

Law and Humanities Quarterly Reviews

Sidabutar, R. N., Danil, E., Yunara, E., & Mulyadi, M. (2023). The Legal Approach to Drug Trafficking with a Follow-the-Money Approach. *Law and Humanities Quarterly Reviews*, 2(2), 115-131.

ISSN 2827-9735

DOI: 10.31014/aior.1996.02.02.64

The online version of this article can be found at:
<https://www.asianinstituteofresearch.org/>

Published by:
The Asian Institute of Research

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The Legal Approach to Drug Trafficking with a Follow-the-Money Approach

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Abstract

Generally, money laundering is carried out in the banking sector. The form is that the perpetrators of criminal acts try to hide or disguise the origin of assets that are the result of criminal acts in various ways so that the assets resulting from crime are difficult to trace by law enforcement officials so that they freely utilize these assets for both legal and illegal activities. Money laundering activities almost always involve banks because of the globalization of banks so that through the payment system, especially those that are electronic (electronic funds transfer), the proceeds of crime that are generally large amounts will flow or even move beyond national borders by utilizing the bank's confidential factors that are generally upheld high by banking. In this study, an example of a case that has permanent legal force will be raised, namely: Medan District Court Decision No. 1738/Pid.Sus/2016/PN.Mdn., Dated 28 June 2016 An. Defendant Abdul Jalil; and Decision of the Medan District Court No. 1995/Pid.Sus/2017/PN.Mdn., Dated November 1, 2017, An. Defendant Mursalin Alias Salim. North Sumatra Police investigators conduct a financial analysis of the accounts concerned. It turned out that a significant flow of funds was found in Abdul Jalil from a suspect named Mursalin Alias Salim. Efforts to strengthen the legal framework in the field of investigating money laundering are one of the efforts to prevent Indonesia from re-entering the NCCT's list issued by FATF. Investigation of money laundering by using the follow-the-money method is expected to increase the disclosure of cases of money laundering crimes that occur in Indonesia, especially regarding narcotics criminal action.

Keywords: Law Enforcement, Illicit Narcotics Circulation, Follow-the-Money Approach

1. Introduction

1.1. Background

Money laundering or the Crime of Money Laundering (“TPPU”) is generally known as a follow-up crime. A follow-up crime is a crime that occurs after the predicate crime has occurred (Supandji, 2009: 3). In this study specifically discusses the crime of illicit traffic of Narcotics. The trade-in of Narcotics and illegal drugs (hereinafter referred to as Narcotics) in the world in one year reaches more than US\$. 400 billion or almost equivalent to Rp. 4,000.- trillion. This means that drug transactions every day are more than Rp. 1 trillion (World Development Report, 2011: 62). The United Nations (UN) and the International Narcotics Agency estimate that around 4% of

the world's population currently uses drugs (Majalah Sinar BNN, January 2014: 6). Drugs such as heroin, morphine, and cocaine come from countries that are often called the Golden Crescent, namely: Iran, Pakistan, and Afghanistan, and the countries of the Golden Triangle, such as Burma, Thailand, Laos whose circulation passes through Hong Kong (BNN-RI, 2009: 8). Distribution channels for psychotropics such as methamphetamine, the raw material for ecstasy and other illegal drugs, originate from China which is then distributed to the Netherlands and Australia (Jehani & Antoro, et al., 2006: 25).

Globalization makes the illegal drug trade smoother because state border checks are not carried out regularly and are less effective, and in every conflict area there are many arms trade transactions in exchange for drugs (Batara G., & Sukadis (Ed.), 2007: 15). Many countries make drugs a source of income for farmers and residents, such as cocaine in South America, opium in Afghanistan, and mountainous regions in Central Asia and countries in the golden triangle region (Majalah Tempo, Tuesday, April 16th, 2013).

Based on information from the National Narcotics Agency (BNN), illegal narcotics traffic routes to Indonesia originate from 3 (three) places called the Golden Triangle, namely: Thailand, Laos, and Myanmar, these countries are detected to have plantations of opium since ancient times. Other opium suppliers recorded from BNN data are Iran, Pakistan, and Afghanistan whose production reaches 4,000 tons per year. While domestically, cannabis from Aceh, which is known to be of the best quality, is widely circulated. The illegal goods eventually entered Bali by land route to Lampung to be brought to Jakarta and were quite varied. The perpetrators brought them either by land route (buses, railways), sea routes via yachts (small cruise ships), and also air routes. (BNN-RI, <http://www.bnn.or.id>, accessed Monday, August 13th, 2018).

The modus operandi for the spread of illegal drugs in Indonesia is mostly through international tourism areas. The cargo business in tourist areas is often exploited by international cartel networks. Drug dealers who come from other than Indonesia choose Bali Island, to avoid the tight security in the Caribbean Sea, the Gulf of Mexico, or the Gulf of Panama. Dealers are willing to travel long distances just to avoid areas that have a higher level of customs control. Bali is also a transit area for drug shipments from Thailand to Europe due to tight supervision in Europe for imported goods from Thailand. The impact is that many high-profile international dealers are caught in Bali. According to data from the Bali High Court in Denpasar, this island has become a haven for drug dealers. For example, drug kingpin Kid Mikie, a fugitive from the United States Drug Enforcement Administration (DEA) for drug smuggling in the Golden Triangle area (Tobing, 2002: 83).

According to Andrew Haynes, said that: "*The simple reason for this new paradigm is that eliminating the passion and motivation of criminals to commit crimes, can be done by blocking them from enjoying the results or fruits of their crimes*". Thus, the birth of the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances 1988 (Vienna Convention 1988), is seen as a milestone and the culmination of the attention of the international community to establish an "*International Anti-Money Laundering Legal Regime*". In essence, this regime was established to combat drug trafficking and encourage all ratifying countries to immediately criminalize money laundering activities. In addition, the 1988 Vienna Convention also seeks to regulate infrastructure covering issues of international relations, establishing agreed norms, regulations, and procedures within the framework of regulating anti-money laundering provisions (Haynes *in*. Husein, 2004: 2).

