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## IMPLEMENTATION OF FOLLOW THE MONEY IN THE ERADICATION OF CORRUPTION AND MONEY LAUNDERING

Joeroy<sup>1</sup>, Jeane N. Sally<sup>2</sup>, Wiratno<sup>3</sup>

Universitas Trisakti, Jakarta, Indonesia<sup>1,3</sup>

Universitas Tarumanegara, Jakarta, Indonesia<sup>2</sup>

joeroyju@gmail.com

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KEYWORDS	ABSTRACT
follow the money, corruption, money laundering, financial losses.	This study aims to identify and analyze the implementation of follow the money in eradicating corruption and money laundering in order to recover state financial losses. This research is normative research, this research was carried out by examining library materials in the form of primary, secondary, and tertiary legal materials, with an empirical-analytical approach, which uses concrete cases to become research objects, and uses relevant theories. The follow the money policy in eradicating corruption and money laundering in Indonesia has not been effective enough in returning assets that have been confiscated and has resulted in losses to state finances. Therefore, it is necessary to strengthen the system for returning assets resulting from acts of corruption with the Asset Recovery Bill, increasing FINTRAC capacity, strengthening asset confiscation, and cooperation between countries to track assets resulting from crimes abroad and maximize returns through Mutual Legal Assistance. The future policy direction is to strengthen the system for recovering assets and confiscating assets through conviction-based forfeiture and non-conviction-based forfeiture, as well as civil lawsuits. In the Indonesian legal system, the follow the money policy is very important to overcome corruption and money laundering. However, the return on assets is still not optimal. Therefore, the Bill on Asset Recovery and the Bill on Cash Payments as well as the application of Articles 18 and 37 of the Corruption Law are needed to confiscate the proceeds of crime through criminal compensation.

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**Corresponding Author:** Joeroy

**E-mail:** joeroyju@gmail.com

### INTRODUCTION

In the international world, anti-corruption measures have become a global necessity which is currently a problem not only for poor and developing countries, but also for developed countries. In fact, it has become a routine movement that all countries carry out its eradication, in fact everyone is aware that in "eradicating corruption" around the world, corruption is getting more attention than other criminal acts and various additional efforts to eradicate it (Zafar et al., 2023). This phenomenon must be understood considering the negative impact of corruption crimes, the impact can affect various areas of life, so that corruption is a serious problem that can endanger development (Ferrali, 2020). Socio-economic, social stability and security, as well as politics, and can undermine democratic moral values, because these actions gradually seem to become a culture. Corruption is a threat to the ideals of a just and prosperous society (Lubis, 2017). Basic understanding regarding criminal acts of corruption, Andi Hamzah states:

*"Corruption comes from the Latin corruption or corruptus. It was from Latin that it descended into many European languages such as English, namely Corruption, corrupt; France, namely*

*corruption; and the Netherlands, namely corruptie (korruptie). We can venture that it was from the Dutch language that the word descended into Indonesian, namely "corruption".*

Admit it or not, there are obstacles, both technical and non-technical, to eradicate corruption. One way to overcome this problem is to have an anti-money laundering system, which can be used as an alternative and a new paradigm for eradicating corruption. Mien Rukmini stated that:

*"Corruption is an extraordinary crime (extra ordinary crime) as well as a crime that is difficult to find criminals (crime without offenders), because corruption is in an area that is difficult to penetrate. Why is that, because corruption is said to be an invincible crime which is very difficult to obtain procedural proof, where the modus operandi is systematic and congregational."*

So that demands for eradicating in extra ways need to be carried out, Satjipto Rahardjo said that, "preventing and eradicating corruption is not enough to be done in a conventional way, it must be done in a different way and outside the prevalence of other crime prevention" (Fathra, 2020). Baharuddin Lopa cites the opinion of David M. Chalmers, explaining the meaning of the term "corruption" in various fields, namely those relating to bribery, those related to manipulation in the economic field, and those involving the field of public interest (Suryani, 2013). Chalmers, stated:

*"Financial manipulations and delictions injurious to the economy are often labeled as corrupt, the term is often applied also to misjudgements by officials in the public economy. Disguised payments in the form of gifts, legal fees, employment, favors to relatives, social influence, or any relationship to the public and welfare services, with or without the implied payment of money, is usually considered corrupt."*

Furthermore, Baharudin Lopa also describes other forms of corruption, which are termed political corruption, namely (Evi Hartanti, 2023):

*"Electoral corruption includes the purchase of votes with money, promises of office or special favors, coercion, intimidation, and interference with administrative of judicial decisions, or governmental appointments"*

As an illustration, the birth of anti-money laundering regimes in developed countries was originally the answer to the frustration of law enforcers in fighting the illicit traffic of narcotics and drugs. This answer is partly because the anti-money laundering regime focuses more on tracing the flow of money proceeds from crime (follow the money) (Sparkes, 2022) . Thus, the use of the principle of follow the money in other crimes, especially corruption has a close relationship, namely shifting the orientation of law enforcement not only to follow the suspect or chasing the perpetrators of the crime, but by following the money it will be clearer where the money is. has been corrupted (Husein, 2019) . Yunus Husein stated:

*"Keep in mind that the proceeds of crime are the "life blood of the crime ", meaning that it is the blood that feeds the crime as well as the weakest point in the crime chain that is the easiest to detect. Efforts to cut the chain of crime apart from being relatively easy to do will also eliminate the motivation of the perpetrators to commit crimes because the purpose of the perpetrators of crimes to enjoy the proceeds of their crimes is hindered or difficult to do."*

On the same view, that the relationship between the crime of corruption is very close to the crime of money laundering, because the crime of money laundering is a derivative crime which is always preceded by a predicate crime, such as the crime of corruption (Putra, 2021). This means that the process of money laundering will never be carried out without the object of money laundering, namely assets resulting from predicate crimes, in this case corruption. So that preventing and eradicating money laundering is the same as preventing and eradicating corruption as a predicate crime. In addition to the four factors mentioned above, money laundering methods are already very close to corruption actors

and are quite well known by the international community, namely buy and sell conversions, offshore conversions, and legitimate business conversions (Ogbeide et al., 2023). So, it is appropriate to use the approach of tracking money in financial transactions on the proceeds of corruption, which allows for the prevention and deterrence of perpetrators of corruption, because the use of money resulting from corruption will be hampered.

