrichment regulation. Illicit enrichment concept plays important role in LHKPN function. The parties may be subject to illicit enrichment is only state officials / former state officials or other parties that manage the assets of state officials / former state official (or state administrators / former state administrators). The procedural law of reversed authentication implementation must be regulated more clearly. In condition, the defendant can prove, so the consequence is that the general prosecutor must prove the origin of assets and other elements. If the defendant cannot prove, the consequence is that the general prosecutor does not need to prove the origin of assets but still must prove other elements. This provision is also related to the legal consequences in the form of a proven or not proven the prosecutor's indictment. In the aspect of law enforcement institutional structure, the effort must be conducted is to establish an optimal synergy. Synergy shows coherence in the eradication of AML preceded by asset tracing activities. Follow the money approach must be optimized with supports from investigative audit role. Follow the money must be followed by rescue action for assets allegedly derived from corruption. In culture aspect, empowerment strong legal culture can be conducted by eliminating perpetrator motive to commit a crime. In eradicating money laundering and corruption, legal culture approach must involve the active participation from community and good will of the government.

¹ Zainudin Ali, *Philosophy of Law*, Sinar Grafika, Jakarta, 2010, p.96.

2. Recommendation

On this occasion, the author conveys suggestions of recommendations as follows:

- 1) On substance aspect, it is needed to have an enactment that specifically regulate about reversed authentication as umbrella act to all criminal act with the implementation of reversed authentication. It is intended to uniformity in the process of reversed authentication in the criminal justice system. With the special law is expected to further optimize effective and efficient law enforcement and in order to restore the country's financial losses. The provisions of Article 69 AML Law should be revised to require the predicate crime and money laundering in a single examination in court. It is based on the understanding that all elements must be proven in reversed authentication system.
- 2) On structure aspect, it is required the integration of law enforcement in the inquiry and prosecution functions to be performed simultaneously, integral, and parallel. For this purpose, KPK as a coordinator and supervision needs to formulate in more detail with the involvement of other law enforcement agencies, so that it becomes collective agreement that supports the function of synergy. There should be a clear standard in the coordination and supervision functions carried out by KPK in establishing uniformity of eradicating money laundering and corruption.
- 3) In the cultural aspect, in terms of strengthening the legal culture of law enforcement is done by applying the function of reward and punishment. Both of these functions should be clearly and continuously performed. To the officer who commit violations must be dealt with firmly and published in public, while the officer who demonstrates achievement must be rewarded, for example by raising the rank and promotion to a higher level. Strengthening the legal culture in society is also important. The most appropriate method is through socialization and educational activities that need to be developed and enforced to the maximum. This work is done with the involvement of experts, academics, and law enforcement officials. The facilitator can be done by the local government.

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