Money Laundering not only threatens economic stability and the integrity of the financial system but also endangers the foundations of social, national, and state life based on Pancasila and the 1945 Constitution (Section Considering the letter a. Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes). Money laundering is done to disguise the proceeds of crime (Reuter & Truman, 2004: 1-8). In this case, it will be raised about criminal acts of narcotics and illegal drugs. Drug crimes that are disguised are the money from the sale so that they are considered halal and legal. The drugs that are in circulation will be sold to the user after they are sold, then the money obtained will be made into an attempt or whatever form it takes to legalize the money so that the money from selling the drugs is obscure, that's why it is called money laundering (Nurhadiyanto, 2010: 161).

The crime of illicit drug trafficking has long been believed to have a close connection with the money laundering process. The history of the development of the typology of money laundering shows that the drug trade is the most dominant source and the main predicate crime that gives rise to money laundering crimes. Organized crime always uses money laundering methods to hide, disguise, or obscure illicit business results to appear as if they were the results of legitimate activities. Furthermore, the money from buying and selling drugs that have been laundered is used again to commit similar crimes or develop new crimes (Husein, 2004: 1).

The absence of an adequate anti-money laundering regime in Indonesia has resulted in Indonesia being included in the list of non-cooperative countries in preventing and eradicating money laundering (Non-Cooperative Countries and Territories - NCCTs) by the Financial Action Task Force (FATF) on Money Laundering since June 2001. Indonesia's inclusion in the NCCT list has had negative consequences both economically and politically. Economically, being included in the NCCT's list results in high costs being borne by the Indonesian financial industry, especially national banking when conducting transactions with partners abroad (high-risk premium). This cost is of course an additional burden on the economy which in turn can reduce the competitiveness of Indonesia's products abroad. Meanwhile, politically, Indonesia's entry into the NCCT's list can disrupt Indonesia's association in the international arena (Nasution, 2008: 22-23).

Serious steps were then taken by the Indonesian government, namely the promulgation of Law No. 15 of 2002 which explicitly states that money laundering is a crime, and orders the disclosure of the Financial Transaction Reports and Analysis Center (PPAT) as the focal point for implementing the law. However, the FATF considered this law to be inadequate because it had not fully adopted the 40 recommendations and 8 special recommendations they issued. The FATF formally requested that the law be corrected and finalized. Finally, efforts to improve and perfect the law can be completed with the promulgation of Law No. 25 of 2003 concerning Amendments to Law No. 15 of 2002 concerning the Crime of Money Laundering on October 13, 2003 (Nasution, 2008: 23-24).

By making amendments to this law, Indonesia will not be immediately removed from the NCCT list because the FATF still sees the proposed implementation plan and the effectiveness of its implementation is not yet sufficient. The last time the FATF required that there be 3 main points for Indonesia to be removed from the black list (NCCTs), namely: "*Conducting compliance audits of financial service providers; Mutual legal assistance cooperation; and There is a money laundering case decided by the court*" (Nasution, 2008: 24). Meanwhile, the FATF recently issued a special recommendation (special recommendation) regarding bringing cash into or out of a country's territory (cash courier) (Nasution, 2008).

The Presence of Law No. 15 of 2002 concerning the Crime of Money Laundering as amended by Law No. 25 of 2003 concerning the Crime of Money Laundering is Indonesia's effort to respond to the FATF Decision dated 22 June 2001. The FATF decision included Indonesia as one of the 15 (fifteen) countries deemed uncooperative in eradicating money laundering practices. In other words, Indonesia is considered to be included in the list of countries that are not cooperative (Non-Cooperative Countries and Regions) to eradicate money laundering, as contained in the list released by the FATF which is a task force from the Organization for Economic Cooperation and Development (OECD) (Nasution, 2007: 2).

The passage of time proves that these steps are a continuous effort that never ends. Efforts made over a period of 4 (four) years from 2001 to 2005, is not a short time for a struggle. This struggle is further exacerbated by the additional recommendations issued by the FATF after each face-to-face meeting with the Government of Indonesia. Of course, good cooperation and coordination between related agencies and every element involved in building the anti-money laundering regime also contributed greatly to the success of Indonesia's exit from the NCCT's list (Husein, 2005: 9-10).

The removal of Indonesia from the NCCT's list by the FATF in February 2005 was not the end of everything, but rather a starting point for a new journey towards the development of a better anti-money laundering regime. Very good cooperation between related agencies and full support from all components of Indonesian society is needed during the monitoring period set by the FATF to prevent Indonesia from being re-entered into the NCCT's list (Husein, 2005: 10).

In overcoming the various weaknesses (shortcomings) as stated by the FATF, the Government of Indonesia has again taken various steps and efforts to prevent and eradicate money laundering crimes. These steps and efforts include aspects of strengthening the legal framework, increasing supervision in the financial sector, operationalizing PPATK, and strengthening cooperation between domestic and international institutions (Husein, 2005: 13-14).

The protection of the legal framework is in terms of law enforcement on money laundering crimes. Meanwhile, increasing supervision in the financial sector is by applying the Know Your Customer (KYC) principle to the financial services sector (Husein, 2005: 13-14). One way to strengthen law enforcement is to enact Law No. 8 of 2010 concerning the Eradication and Prevention of Money Laundering Crimes. This law provides an opportunity for the legal detention of intellectual actors with investigative pressure on the flow of money generated and also provides a basis for law enforcement officials to ensnare intellectual actors who are recorded and hide crimes that are included in the predicate of crime by carrying out investigations and investigations. to the proceeds of crime money flows (Nasution, 2007: 2).