The activities of the Financial Transaction Reports and Analysis Center (FINTRAC) as a money laundering intelligence agency assist the prevention and eradication of criminal acts of corruption by authorized officials by analyzing reports received by FINTRAC, with the results of analyzes related to corruption (Anandiasyah, 2020). For investigators of corruption, namely. The KPK and the Attorney General's Office. In addition, FINTRAC can also provide information requested by corruption investigators through an information exchange mechanism that can be used in connection with investigations, pretrial investigations, and prosecutions. Arrangements for the legal prosecution of money laundering crimes are the key to successful monitoring of the FINTRAC's analysis results submitted to court, so that the perpetrators, especially corruption, cannot avoid the threat of punishment and the benefits derived from it can be confiscated by the state. Without the coordination and cooperation of enforcers of the Money Laundering Law, prevention and eradication of money laundering and corruption cannot be dealt with effectively.

Whereas in the eradication of Corruption, especially in several cases, for example, with the defendants Wa Ode Nurhayati, Gaius Tambunan, and Benny Tjokrosaputra. In the case of Gayus Tambunan, it started with suspicions from the Financial Transaction Reports and Analysis Center (FINTRAC) regarding the account belonging to Gaius H. Tambunan at Panin Bank. The police then investigated this case. On October 7, 2009 investigators from the Criminal Investigation Unit at the National Police Headquarters named Gaius H. Tambunan as a suspect by sending a Notice of Commencement of Investigation (SPDP). In the dossier sent by Polri investigators to the prosecutor's office, Gaius H. Tambunan was charged with three layers of articles, namely corruption, money laundering and embezzlement. This is because Gaius H. Tambunan is a civil servant and has Rp. 25 billion in Panin Bank. The results of the prosecutor's research stated that there was only one article that was proven to indicate a crime and could be transferred to the court, namely embezzlement, but this was not related to money worth Rp. 25 billion which FINTRAC and the Police are making a fuss about. And where the loss of state finances in this case is estimated to be up to Rp. 1.5 trillion, even though the evidence in court is unable to reveal this.

Law enforcement against criminal acts of corruption that cause losses to state finances will experience difficulties if it only relies on the follow the suspect based conventional model (Isra et al., 2017). Corruption is often the predicate crime for money laundering and financial-based law enforcement requires more efficient methods, such as the follow the money approach adopted by FINTRAC. Furthermore, the author wants to conduct a study on the efficiency of disclosing corruption and strengthening the FINTRAC institution with the function of a Forensic Auditor or Financial Investigator. This will assist investigations, investigations, prosecutions, and judicial processes against perpetrators of corruption.

The successful disclosure and early detection of assets resulting from corruption that have been integrated with the banking system will greatly assist investigations in finding out how much loss is caused by corruption, and with the existence of an Analysis Report (LHA) of Suspicious Financial Transaction Reports (LTKM) made by FINTRAC is the result of tracer assets from the perpetrators of criminal acts in order to confirm the existence of evidence for the consequences of criminal acts of corruption. So, in the process of inquiry and investigation referred to, it would be even more ideal if the amount of state financial losses that had occurred could be known through the results of a review from

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the FINTRAC, so that the Public Prosecutor in preparing the Indictment could also postulate a valid calculation of the state financial losses that had occurred. Moreover, FINTRAC needs to confirm the Analysis Result Report (LHA) with the Calculation of State Financial Losses by the BPK RI as stipulated in the BPK Law and in accordance with the Constitutional Court Decision Number 31/PUU-X/2012 dated 23 October 2012.

As a focus of research, the author wants to examine the application of the follow the money principle which was previously known in law enforcement against money laundering, but in this case follow the money is used to uncover and eradicate corruption. The paradigm shift, which originally involved enforcement, had to first identify whether there was a criminal act of corruption and who the perpetrators were, but in this case, it would first look at the presence or absence of a suspicious transaction, placement or financial activity, so that it could be traced to what extent uncovered potential losses. This will be supported optimally by reversing the burden of proof on corruption. Efforts to follow the money, in the end will bring hope to maximize demands for criminal sanctions for replacement money in accordance with Article 18 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes, which also encourages asset recovery as expected (Mahmud, 2020).

Law enforcement against criminal acts of corruption followed by criminal acts of money laundering will be successful if there is efficiency and effectiveness in recovering state financial losses. Thus, it is felt that it is very important if further research is carried out, so that various problems relating to the above can be answered and new findings can be obtained in the development of Indonesian criminal law enforcement against corruption and money laundering crimes which are oriented towards returning state financial losses. The purpose of this study is to identify and analyze the implementation of follow the money in eradicating corruption and money laundering in order to recover state financial losses.

## **METHODS**

Judging from the type of research, this research is normative research, this research was carried out by examining library materials in the form of primary, secondary and tertiary legal materials. This research can also be considered as research on document studies, where this document study aims to re-examine data validity and reliability that can determine the results of a study. Data collection activities in research can be done with library research. In data collection activities there are several data collection techniques, namely library research, interviews and questionnaires. Which data collection technique should be used depends on the scope and objectives of the legal research being carried out, particularly regarding the type of data being studied. Then, the data in this study were analyzed objectively based on existing juridical references in order to obtain answers to the problems.