In general, money laundering is carried out in the banking sector. The form is that the perpetrators of criminal acts try to hide or disguise the origin of assets that are the result of criminal acts in various ways so that the assets resulting from crimes are difficult to trace by law enforcement officials so that they can freely utilize these assets both for legal and illegal activities. Money laundering activities almost always involve banks due to the globalization of banking so that through payment systems, especially those that are electronic in nature (electronic funds transfer), the proceeds of crime which are generally in large quantities will flow or even move across national borders by utilizing bank secrecy factors which are generally upheld. high by banks (Hafizi, 2011).

The Financial Transaction Reports and Analysis Center (PPATK) is an intelligence agency in the financial sector, better known internationally by its generic name, namely the Financial Intelligence Unit (FIU). In the anti-money laundering regime in Indonesia, PPATK is an important element because it is the national focal point in efforts to prevent and eradicate criminal acts of money laundering and financing terrorism. PPATK was born after the issuance of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

PPATK has the task of preventing and eradicating money laundering crimes, with the function of preventing and eradicating money laundering crimes; management of data and information obtained; supervision of the Compliance of the Reporting Party; and analysis or examination of financial transaction reports and information indicating money laundering and/or other criminal acts (*see*. Article 40 of the Anti Money Laundering Law).

In carrying out the function of preventing and eradicating money laundering, PPATK has the authority to request and obtain data and information from government agencies and/or private institutions that have the authority to manage data and information, including from government agencies and/or private institutions that receive reports from certain professions; establish guidelines for identifying Suspicious Financial Transactions; coordinate efforts to prevent money laundering crimes with related agencies; provide recommendations to the government regarding efforts to prevent money laundering; represent the Government of the Republic of Indonesia in international organizations and forums related to the prevention and eradication of money laundering; organize anti-money laundering education and training programs; and organize socialization on the prevention and eradication of money laundering crimes (*see*. Article 41 paragraph (1) Anti Money Laundering Law).

As for the results of the analysis and examination results compiled as an initiative of the PPATK in the framework of carrying out its duties in preventing and eradicating money laundering, with narcotics predicate crimes, among others against the suspects "JT" and "FIN." The mode of action is by sending money abroad with funds suspected of originating from narcotics crimes committed through intermediary accounts of private parties within the country. The transaction value allegedly originating from the crime amounted to Rp. 3.6 trillion for each suspect (Indonesian Financial Transaction Reports and Analysis Center (INTRAC), <http://www.ppatk.go.id/backend/assets/uploads/20171219165527.pdf>., accessed Monday, August 13th, 2018).

In this study, examples of cases that have permanent legal force will be raised, namely: Medan District Court Decision No. 1738/Pid.Sus/2016/PN.Mdn., dated 28 June 2016 An. The accused Abdul Jalil; and Medan District Court Decision No. 1995/Pid.Sus/2017/PN.Mdn., dated 01 November 2017 An. The accused Mursalin Alias Salim.

During the first case of An. Abdul Jalil carried out an investigation and investigation into narcotics crimes at the North Sumatra Regional Police, the investigative technique carried out was used the follow-the-money approach. Investigators from the North Sumatra Regional Police conducted a financial analysis of the accounts in question. The results of a financial analysis of the account found sizable flows of funds to Abdul Jalil from a suspect named Mursalin Alias Salim. The fund transaction is in the form of a fund transfer. After discovering the transfer of funds, then questioned suspect An. Abdul Jalil for what to transfer funds. As is known, it turned out that the suspect An. Mursalin Alias Salim is a narcotics dealer, so this is the basis for North Sumatra Police investigators to return to uncover the crime of illicit drug trafficking against suspect An. Abdul Jalil.

Efforts to strengthen the legal framework in the field of money laundering investigations are one of the efforts to prevent Indonesia from being included in the NCCT's list issued by the FATF. Investigations into money laundering crimes using the follow-the-money method are expected to increase the disclosure of money laundering cases that occurred in Indonesia, particularly regarding narcotics crimes.

Based on the case examples above, there is a pattern established by law enforcement, namely the follow-the-money approach. This approach in law enforcement is that when someone suspected of committing a narcotics crime is arrested, then an analysis of the transactions in his savings account is carried out to pursue other perpetrators. This is the reason for conducting a study entitled: "The legal approach to drug trafficking with a follow-the-money approach."

1.2. Problems

The problems that arise in this study can be formulated as follows:

1. How is law enforcement against the illicit traffic of narcotics through the follow-the-money approach?
2. What are the obstacles faced by investigators in enforcing the law on narcotics crimes through the follow-the-money approach?

1.3. Purposes

The purpose of this research is as follows:

1. To study and analyze law enforcement against the illicit traffic of narcotics through the follow-the-money approach.
2. To examine and analyze the obstacles faced by investigators in enforcing the law on narcotics crimes through the follow-the-money approach.

2. Research Methods

This research is normative legal research (Soekanto, S., 2001: 6). The nature of the research is descriptive analysis (Marzuki, P.M., 2007: 93-95). The type of data used is secondary data sourced from primary, secondary, and tertiary legal materials (Fajar, M., & Achmad, Y., 2015: 156). Secondary data was collected using literature study techniques ("*library research*") (Zed, M., 2008: 1). Furthermore, these data were analyzed using qualitative analysis methods (Bungin, B., 2009: 153).

3. Result and Discussion

3.1. Theory of Evidence

In Indonesia, the criminalization of money laundering has been going on for a long time. This can be seen by looking at the efforts to deal with money laundering in Indonesia, which began with the enactment of Law No. 15 of 2002 concerning the Crime of Money Laundering as amended by Law No. 25 of 2003 concerning Amendment to Law 15 of 2002 concerning the Crime of Money Laundering, which was also amended by a new law, namely Law No. 8 of 2010 concerning the Eradication and Prevention of Money Laundering Crimes (Anti Money Laundering Law).

Provisions regarding evidence in the Anti Money Laundering Law have regulated specific provisions regarding provisions for evidence carried out during examination at trial. The proving provisions are regulated in Articles 77 and 78 of the Anti Money Laundering Law, namely regarding reversed proving provisions.

The provision for reverse proof regulated in Article 77 Anti Money Laundering Law, states as follows: *“For examination at a court hearing, the Defendant is obliged to prove that his assets are not the proceeds of a crime”*.

Furthermore, the provisions in Article 78 Anti Money Laundering Law are as follows: *1) “In the examination at the trial court as referred to in Article 77, the Judge orders the Defendant to prove that the assets related to the case do not originate or are related to the crime referred to in Article 2 paragraph (1); 2) The Defendant proves that the assets related to the case do not originate from or are related to the crime referred to in Article 2 paragraph (1) by submitting sufficient evidence”*.

From the provisions above, efforts to prove the criminal act of money laundering committed by the perpetrator become easier. This convenience is because the burden of proof in the trial is on the defendant. This is the reason that reverse proof will be more effective in proving that the defendant is guilty or not. Likewise in proving investigations using the follow-the-money approach, law enforcement officers can apply reverse proof.

According to R. Soesilo, there are 4 kinds of proof systems or theories, namely:

1. “Positive Legal Proof System;
According to this system, whether or not the number of pieces of evidence has been determined by law is wrong or not. According to this regulation, the judge's job is solely to check whether the amount of evidence that has been stipulated in the law already exists, if he does not need to ask what is in his heart (is he sure or not), the suspect must be declared guilty and sentenced. In this system, the judge's belief does not take part at all, but the law, which rules here.
2. System of Proof According to Negative Laws;
According to this system, a judge can only sentence a sentence, if at least the number of evidence that has been determined is that the law exists, coupled with the judge's belief in the guilt of the defendant in the criminal incident he was accused of. Even though the evidence is complete, if the judge is not sure about the guilt of the defendant, then he must be acquitted. In this system, it is not the law that is in power, but the judge and that power are limited by law.
3. Free Proof System;
According to this system, the law does not stipulate rules such as a system of evidence that must be obeyed by judges. This system also assumes or recognizes the existence of certain pieces of evidence, but these pieces of evidence are not stipulated in law, such as the system of evidence according to law. -positive law and negative statutory evidentiary system. In determining the types and amount of evidence deemed sufficient to determine guilt, the judge has complete discretion. It is free to turn on. The binding rule is that in his decision he must also mention the reasons.
4. A system of proof solely based on belief.
According to this system, the judge is not bound by any particular evidence. He decides that the guilt of the accused is solely based on his convictions. In this case, the judge has complete freedom without being controlled at all. Of course, there are always reasons based on logical thinking, which result in a judge having an opinion about whether a situation is proven or not. The problem is that in this system the judge is not required to state the reasons and if the judge mentions the evidence he uses, then the judge can use any evidence. The existence of this system is that it contains too much reliance on the mere personal impressions of a judge. Supervision of judge decisions like this is difficult to

do because the supervisory body cannot know the judge's considerations, which directs the judge's opinion towards the decision (Soesilo, R., 1985: 6-8).

After discussing the theories of proof in criminal procedural law, the question arises as to what system is currently used in Indonesia. Article 183 of the Criminal Procedure Code, stipulates: *“A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains conviction that a crime has occurred and that the defendant is guilty of committing it”*.

Based on Article 183 of the Criminal Procedure Code, the criminal procedural law in Indonesia uses a system of evidence according to negative laws. Therefore, the proof system adopted is the *“negatief wettelijk stelsel”* proof system. The *Wettelijk Stelsel* negative proof system must: The error be proven by at least "two valid pieces of evidence"; and With the legal minimum evidence, the judge obtains confidence that a crime has occurred and the defendant is the perpetrator.

Regarding the evidentiary law regarding the handling of money laundering crimes, the Anti Money Laundering Law regulates the type and strength of evidence more broadly than the formulation contained in the Criminal Procedure Code. In the Anti Money Laundering Law, in addition to the evidence listed in Article 184 of the Criminal Procedure Code, it is also supplemented with other evidence as stipulated in Article 73 of the Anti Money Laundering Law, that valid evidence in proving money laundering is: 1) Evidence as referred to in the Criminal Procedure Code, namely: a. Witness Statement; b. Expert Statement; c. Letter; d. Instruction; e. Statement of the Defendant; and 2) Other evidence in the form of information spoken, sent, received, or stored electronically with optical devices or devices similar to optics and documents. Article 1 number 16 of the Anti Money Laundering Law, stipulates that Documents are data, recordings, or information that can be seen, read, and/or heard, which can be issued with or without the help of some means, either written on paper or any physical object other than paper or recorded electronically, including but not limited to a. writing, sound, or image; b. maps, plans, photographs, or the like; and c. letters, signs, numbers, symbols, or perforations that have meaning or can be understood by people who can read or understand them.

The use of the Anti Money Laundering Law is very urgent to effectively prove narcotics crimes. Moreover, law enforcers in Indonesia, be it the Police or the Attorney General's Office, are still being educated, raised, and practicing the old paradigm in evidence. Law enforcers in Indonesia still adhere to the follow-the-suspect paradigm. That is, to prove a narcotics crime, law enforcers rely more on the testimony of the perpetrator or other people who know it, where the most important thing is the witness. But this approach is not sufficient enough to prove the growing narcotics cases. Narcotics offenders who understand financial market instruments understand how banks work and know various investment products, it will be easy for them to cover up traces of the proceeds of narcotics crimes. By laundering the money, the crimes he committed will not be exposed.

3.2. Law Enforcement Theory

In general, law enforcement can be interpreted as an act of applying certain legal means to impose legal sanctions to guarantee the arrangement of the stipulated provisions, whereas according to Satjipto Rahardjo, that: *“Law enforcement is a process for realizing legal desires (namely the thoughts of the legislature formulated in legal regulations) to become a reality”* (Rahardjo, S., 1983: 24).