## **RESULTS AND DISCUSSION**

### **Follow the Money Policy in Law Enforcement Against Corruption and Money Laundering**

The problem of corruption has been coloring for a long-time various aspect of people's lives, this phenomenon has become a national problem that is very difficult to overcome. The proclaimer of Indonesian independence, Muhammad Hatta said that: corruption tends to be entrenched, or has become part of the culture of the Indonesian nation (Widhiyaastuti & Ariawan, 2018). Even cynically, foreign journalists call the condition of corruption in Indonesia: is the way of living in Indonesia. Because of the dangers of corruption, efforts to eradicate corruption have received serious attention from both the government and society. Corruption Crimes and Money Laundering Crimes have a very close relationship. This can be clearly seen in Article 2 paragraph 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. According to Article 2 paragraph (1), the

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proceeds of the crime are classified into 26 (twenty six) predicate crimes (Nugroho, 2016). Currently, money laundering practices are very often carried out on money obtained from the proceeds of corruption crimes. In Indonesia, this money laundering practice with the result of acts of corruption committed by state officials has had a very significant impact on increasing money laundering crimes (Hidayat, 2017). One of the efforts made by perpetrators of corruption is to avoid legal action or payment of replacement money by hiding or obscuring the results of their crimes through money laundering (A Hayer, 2018). The handling of cases of money laundering has an important meaning for the return of state assets related to the eradication of criminal acts of corruption.

Law enforcers (Police, Prosecutors' Office, KPK, and Courts) cooperate and coordinate along with their respective functions, in efforts to prevent and eradicate money laundering crimes. Law enforcers coordinate according to their duties based on the FINTRAC analysis report. Cooperation between law enforcers is not only related to eradicating money laundering crimes, but also in efforts to eradicate criminal acts of corruption.

FINTRAC 's collaboration with the Attorney General's Office is contained in a Memorandum of Understanding (MoU), namely MoU Number KEP-612/A/JA/09/2004 and Number: 3/2.MOU/PPATK. In essence, this memorandum of understanding states that FINTRAC can provide information to the Attorney General's Office regarding the results of FINTRAC's analysis relating to the duties of the Attorney General's Office and other information required by the Attorney General's Office in order to conduct investigations, investigations and prosecutions of corruption (Sipahutar et al., 2017). In addition, the prosecutor's office also plays an important role in eradicating money laundering crimes by carrying out money laundering penalties handed down by district court judges. FINTRAC also cooperates with the Supreme Court in seizing funds related to money laundering and other criminal acts. The Supreme Court issued a Supreme Court order to seize money from suspicious and immoral accounts. This order is contained in Supreme Court Regulation (Perma) Number 1 of 2013 concerning Procedures for Applications for Confiscation of Assets for Money Laundering or Other Crimes.

This regulation forms the basis for creating procedures to catch suspicious accounts. The trial will be held by a judge. FINTRAC acts as a reporter while the judge directs, examines, and decides on the cases submitted. The mechanism for confiscating this treasure begins with a FINTRAC notification of a suspicious account whose ownership identity is unclear. Based on the report, the appointed district court will publish the account number on the bulletin board and in the media. If someone believes they have the account, a judge will hold a hearing to establish the identity and ownership of the account. In addition, the account holder must be able to prove that the money did not originate from a crime. However, if no one claims or admits after the notification, FINTRAC will confiscate the funds in the account to be transferred to the country within 30 working days from the notification period. To strengthen anti-corruption, FINTRAC also cooperates with the KPK. This cooperation regulates the exchange of information. FINTRAC can provide information to the KPK regarding the results of FINTRAC 's analysis related to the KPK's duties and other information needed by the KPK in the context of investigations, investigations, and prosecutions of corruption crimes. The KPK can also provide information to FINTRAC regarding the results of investigations, investigations, and prosecutions of corruption related acts of money laundering by the KPK, as well as other information needed by the FINTRAC to analyze alleged money laundering crimes.

Many parties agree that the TPPU Law is more effective in recovering state finances in terms of asset recovery, when compared to the Corruption Crime Law (Bahreesy, 2018) . The reason is because the ML Law uses a new paradigm in handling criminal acts, namely by following the money flow approach to detect ML and other criminal acts. Apart from that, the TPPU Law is also able to ensnare judicial mafia actors. Efforts to eradicate corruption and judicial mafia practices are not enough just to

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rely on bribery and gratuity articles. The application of the Money Laundering Law has added value, for example by applying the Money Laundering Law in the handling of a judge's case, if prosecutors and investigators find assets from other cases handled by the said judge, they can be immediately confiscated. Thus, the Corruption Eradication Commission can contribute optimally in assisting the implementation of the Money Laundering Law, in addition to using the Corruption Crime Law, by reversing the burden of proof in corruption cases (Putra & Prahassacitta, 2021). For the handling of corruption cases, law enforcers should also consider using the TPPU Law. This provision is like a "powerful weapon" that will "paralyze" corruptors.

The existing criminal act of corruption still raises several problems. The substitution of having to pay replacement money with body confinement and confiscation of property is only aimed at convicts creating opportunities for corruptors to choose to extend their corporal sentences. In addition, the paradigm related to money as a substitute for corruption also has a mistake. Another problem that makes it difficult to return money for corruption crimes to the state is because the Corruption Law has limited the amount of compensation that can be imposed. In addition to obstacles to the legal paradigm of eradicating corruption, efforts to recover state funds are also hampered by the characteristics of corruption, the proof of which is very detailed and takes a very long time. The average span of 2 to 3 years to complete a corruption case provides a very loose time for the perpetrators to eliminate traces of the assets obtained from corruption. Therefore, steps are needed to maximize the return of money for corruption crimes to the state, such as efforts to overhaul the legal system for eradicating corruption and providing special funds to investigate corruption cases.

In the history of asset confiscation, corruption in Indonesia has not yielded significant results. Assets that were taken abroad, as in several cases of Edy Tansil, Bank Global, BLBI cases, and other cases, to this day, law enforcement officials are still having difficulties tracking them down to their confiscation (Rahayuningsih, 2013). These obstacles are not only due to the weak legal instruments, but also the lack of legal instruments that regulate cooperation with other countries to confiscate the proceeds of crime. Efforts to suppress crime by relying on the use of penal provisions also leave other obstacles.

Improvements in global regulation show that confiscation and confiscation of evidence and instruments of infringement is an important part of efforts to reduce the percentage of crimes. Covering the disclosure of demonstration criminal acts and finding the perpetrators of the confiscation and further confiscation as well as the tools of demonstration criminal acts are an important part of the examination, examination, and examination of demonstration criminal acts. In addition, to fortify existing crime regulations, several countries adopt arrangements ranging from general regulation to prosecution for crime.

General indictments can be resolved separately from criminal indictments against perpetrators of criminal demonstrations. Based on current experience, the use of such methods in various countries has proven successful in increasing the value of seizable error returns. States parties that have signed and ratified the UNCAC, as victims of corruption, have the right to be able to return the proceeds of corruption that have been sent abroad. Article 53 of the UNCAC is designed to ensure that each State Party recognizes that other State Parties have the same legal standing in carrying out civil actions and other direct means to recover property (assets) that were obtained illegally and flown abroad.

In dealing with money laundering crimes, FINTRAC has a strategic role. The FINTRAC's important task is to detect the occurrence of money laundering crimes and to assist law enforcement related to money laundering and predicate offenses. In the view of I Made Sadguna, "prevention and eradication of money laundering requires a systematic and comprehensive mechanism that includes detection and legal processes."

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Therefore, FINTRAC must carry out its role in a systematic and comprehensive manner in the process of detecting and enforcing the law against money laundering crimes. more broadly, FINTRAC can cooperate and assist investigators and public prosecutors with the information they have and their analytical skills. This information can come from the FINTRAC database obtained either from financial service providers, or it can also come from sharing information with Financial Intelligence Units from other countries and can also receive information from third parties, both individuals and entities regarding alleged money laundering by something party.

FINTRAC in carrying out its main duties plays an active role in efforts to prevent and eradicate criminal acts of money laundering and corruption, to support efforts to create financial sector stability in Indonesia. So that FINTRAC formulates its policies, namely; increasing the effectiveness of information management and the quality of analysis results based on information technology; increasing the effectiveness of delivery and monitoring of follow-up reports on the results of analysis, giving, providing advice and legal assistance as well as providing recommendations to the government.

As with criminal acts of corruption, in financial crime investigations and investigations (crimes committed with the aim of seeking money or wealth) we recognize the 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 1988 in the Vienna Convention, Convention Against Illicit Traffic in Narcotics and Psychotropic Substances (Riyadi et al., 2019) . In Indonesia, the follow the money approach is regulated in Law (UU) No. 15/2002 as amended by Law No. 25/2003 which is commonly called the TPPU Law (Kresna, 2018) . Even though the TPPU Law has been in force, there are still many law enforcers who are reluctant to apply the follow the money approach. In every crime, there are at least three components, namely the perpetrator, the crime committed, and the results of the crime. The results of a crime can be in the form of money or other assets. The follow the money approach prioritizes looking for money or assets resulting from crime compared to finding the perpetrators of crimes. After the results are obtained, then look for the culprit and the crime committed. In seeking the results of criminal acts, a financial analysis approach is used.

Financial analysis has not been able to confirm the occurrence of a crime and does not provide evidence of the occurrence of a crime. These last two things are the task of the investigator who receives the results of the financial analysis from the Financial Transaction Reports and Analysis Center (FINTRAC). To see the advantages of the follow the money approach, the author uses the example of corruption which is difficult to eradicate because it involves unscrupulous officials and financiers. With the additional follow the money approach, it will be possible to reveal the officials who received the proceeds from the corruption crime.

The Money Laundering Law, which uses the follow the money approach, criminalizes money laundering, namely the act of hiding and disguising assets resulting from crime, so that they appear to be legitimate assets. Yunus Husein continued, that apart from having an advantage, there are also several reasons for the weakness of the follow the money approach in eradicating corruption.

### **Implementation of Follow the Money in Cases That Have Permanent Legal Force (In Kracht Van Gewijsde)**

The cases analyzed as evidence related to the effectiveness of follow the money implementation include: Gaius Tambunan, this case was chosen because it is a case that attracts public attention and has permanent legal force.

### **Analysis of the Case of Gaius Halomoan P. Tambunan**

In this study, the authors analyze cases of corruption, followed by the most complex crime of money laundering, namely the case of Gaius Halomoan Partahan Tambunan, which analyzes from court decisions that have been in *kracht*, including:

- a. South Jakarta District Court No.1195/Pid.B/2010/ PN. Jkt.Sel
- b. Jakarta High Court Decision No. 06/PID/TPK/2011/ PT. DKI.
- c. Indonesian Supreme Court Cassation Decision No. 1198 K/Pid.Sus/2011.
- d. RI Supreme Court Judicial Review Decision No. 38 PK/Pid.Sus/2013
- e. Tangerang District Court Number 49/Pid.B/2010/PN.TNG
- f. Decision of the Supreme Court of the Republic of Indonesia Number 1146 K/Pid.Sus/2010
- g. Decision of the Supreme Court of the Republic of Indonesia Number 55 PK/Pid.Sus/2015
- h. Decision of the Central Jakarta District Court Number 34 / Pid.B / TPK / 2011 / PN. Jkt. Pst
- i. Jakarta High Court Appeal Decision No. 22 / PID / TPK / 2012 / PT.DKI.
- j. Indonesian Supreme Court Cassation Decision Number 52 K/Pid.Sus/2013
- k. Decision of the Judicial Review of the Supreme Court of the Republic of Indonesia Number 66 PK/Pid.Sus/2016.