Conceptually, the essence and meaning of law enforcement lie in the activity of harmonizing the relationships of values that are translated into good principles embodied in a series of values to create, maintain and maintain social peace. Furthermore, he said the success of law enforcement may be influenced by several factors that have a neutral meaning so the negative or positive impact lies in the content of these factors. These factors are closely related to each other and are the essence and benchmark of the effectiveness of law enforcement. These factors, among others: *“Laws; Law enforcers, namely parties who form or apply the law; Facilities or facilities that support law enforcement; Society, namely where the law is applied; and cultural factors, namely as a result of work, creativity, and taste based on the human initiative in social life”* (Soekanto, S., 2005: 5).

The use of law enforcement theory is to measure the effectiveness of using the follow-the-money approach in law enforcement against illicit narcotics trafficking, by using legal elements (laws), law enforcers, facilities and infrastructure, society, and the culture that develops in society.

Money laundering investigations always begin with financial intelligence. It could be an in-depth analysis of a transaction prepared by the Financial Intelligence Unit (FIU) or simple information from the police. It is this identification, discovery, and analysis that ultimately forms the basis for a money laundering investigation. Usually, the FIU does not conduct investigations, they collect and analyze information that is passed on to law enforcement agencies who have the power and responsibility for concealing criminal acts (Broome, J., 2005: 375).

For money laundering investigations, James R. Richards put forward 4 basic stages in the investigation process, namely as follows: (Richards, J.R., 1999: 208-211)

1. Identification of Unlawful Activities

Most of the local money laundering investigations started as a result of investigations into illegal activities, such as drugs, gambling, smuggling, and others. Investigators need to ensure that unlawful activity is one of the special types defined as "unlawful activity" which gives rise to a case of money laundering and/or a case of misuse; known money laundering, confiscation, and laws requiring bank reporting. To prove a money laundering crime, the target must be involved in a financial transaction using funds from an "unlawful activity" (Richards, J.R., 1999: 208-211).

2. Identify and Track Financial Transactions

Identifying and tracking financial transactions is the "showing the money" part of an investigation. This stage is known in the world as following the money and following the suspect. As part of the final investigation, investigators must identify and trace the financial trail of the target's use:

- a. "Documents confiscated during the search: looking for proof of receipt of money changers, broker reports (usually the target will only retain an envelope containing the broker's return address, which is sufficient information to initiate an investigation into accounts that can be held by the target), receipt of wire transfers), receipt of money postal orders, safety deposit box records, car records, credit card statements (overpaying credit cards provides quick access to target cash), casino membership cards, and documents related to travel agents (which are notorious for money laundering, the target of buying open return tickets, then selling those tickets later).
- b. *Law enforcement databases: FinCEN's databases, accessed by state and local agencies through the FinCEN Gateway system, should be the starting point for all financial investigations.*
- c. *Commercial databases: including credit and law bureau reports, or court proceedings (the latter can point to witnesses who have been sued or sued by the target, they can be a source of information about the target)"* (Richards, J.R., 1999: 208-211).

3. Perform a Financial Analysis of the Target

There are 2 (two) main financial investigation tools used to determine whether a target's spending habits reflect honesty. The former, known as "net worth analysis," is generally used when the target has conspicuous assets, and "source and application of funds analysis" is generally used where the target has conspicuous spending habits (Richards, J.R., 1999: 208-211).

a. Net Worth Analysis

Net Worth Analysis is an investigative tool used to determine whether a target has acquired assets that are charging more than its income from "legitimate" sources to conclude whether it has income from "illegitimate" sources. This technique is useful when the target spending pattern reflects the acquisition and sale of tangible assets; where target spending habits are more temporary, such as maintaining a luxurious lifestyle, a "source and application of funds analysis" is more appropriate (Richards, J.R., 1999: 208-211).

b. Fund Application Source Analysis

Application of source of funds analysis is an investigative tool used to determine whether the target has acquired assets that are charging more than his income from “legitimate” sources to conclude whether he has income from “illegitimate” sources. This technique is useful when the target spending pattern is temporary (eg maintaining a luxurious lifestyle), where the target spending habits reflect the acquisition and disposal of tangible assets, a net worth analysis is more appropriate (Richards, J.R., 1999: 208-211).

4. *Freeze and Confiscate Asset*

The confiscation and confiscation of money laundering proceeds is beyond the scope of this discussion, but the key to success is time, as most money launderers do. In particular, those who act as intermediaries in the laundering cycle will collect funds over some time, then disband them at the end of that period. It would be futile to seize target businesses and bank accounts after large withdrawals have been made (Richards, J.R., 1999: 208-211).

In investigations and investigations of narcotics crimes, there are known follow-the-money and follow-the-suspect approaches. The follow-the-money approach has long been used in the United States and is also known as the anti-money laundering approach. This anti-money laundering approach was formally introduced by the United Nations in 1998 in the Vienna Convention, namely the Convention Against Illicit Traffic in Narcotics and Psychotropic Substances (Husein, Y., 2008: 62).

According to Djoko Sarwoko, argued that the follow-the-money approach is in the form of finding money/assets/other assets that can be used as evidence (objects of crime) and of course after going through financial transaction analysis and it can be suspected that the money is proceeds of crime, unlike the case with a conventional approach that focuses on finding the perpetrators directly after the initial evidence is found (Sarwoko, D., 2009: 1-2).

From the aspect of criminology, this thinking departs from the belief that the proceeds of crime are the “blood” that supports the crime itself (the lifeblood of the crime). Thus, if the “blood” of these crimes can be detected and seized by the state, the opportunity to reduce crime rates will be even higher (Indonesia Corruption Watch (ICW), <http://www.antikorupsi.org/antikorupsi/?q=content/17834/waspadai-upayapenjegalan-ruu-pencucian-uang>., accessed June 1st, 2023). The proceeds of crime are the blood that feeds the crime itself and at the same time are the weakest point in the chain of crime. Efforts to cut the chain of these crimes, apart from being relatively easy to do with the follow-the-money approach, will also eliminate the motivation of the perpetrators to repeat crimes because the purpose of the criminals to enjoy the proceeds of their crimes becomes hindered or difficult to do (Annual Report of the Financial Transaction Reports and Analysis Center (PPATK) 2010, 2011: 3).

In a book entitled *The Land of the Money Launderers*, Yunus Husein mentions several advantages of the follow-the-money approach, among others: (Husein, Y., 2008: 66)

- a. "This approach has the priority to pursue the proceeds of crime, not the perpetrators of crime so that it can be carried out "quietly", more easily, and with less risk because it does not deal directly with perpetrators who often have the potential to put up a fight.
- b. This approach pursues the proceeds of crime which will later be brought before the legal process and confiscated for the state because the perpetrators have no right to enjoy the assets obtained illegally. With the confiscation of the proceeds of this crime, the motivation for a person to commit a crime in search of the property is reduced or lost.
- c. Property or money is the backbone of a criminal organization. Pursuing and confiscating assets resulting from crime will weaken them so that they do not endanger the public interest.
- d. There are exceptions to bank secrecy provisions or other secrets from the reporting of transactions by Financial Service Providers (PJK) until further investigation by law enforcement. This will reveal the individuals or actors who are the masterminds of or receive money from money laundering crimes by looking at their financial conditions and financial transactions”.

Investigations into money laundering crimes based on the Anti Money Laundering Law are based on Articles 68 to.d. Article 75. By using the follow-the-money technique, investigators usually compile the flows of funds to and from the target's account. Furthermore, wiretapping regarding discussions related to the flow of these funds,

whether it is payment or delivery of goods. Investigating these flows of funds requires a minimum of 6 (six) months. Then proceed with wiretapping, but it can also be done simultaneously. This very long time is because the financial analysis (financial analysis) that is carried out must be thorough, matching each account with other accounts.

Investigations into money laundering crimes using the follow-the-money approach are very effective without touching the perpetrators and without coming into direct contact with the perpetrators as the target of operations. This is useful to prevent officers from having physical contact with perpetrators of narcotics crimes who usually have multiple layers of protection, especially at the producer level.

3.3. Law Enforcement Analysis of Narcotics Illicit Trafficking Through Follow the Money Approach

The case file An. Abdul Jalil while at the investigative level by North Sumatra Police investigators had uncovered a network of illicit narcotics trafficking using the follow-the-money method. The follow-the-money approach will be able to reveal the perpetrators who receive the proceeds from selling narcotics by looking at their financial situation and financial transactions. In this case, suspect An. Mursalin alias Salim. With this approach, it can also reveal the mastermind behind the illicit trafficking of narcotics.

Based on the investigation and investigation of narcotics crimes using the follow-the-money approach to the perpetrators Abdul Jalil and Mursalin, a network scheme was found which can be seen in the chart below:

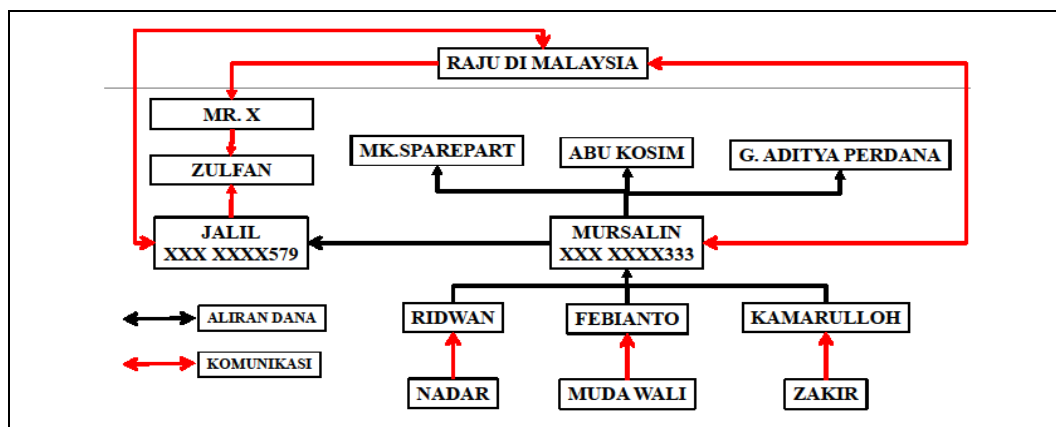


Chart 1: Network Scheme Revealed from Using Follow the Money Approach

Source: Processed Secondary Data

Based on this scheme, doubling the follow-money approach to reveal the Narcotics crime network, so investigators have evidence to attract other suspects. For example MK. Sparepart, Abu Kosim, and G. Aditya Perdana who received cash payments from Mursalin can be withdrawn as suspects.

The follow-the-money approach discusses financial flows being followed or traced to be used as evidence which is then confiscated. In handling narcotics crime cases, the follow-the-money approach can be used at the level of the investigation process where it is required to obtain many sources of information and find many facts or evidence so that the flow of funds can be traced. This is by Article 69 of the Anti Money Laundering Law, which states that: *“To be able to carry out investigations, prosecutions, and examinations in court proceedings against money laundering crimes, it is not obligatory to prove the origin of the crime first.”*

From these provisions, it is reiterated that there is a strengthening of the follow-the-money approach where the target is not the original crime, but money. Thus, the investigation can formulate elements to find criminal acts. As part of the follow-the-money approach, the initial process starts with conducting investigations into suspected narcotics dealers by conducting an analysis of their financial transactions at the bank. This follow-the-money approach is used to prove that it is true that there are stages of money laundering. Because if money laundering

does not go through the stages of placement, layering, and integration, then it cannot be categorized as money laundering.