On January 19, 2011 the panel of judges handed down the first sentence for Gaius, namely a sentence of 7 years in prison and a fine of IDR 300 million or a subsidiary of 3 months in prison. Even though the public prosecutor had demanded Gaius with a prison sentence of 20 years. The crime that Gaius was proven to have committed at that time was abusing his authority when handling tax objections from PT Surya Alam Tunggal (SAT) causing the state to lose Rp. 570.92 million. Then it was proven that he had participated in giving money to the police worth a total of 10,000 United States (US) dollars. Gaius was also proven to have given money to a judge in the amount of US\$40,000 during a case at the Tangerang District Court. Finally, Gaius was proven to have provided false information about his Rp. 28 billion money which was suspected to have come from corruption. As a result of his actions that violated his authority, Gaius Tambunan caused losses to state finances of up to Rp. 570 million. Gaius Tambunan was proven to have violated his authority by accepting PT SAT's tax payment objections.

The crime committed by Gaius Tambunan was not only corruption, but also bribery. Gaius Tambunan once bribed investigator Director II of the Criminal Investigation Agency and Police Commissioner Arafat Enanie through his attorney, Haposan Hutagalung. This was done by Gaius Tambunan so that he would not be detained and some of his property would not be confiscated by the state. Apart from the police, Gaius Tambunan also bribed judge Muhtadi Asnun in the amount of IDR 50 million to smooth out a case of tax evasion and money laundering worth IDR 25 billion. At that time, the Attorney General's Office was not satisfied with the sentence received by Gaius Tambunan and then filed an appeal. In the appeal decision, the judge increased Gaius Tambunan's sentence to 8 years in prison. Gaius Tambunan did not accept the decision on appeal against him, which only aggravated and prolonged his sentence. On that basis, Gaius then filed an appeal to the Indonesian Supreme Court. However, the Supreme Court rejected the cassation filed by Gaius Tambunan. Not only that, the Supreme Court also increased Gaius Tambunan's sentence to 12 years in prison. Not stopping at cassation, Gaius Tambunan then submitted a judicial review of his case to the Supreme Court. However, the Supreme Court refused. Gaius Tambunan still must serve 12 years in prison plus other cases. Namely, the 8-year sentence for the PT Megah Citra Raya tax evasion case. Then, a sentence of 8 years in prison in the case of money laundering and bribery of Brimob Kelapa Dua prison guards, Depok, West Java.



Then, Gaius objected to verdict No. 52 K/Pid.Sus/2013, because the total sentence he received in the corruption case was 28 years in prison. Gaius also had to serve a sentence for the passport forgery case. The Supreme Court accepted Gaius Tambunan's objection by reducing Gaius Tambunan's sentence to 26 years in prison for three corruption cases. Apart from that, the Supreme Court sentenced Gaius to 3 years in prison in the case of passport forgery. That way, the total sentence that Gaius Tambunan has to carry out is 29 years in prison.

Former Head of the Independent Team for the Gaius case, Inspector General of Police matik Salempang, said that during an investigation into Gayus Tambunan, the former tax official once said that the state losses for the 19 companies handled by Gaius amounted to Rp 1.52 trillion. "Gaius said the state loss was Rp 1.52 trillion," said Matthew during a hearing with the Tax Mafia Panja and Commission III law at the DPR building, Jakarta, Thursday (24/2/2011). According to Matthew, he could not confirm whether Gaius' statement was true. It also explained that it should be investigated further. Meanwhile, the Chairman of the Tax and Legal Mafia Committee III of the House of Representatives, Tjatur Sapto Edy, emphasized that what Matthew Salempang said was true. "That's all true," he said.

If viewed historically, that the public prosecutor in the case of criminal acts of corruption at the South Jakarta District Court Decision No.1195/Pid.B/2010/PN. Jkt. Sel experienced a failure in proving the assets obtained from the proceeds of the intended corruption crime, which in his prosecution only prioritized imprisonment for 20 (twenty) years and a fine of Rp. 500 million, without any claim for recovery of state financial losses or criminal compensation as stipulated in Article 18 of the Corruption Law. So that the failure to recover state financial losses in this case became even more evident when the judge handed down a verdict, which contained:

- 1) Declare that the Defendant GAYUS HALOMOAN PARTAHANAN TAMBUNAN has been proven legally and convincingly guilty of committing the crime of Corruption which was carried out jointly as in the First Subsidiary and Second Primary Charges and the Corruption crime as in the Third indictment as well as providing incorrect information about property suspected of having a relationship with the Corruption crime as in the Fourth indictment;
- 2) Sentenced punishment against the Defendant therefore with imprisonment for 7 (seven) years and a fine of Rp. 300,000,000. - (three hundred million rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 3 (three) months;
- 3) Determine the detention period that has been served by the Defendant wholly deducted from the sentence imposed;
- 4) Stipulates that the Defendant remains in detention;
- 5) Establish evidence;
- 6) Charged the Defendant to pay court fees of Rp.5. 000, - (five thousand rupiah).
- 7) The judge's decision did indeed prove the Defendant was guilty of corruption, but it became odd when there was no punishment aimed at recovering state losses. Then efforts to enforce the law of the district court's decision also did not produce results, because until the Judicial Review decision No. 38 PK/Pid.Sus/2013, the judge's decision is permanent and does not change.
- 8) Given that the case committed by the Defendant Gaius Tambunan was tried separately and independently from each of his offenses, then efforts to enforce the law were contained in the Decision of the Central Jakarta District Court Number 34/Pid.B/TPK/2011/PN. Jkt.Pst, carried out more optimally. This can be seen in the prosecution and prosecution of the Public Prosecutor which is followed by the Judge's Decision. Furthermore, the court decision which contained the proven guilt of the Defendant for the crime of corruption and money laundering, was also defended by the Panel of Judges at the Appeal, Cassation and Judicial Review levels.