The flow of funds is the most important part and must be understood by investigators to ensure the truth of the facts to be used as legal evidence so that they can exercise their authority to detain people suspected of committing narcotics crimes. In essence, what underlies following the money is to go out into the field and get facts that are usually trusted and can be accounted for by looking at accounts suspected of narcotics crimes to direct how to prove the money came from narcotics crimes.

Thus, the follow-the-money approach in enforcing the law on illicit narcotics trafficking in Indonesia is part of the investigative process, namely gathering initial evidence and gathering facts (sufficient evidence) with a focus on targeting money or assets that are proceeds of crime. As stated by M. Yahya Harahap that the investigation has the aim of gathering initial evidence or sufficient evidence so that it can proceed at the investigation stage (Harahap, M.Y., 1988: 109). *Following the money is useful for helping to prove the existence of criminal acts of illicit drug trafficking related to buying and selling transactions, such as fund transfers, layering, and so on. After sufficient evidence is found, then proceed to the investigation stage by carrying out forced efforts.*

3.3.1. Advantages of the Follow the Money Approach

There are several advantages to the follow-the-money approach. First, the reach is farther, so it is felt to be fairer as seen in cases of narcotics crimes. Second, this plan prioritizes pursuing the proceeds of crime, not the perpetrators of crimes so that it can be carried out “quietly”, more easily, and with less risk because it does not deal directly with perpetrators who often have the potential to put up resistance. Third, this scheme pursues the proceeds of crime which will later be brought before the legal process and confiscated for the state because the perpetrators have no right to enjoy the assets obtained illegally.

With the confiscation of the proceeds of the crime, the motivation of people to commit crimes in search of property is reduced or lost. Fourth, wealth or money is the backbone of a criminal organization. Pursuing and confiscating assets resulting from crime will weaken them so that they do not endanger the public interest. Fifth, there are exceptions to bank secrecy provisions or other secrets from the reporting of transactions by Financial Service Providers until further investigation by law enforcement.

3.3.2. Weaknesses of the Follow the Money Approach

The Anti Money Laundering Law, which uses a criminal act approach, criminalizes money laundering, namely the act of hiding and disguising assets resulting from a crime so that it appears as if they are legitimate assets. There are several reasons for the weakness of the follow-the-money approach in eradicating crime. First, there is no common perception among law enforcers, for example between the police as investigators, the prosecutor's office as the public prosecutor, and the judges who try them.

Second, investigators of money laundering crimes still have limited human resources and expertise in carrying out financial investigations. Third, the public prosecutor (prosecutor), even though there are already guidelines for prosecuting cases using money laundering charges and predicate (cumulative) crimes, there is still a reluctance to apply them. The prosecutor prefers to use alternative or layered indictments with the first indictment of “narcotics crime” and the second indictment of “money laundering”. Fourth, the investigation time using the follow-the-money approach does not accommodate the detention period, where the investigation takes around 6 months, while the detention period is only 4 months at most.

Fifth, there is non-compliance by banking services to report suspicious financial transactions to PPATK. Sixth, PPATK after receiving a report on money laundering, conducting an analysis takes at least 3 months only for investigation. It's different for investigations.

The follow-the-money method is good because it is not supported by a legal umbrella, so the results also do not reflect law enforcement (*fiat justitia*) so it cannot be used as evidence because obtaining bank statements and wiretapping are done in ways that violate the law. If the follow-the-money approach is given a good legal umbrella, then the process of enforcing the law on narcotics crimes using the follow-the-money approach will also be good. Taking a follow-the-money approach will collide with laws and regulations, plus the authority of PPATK which has its authority to analyze suspicious financial transactions.

3.4. Obstacles Faced by Investigators in Upholding the Law of Narcotics Crimes Through the Follow The Money Approach

Law enforcement as a process, in essence, is the application of discretion which involves making decisions that are not strictly regulated by the rule of law, but have an element of personal judgment (Faal, M., 1991: 74). Based on this description, it can be said that disturbances in law enforcement may occur if there is an unequal "trinity" of values, rules, and patterns of behavior (Seokanto, S., 2005: 7).

Based on the research that has been done, answers to problems regarding the inhibiting factors of legal detention of narcotics crimes are obtained by using the criminal approach method carried out by the police, the Directorate of Narcotics of the North Sumatra Regional Police found various obstacles, as follows:

3.4.1. Barriers to Legal Substance (Standard Operating Procedure Regulations (S.O.P)

In terms of handling general criminal cases, apart from being regulated in the Criminal Procedure Code (KUHP), the National Police also issued Regulation of the Chief of Police of the Republic of Indonesia No. 3 of 2014 concerning Standard Operational Procedures for Investigating Criminal Acts.

In contrast to the handling of narcotics criminal cases using the follow-the-money approach, the National Police have not issued Standard Operating Procedures (S.O.P) regarding Technical Instructions and Implementation Guidelines. The SOP needs to be made because not every investigator understands what must be done to use the follow-the-money technique in carrying out investigations and investigations.

As an example raised in this study, suspect An. Abdul Jalil, whose first case was only convicted as a person who knew about narcotics crimes but did not report them, was sentenced to 1 (one) year in prison. However, in the next case, An. It turned out that using the follow-the-money approach, it turned out that the suspect Mursalin alias Salim had a flow of funds to and from the suspect Abdul Jalil, so based on this, an investigation was carried out and an investigation into his narcotics crime. Finally, the case file in question was returned to the Medan District Court, but it had not yet entered the examination before the trial of defendant An. Abdul Jalil passed away. Therefore, the case was stopped by law.

3.4.2. Legal Structure Constraints

3.4.2.1. Personnel Constraints

Investigators from the North Sumatra Regional Police admit that there are still deficiencies in terms of human resources. This is a deficiency/obstacle in completing the process of handling cases of law enforcement for narcotics crimes by using follow the money. The number of investigators at the Narcotics Directorate of the North Sumatra Police who can use the follow-the-money method is only 4 people. These investigators also do not receive uniform training and education programs regarding money laundering. Therefore, additional personnel is needed in the North Sumatra Police Narcotics Directorate.

In addition to adding personnel, training, and certification of investigators are also needed. Certification should be carried out by a Professional Certification Agency from the National Professional Certification Agency, abbreviated as BNSP. BNSP is an independent institution formed by the government to carry out guarantees of quality and competence in all professional fields in Indonesia through competency certification.

3.4.2.2. Investigation Time Constraints

Carrying out investigations and investigations into narcotics crimes by using the trick of money, requires a lot of manpower/human resources and also takes a long time. This is due to a financial analysis conducted by Investigators at the Directorate of Narcotics of the North Sumatra Police. Financial analysis requires foresight and caution, so it takes a long time to do the analysis.

In the Anti Money Laundering Law, there is Article 71 which states that blocking the assets of a perpetrator is carried out no later than 30 working days. In this case, the problem is the process of handling money laundering cases which requires quite a long time based on the level of complexity of the case. If within 30 days the case investigation has not been completed, then the offender's account containing assets known to be the proceeds of crime will be disbursed again. This could be a new loophole for perpetrators to reuse their assets.

In terms of the use of the Narcotics Law, it is clear that the criminal act being investigated is a narcotic crime. Talking about narcotics crimes, the procedural law provisions that apply are Criminal Procedural Law. The Criminal Procedure Code stipulates that investigators can detain for a period of 20 days (*see*. Article 24 paragraph (1) Criminal Procedure Code) and the investigator may request an extension from the public prosecutor for a maximum period of 40 days (*see*. Article 24 paragraph (2) Criminal Procedure Code). After the said 60 days, the investigator must have released the suspect from detention by law (*see*. Article 24 paragraph (4) Criminal Procedure Code).

At the investigative level, in the context of arresting and detaining people suspected of committing abuse and illicit trafficking of narcotics and narcotics precursors. The exercise of the authority to arrest is carried out for a maximum of 3 x 24 hours (three times twenty-four hours) from the date the arrest warrant is received by the investigator and can be extended for a maximum of 3 x 24 hours (*see*. Article 74 Narcotics Law). However, regarding the authority of detention by investigators, unfortunately, the Narcotics Law does not provide special provisions such as arrests.

If you use the rules according to the Criminal Procedure Code, then investigating narcotics crimes using the follow-the-money approach will take a long time because of the financial analysis of the offender's accounts. In addition, the piling up of work due to a lack of personnel causes investigators to be too exhausted to apply the follow-the-money approach in narcotics crime cases.

3.4.3. Legal Culture Barriers

Departing from law enforcement on Narcotics crimes using the approach of following money which takes a long time, the next legal obstacle is related to the legal culture of each party. The obstacles to the legal culture are:

- a. Requests for checking accounts from banks related to where the perpetrator is a customer. The request for a checking account is not carried out according to the procedure, because the time needed will take a very long time if it is done by correspondence. Therefore, investigators asked for the perpetrator's checking accounts in ways that were not by procedures. This kind of legal culture is an obstacle for investigators.
- b. Wiretapping is carried out without procedures by applicable regulations.
- c. Financial Service Providers do not report bank customers who carry out Suspicious Financial Transactions because if this is reported to Indonesian Financial Transaction Reports and Analysis Center (INTRAC), the said bank's customers will decrease and they will no longer trust the bank. The above is by the reporting obligations of Financial Service Providers as contained in Article 23 too.d. Article 25 of the Anti Money Laundering Law.
- d. Financial Service Providers also do not carry out their obligations related to the contents of transactions where funds are intended for use and sources of funds used by INTRAC regarding transactions above Rp. 500 million. The above is by the provisions on the principle of recognizing service users as contained in Articles 18 to.d. Article 22 of the Anti Money Laundering Law.

The follow-the-money approach is effective in uncovering the illicit traffic of narcotics. The approach method is good but it is not supported by a good legal umbrella either, so the result is not fiat justitia (investigation). So it cannot be used as evidence because the evidence obtained was obtained illegally. If given a legal umbrella it will be even better and it is hoped that it can support the anti-money laundering regime in Indonesia.

4. Conclusions

Law enforcement agencies combat the illegal drug trade by employing the follow-the-money strategy, which involves freezing the perpetrator's financial accounts. This approach helps uncover individuals involved in narcotics crimes and trace the origin of the funds obtained by the perpetrator. Additionally, it minimizes direct interactions between law enforcement officers and drug dealers, reducing potential conflicts. However, gathering evidence to substantiate allegations of narcotics trafficking can be challenging. Therefore, it is crucial to implement a criminal approach (follow the money) within the North Sumatra Regional Police's Resort Police units to facilitate the disclosure of these illicit activities.

In the process of investigating narcotics crimes using the follow-the-money approach, the Narcotics Directorate of the North Sumatra Police encountered several obstacles. These include the lack of regulation on investigation techniques using the follow-the-money approach, inadequate personnel, limited knowledge of investigators regarding money laundering, the absence of investigator certification, time constraints in analyzing financial statements, and the failure of Financial Service Providers to report suspicious financial transactions. To address these issues, the following recommendations are proposed: *First*, Amend Law No. 8 of 2010 to include procedures for using the follow-the-money approach; *Second*, Establish internal regulations within the police force to guide investigations using the approach; *Third*, Increase the number of personnel in the Narcotics Directorate to improve effectiveness; *Fourth*, Establish cooperative relationships with Bank Indonesia and the Financial Transaction Analysis Reporting Center (INTRAC) to facilitate analysis of financial transactions; *Fifth*, Create a legal basis, such as a memorandum of understanding, if amendments to the law are not possible, to address the certification issue; *Sixth*, Impose strict sanctions on Financial Service Providers (PJK) for non-compliance with Know Your Customer (KYC) principles and failure to report Suspicious Financial Transactions to INTRAC.

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