If viewed from Gustav Radbruch's Theory, law enforcement efforts that are just, beneficial and have legal certainty in this case, the authors state the following:

- a. That justice in the enforcement of this case has not been fully realized, because law enforcement against corruption cases accompanied by various money laundering crimes committed by Gaius Tambunan has completely damaged the system in the field of taxation, which has led to a mode of abuse of authority to enrich oneself against the law (illicit enrichment). Gaius Tambunan's actions should have been given a harsh sentence, apart from being proven guilty of committing several crimes which were tried at several court levels, it should be considered that in this case law enforcers only used imprisonment as the main sanction. What should be, the state through its law enforcers needs to implement "impoverishment" efforts by confiscating assets and monetary sanctions in lieu of compensation.
- b. That the goal of legal certainty in this case encountered real difficulties, because the handling of the Gayus Tambunan case was marred by obstruction of justice by unscrupulous officials who carried out selective logging and toyed with the formulation of the indictment in order to avoid allegations of corruption. Law enforcers have difficulty realizing essential justice, because there are difficulties in prosecuting tax crimes that cause state losses, or money laundering by the Defendant.
- c. In terms of punishment, the accumulation of up to 29 years is considered quite heavy, but the state has not been able to meet the criteria for expediency, because there are still allegations of Gaius Tambunan's hidden wealth with a potential of Rp. 1.5 trillion which was not disclosed throughout the law enforcement process in this case.

If it relates to Richard Posner's Economic analysis of the law theory, then the search for abnormal wealth should be confirmed by a proportionality calculation approach where Gaius Tambunan whose rank is still class IIIA, where with that status, the salary he receives from the Ministry of Finance should be only around IDR 12.1 million per month or IDR 145.2 million a year. However, it turned out that Gaius Tambunan could receive incentives of up to Rp. 100 billion or, if calculated from his last salary as a civil servant, the equivalent of his salary for 688.7 years.

If viewed from the value of existing state financial losses, law enforcement in this case also does not function Article 18 of the Corruption Law regarding replacement money, but only confiscates assets that cannot be proven to have been obtained through a lawful business by the Defendant. As for the investigation into the recovery of these assets, at a hearing with the Tax Mafia Panja and Commission III law at the DPR building, Jakarta, Thursday 24/2/2011, the Chairperson of the Independent Team on the Gaius case, Inspector General Pol Mathew Salempang, raised that "the state loss of The 19 companies handled by Gaius amounted to IDR 1.52 trillion."

So, it can be judged that the application of follow the money in the decision of the Central Jakarta District Court Number 34/Pid.B/TPK/2011/PN.Jkt.Pst, up to the Judicial Review decision, has been implemented properly, but efforts to disclose other perpetrators, including Gaius Tambunan's wife named Milana Anggraini should also be made a "participant in committing a crime" as stipulated in Article 55 paragraph (1) 1st of the Criminal Code in alleged corruption or passive actors in money laundering as stipulated in Article 5 of the TPPU Law .

Efforts to obfuscate through transactions, transfers, purchase of shares and other banking products from money/assets resulting from criminal acts are the modes used in money laundering crimes, which are intended so that illicit money resulting from corruption is not easily detected and disclosed for confiscation by the state. If the potential loss to the state reaches IDR 1.5 trillion, then the state's task of recovering lost state finances is not over, because it is necessary to convert assets that have been confiscated back into money that can be deposited into the state treasury through an auction process. This is not necessarily effective, because the decrease in the value of the confiscated goods

could become an obstacle to recovering state losses. Supposedly, the utilization of FINTRAC's functions in all cases of Gayus Tambunan could be optimally applied, but only in the last decision which asset tracing was used in seizing evidence which was stated to be the result of a money laundering crime.

### **Follow the Money Prospects in Returning State Financial Losses Due to Corruption and Money Laundering**

#### **1. Policy Policy Follow the Money through Financial Transaction Reports**

##### **a. Suspicious Financial Transaction Reports**

FINTRAC functions to analyze Suspicious Financial Transaction Reports (LTKM) reported by Reporting Parties in accordance with Article 17 paragraph (1) of the TPPU Law. Financial Transactions include various types of financial transactions such as placements, deposits, withdrawals, transfers, transfers, payments, grants, donations, safekeeping, and/or exchange of sums of money or other actions and/or activities related to money. Suspicious Financial Transactions begin with transactions that do not have a clear economic and business purpose, use relatively large amounts of cash and/or are carried out repeatedly in an unusual manner, or customer transaction activities are out of the ordinary and reasonable. Transactions that meet the criteria referred to in Article 1 point 5 of the TPPU Law must be reported as Suspicious Financial Transactions

##### **b. Report on Suspicious Financial Transactions on Money Transfers Between Domestic Banks and Foreign Banks**

Based on Article 1 Number (6) of the Money Laundering Law, Cash Financial Transactions are: Financial Transactions conducted using banknotes and/or coins. Then in Article 25 paragraph (2) of the TPPU Law, it states that the submission of cash financial transaction reports by financial service providers to FINTRAC as referred to in Article 23 paragraph (1) letter (b) of the TPPU Law is carried out no later than 14 (fourteen) working days starting from the date the transaction was made. 90 In cash financial transactions there are several financial transactions that are exempt from reporting for financial service providers as stipulated in Article 23 Paragraph (4) of the Money Laundering Law. Then Article 24 paragraph (1) and paragraph (2) of the Money Laundering Law, stated that financial service providers are required to make and keep a list of transactions that are excluded as mentioned. Financial service providers who do not make and keep a list of exempted transactions will be subject to administrative sanctions.

##### **c. Suspicious Transaction Reports on Goods and Service Providers**

In Article 25 paragraph (3) of the Money Laundering Law, it is stated that the number of financial transactions of transfers of funds to and from abroad that must be reported as referred to in Article 23 Paragraph (1) letter c is regulated by a regulation from the Head of FINTRAC. Submission of reports on transactions for transfers of funds to and from abroad as referred to in Article 23 Paragraph (1) letter c shall be made no later than 14 (fourteen) working days from the date the transaction was made.

##### **d. Reports of Carrying Cash Suspicious**

Bringing cash and other payment instruments into or outside the Indonesian customs territory is one means of money laundering. For this reason, the TPPU Law formulates provisions in Article 34, Article 35, and Article 36.

### **Policy on the Use of FINTRAC Analysis Results Reports in Tracing and Disclosing Assets or Suspicious Transactions Resulting in Money Laundering Crimes**

The results of the implementation of these functions FINTRAC produces 3 (three) outputs, namely:

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- a. Analysis Results (HA) are basically outputs in the form of HA obtained by combining various information from various sources including both the profile of the reported party, the source of funding, the purpose of using the funds, the underlying transaction for each transaction carried out, the suitability between the transaction value and the reported profile and other matters others deemed necessary to be used as information or supporting data.
  - b. Inspection Results (HP) in general is an in-depth development of the analysis process. HP can be obtained from the development of HA or is the handling of reports received by FINTRAC which are deemed necessary to carry out an inspection in the field considering the urgency, the significance of the transaction value, the strength of the alleged crime based on initial information, the impact and other considerations so that it is deemed necessary to carry out an inspection by FINTRAC.
  - c. Information on Analysis Results (IHA), is from an analysis process with a process like point (1), but the results are in the form of information submitted to related agencies or institutions that already have a memorandum of understanding (MoU) with FINTRAC, this is intended as an effort to prevent ML.

As for the implementation of FINTRAC's authority in analyzing financial transactions, it can produce 2 (two) types of Analysis Results Reports (LHA), namely:

- a. The results of the analysis are submitted to law enforcement officials. The results of the analysis submitted to law enforcement officials are the results of the analysis containing instructions regarding the existence of suspected suspicious financial transactions that indicate money laundering and/or other criminal acts based on the provisions of Article 44 of the PPTPPU Law.
- b. The results of the analysis are entered into the FINTRAC database. From the results of an analysis of suspicious financial transaction reports received from Financial Service Providers, no indications of specific crimes have been found, both money laundering and predicate crimes. The results of the analysis will be stored in the FINTRAC database until information regarding certain crimes is obtained. All data that is in the FINTRAC database will assist the next analysis process in terms of having links with the data that is being or is being analyzed.

FINTRAC's Analysis Process is carried out by the Directorate of Research and Analysis by utilizing various existing information sources that are managed internally (self-help) or other information that can be obtained by FINTRAC through inter-agency collaboration mechanisms both at home and abroad. FINTRAC analysis results are submitted to investigators and also submitted to other agencies that have entered into a memorandum of understanding (MoU) with FINTRAC. The results of the analysis indicating suspicions of money laundering or other criminal acts will be submitted to investigators or related agencies that have collaborated with FINTRAC. If no suspicion of money laundering or other criminal acts has been found, the results of the analysis will be stored in a database that will assist the next analysis process. The results of the analysis that do not indicate a suspected crime will be entered into the FINTRAC database. FINTRAC's analysis results submitted to investigators were divided into 2 (two), namely: (a.) Proactive analysis results were results of analysis submitted on FINTRAC's initiative; (b.) The results of the Inquiry analysis are the results of the analysis submitted at the request of the Investigator.

So, the results of the proactive analysis are the results of the analysis submitted by FINTRAC because their authority is based on law without being based on requests from investigators, while the results of inquiry analysis are submitted based on requests from investigators. The forwarding of the Analysis Result Report is based on the provisions of Article 44 Paragraph (1) letter I of the PPTPPU Law which is the forwarding of the results of the FINTRAC's initiative analysis. The forwarding of the results of the analysis is also regulated in the provisions of Article 64 Paragraph (2) of the PPTPPU Law as follows: "In the event that indications of money laundering or other criminal acts are found, the

Financial Transaction Reports and Analysis Center (FINTRAC) submits the results of the examination to investigators to carry out investigation". FINTRAC forwards the examination results which are the final assessment of the entire process of problem identification, analysis and evaluation of Suspicious Financial Transactions which are carried out independently, objectively, and professionally and submitted to investigators. The results of the inspection are a follow-up to the results of the analysis if deemed necessary and constitute an in-depth development of the analysis process by carrying out field checks including in this case, inter alia, temporary suspension of transactions, as well as making inquiries of other parties.

The FINTRAC Analysis Report is financial intelligence information that is highly confidential and cannot be given to other parties and can only be used for the purposes of investigation and investigation in accordance with the provisions of Article 11 to Article 16 of the TPPU Law, the Analysis Result Report contains: 1.) Cases Position; 2.) Customer Profile; 3.) Analysis Results and; 4.) Conclusion.

Analysis Result Report, the main product of FINTRAC's analysis process with indications of money laundering or other criminal acts, is forwarded to investigators either based on their own initiative (proactive) or at the request of investigators or law enforcement officials (inquiry), as in Article 48 Paragraph (1) of the Presidential Decree No. 50/2011. Furthermore, the obligation of investigators to follow up on the analysis results from FINTRAC is regulated in the provisions of Article 48 Paragraph (3) of Presidential Decree No. 50/2011. In addition, investigators who know, receive reports or complaints about the occurrence of an event that is reasonably suspected to be a criminal act must immediately take the necessary investigative action.

FINTRAC Analysis Results Reports at the KPK are entered through the Public Complaints Sub-sector which will then be followed up on to the investigation sub-sector and will then be forwarded to the Enforcement Sector investigation sub-sector as referred to in Article 26 Paragraph (6) letter b and Paragraph (4) letters a and b of the Law Number 30 of 2002 concerning the Corruption Eradication Commission. FINTRAC and KPK cooperate in exchanging information related to the prevention and eradication of money laundering crimes in following up on the Analysis Results Report submitted by FINTRAC to the KPK.

That the KPK and FINTRAC are cooperating in eradicating money laundering crimes which of course originate from criminal acts of corruption. Apart from being based on the TPPU Law, this cooperation is also based on a Memorandum of Understanding (MoU). Such cooperation can take the form of forwarding the results of an analysis based on the FINTRAC initiative or at the request of the KPK, as well as cooperation in monitoring people who must be monitored from a political perspective and apply internationally in the eradication of money-laundering, such as parliamentary officials, officials from central and regional government, from agencies. As soon as there are transaction activities abroad, they are categorized as PEPs (Politically Exposed Persons), so that overseas banks are obliged to categorize these persons into groups that are prone to money laundering. Meanwhile, FINTRAC's collaboration with educational institutions such as universities is limited to delivering information on the results of an analysis of suspected money laundering crimes. Educational institutions that receive delivery of analysis results do not have the authority to conduct investigations into money laundering crimes because investigative authority is only given to investigators based on the Money Laundering Law. FINTRAC's collaboration with educational institutions is based on a Memorandum of Understanding (MoU). This collaboration takes the form of developing scientific studies in various fields related to the prevention and eradication of money laundering crimes through applied research, increasing human resources, organizing socialization regarding the implementation and development of the anti-money laundering regime in Indonesia.

### **Legal System in Returning Assets Proceeds of Corruption Crimes**

About asset recovery arrangements, the Indonesian government has issued various regulations that can be used as a basis for the government's efforts to restore state financial losses as a result of criminal acts of corruption. These efforts are regulated in: Law No. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption (Tipikor Law); UU no. 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (Anti-Corruption Convention); UU no. 15 of 2002 as amended by Law no. 25 of 2003 concerning the Crime of Money Laundering (TPPU Law); UU no. 1 of 2006 concerning Mutual Assistance in Criminal Matters (ASSET, nd) .

In the Corruption Law, the recovery of state financial losses can be carried out through 2 (two) legal instruments, namely criminal instruments, and civil instruments. The criminal instrument was carried out by the investigator by confiscating the property of the perpetrator which had previously been ruled by a court with an additional criminal verdict in the form of compensation for state financial losses by the judge and then the public prosecutor demanded that it be confiscated by the judge. While civil instruments (through Article 32. 33.34) Law no. 31 of 1999 and Article 38C of Law no. 20 of 2001) which was carried out by the State Attorney General (JPN) or the agency that was harmed.

### **Use of FINTRAC as a Financial Investigator and Forensic Auditor in an Effort to Trace the Results of Criminal Acts**

In the context of follow the money disclosure of assets that are suspected of proceeds of crime, it is necessary to have asset tracing which is defined as an effort to search, trace assets with various efforts so that their whereabouts can be found, where ownership is identified, researched and the truth confirmed, so that it can be instructions or references for further legal steps to be taken so that they can be restored or returned to the state (Ferrante et al., 2021).

#### **1. Financial Service Provider**

Financial Service Providers such as banks have an obligation to submit suspicious financial transaction reports (Suspicious transaction reports) and cash financial transactions (Cash transaction reports) to FINTRAC. This report usually includes details of the amount transferred, the name of the bank, and the bank account number of the sender (if the transfer did not come from a cash deposit) and the recipient. This information is useful for freezing the bank account and further tracing where the funds flowed from.

#### **2. Center for Reporting and Analysis of Financial Transactions (FINTRAC)**

FINTRAC also has a good network of cooperation with similar institutions abroad such as the Financial Intelligence Service (FIS) in the UK, which is its counterpart and interpol party. Information from within and outside the country can be used for the purpose of tracing assets in accordance with laws and regulations on money laundering crimes, for example by the Corruption Hunt Team.

#### **3. Research Results from Academics and Non-Governmental Organizations**

Information about hiding assets is research from NGO organizations that conduct research independently, for example, the Indonesian Corruption Watch (ICW) Institute, which is a non-governmental organization that supervises corruption cases in Indonesia.

#### **4. Disputes/Cases in Court**

Information can also be obtained from disputes that are being tried in courts, both domestic and foreign. Disputes can occur between families or between companies or organizations that can be involved, perhaps the disputed property is suspected of originating from a criminal act.

#### **5. Corruption Eradication Commission (KPK)**

State Officials Wealth Report (LHKPN) submitted by each state official/administrator to the KPK.

#### 6. Office of Information Services for the Public

In many countries and various registration offices, information is open to the public because it is intended to protect the public interest. For example, in Indonesia, the National Land Agency (formerly known as Kadastral), Bapepam and the Stock Exchange are sources of information about companies selling securities in the capital market.

#### 7. Leakage of information by insiders.

There is a leak of inside information that informs about the hiding place of assets from a crime. Usually, insiders who leak this can be employees where the perpetrators of crimes work, business partners who feel let down, people who become witnesses or whistle blowers who work with law enforcement to uncover a crime and hide its assets.

#### 8. Private Investigator Services

It is undeniable that the services of private investigators or what are known as private detectives are now increasingly widespread in Indonesia, even though their legality is still questionable in our country, but in other countries, the private investigator profession has been recognized because with their services the whereabouts of criminals and assets can be traced. - assets hidden abroad without having to wait too long in the process of tracing assets to facilitate the work of our country's investigators in resolving a case and being able to recover these assets back to Indonesia.

### CONCLUSION

In the Indonesian legal system, a follow the money policy is needed to overcome corruption and money laundering. The perpetrators of corruption always try to eliminate traces of assets obtained illegally through money laundering practices. Currently, there are several policies and laws and regulations related to eradicating criminal acts of corruption and money laundering, but asset recovery is still not optimal. Therefore, the Bill on Asset Recovery and the Bill on Cash Payments which are oriented towards follow the money as well as affirming the application of Articles 18 and 37 of the Corruption Law are needed to confiscate the proceeds of crime through criminal compensation.

The policy direction of future laws and regulations in accommodating follow the money in law enforcement against criminal acts of corruption with the aim of returning state financial losses can be strengthened by: (1) strengthening the system for returning assets resulting from acts of corruption with the Asset Recovery Bill; (2) Increase the capacity of FINTRAC to become a crime investigator or Financial Audit Forensic, and make the Analysis Results Report (LHA) as evidence in the process of investigation, investigation and prosecution; (3) Strengthening asset confiscation through Conviction based forfeiture and Non conviction based forfeiture, as well as civil lawsuits; (4) Strengthening cooperation between countries to track assets resulting from crimes abroad and maximize returns.

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