

Juridical Analysis of Criminal Liability of Offenders Participating in the Crime of Money Laundering

Uning Haryani

Faculty of Law, Universitas Islam Sultan Agung, Indonesia, E-mail: haryauning@gmail.com

Abstract. *The problem of money laundering as a crime has an international dimension. In Indonesia, regulation of money laundering crimes is set forth in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The form of accountability for ML perpetrators is regulated in this law, money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. In general, it can be said that money laundering is a method of hiding, transferring, and using the proceeds of a crime, organized crime, economic crime, corruption, narcotics trafficking, and other predicate offenses. This study uses a normative juridical approach. As for obtaining data from this discussion, researchers use legally binding materials, namely laws. Data analysis using juridical analysis. Data analysis techniques are qualitative analysis in the form of presentations, descriptions, and descriptions of research results. The results of the study that as has been stated by the public prosecutor, that the defendant had committed the act of participating in the crime of money laundering as stipulated and punishable by crime in the First Primary Indictment: Article 3 Jo. Article 10 of RI Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. must be held responsible for the actions he has committed and the Panel of Judges stated that the Defendant was proven legally and convincingly guilty of committing the crime of "participating in the crime of money laundering" as stipulated and punishable by a criminal sentence in the Public Prosecutor's First Primary Indictment, and the Panel of Judges imposed a sentence on The defendant is therefore subject to imprisonment for 4 (four) years and a fine of IDR 100,000,000.*

Keywords: *Criminal; Money Laundering; Participating.*

1. Introduction

Indonesia is a constitutional state, this is stated in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Thus all citizens' activities must be in accordance with the rules that apply in Indonesia. Violations committed must be subject to sanctions in accordance with applicable regulations. If the violation is public in nature, it is categorized as a violation of criminal law and is subject to sanctions in accordance with the provisions in force in criminal law.

Criminal law is part of the overall law that applies in a country, which establishes the principles and rules to determine which actions may not be carried out and which are prohibited, accompanied by threats or sanctions in the form of criminal penalties, for anyone who violates the prohibition. ¹The characteristic of the criminal law itself is the law that regulates the actions of legal subjects, in which these actions include crimes and violations. Crimes that occur today are more complex than crimes that occurred in the past. This happens because of the development of the times, technology, and the interests of one individual to another.

How to cover who applies and its source, criminal law is divided into two parts, namely general criminal law and special criminal law. ²One of the specific crimes in this writing is the crime of money laundering (TPPU). With the times and technological developments that have taken place, new modes of crime have also emerged which are supported by technological advances themselves.

The problem of money laundering as a crime that has an international dimension is something that happens a lot in many countries, including Indonesia. The range of possible negative effects for the country's economy, therefore for the countries of the world and many international organizations feel moved and motivated to seriously pay attention to the prevention and fight against money laundering. this is because the crime of money laundering (money laundering) is directly or may be directly or indirectly affected by it affecting the economic system and the impact is negative for the country's economy. ³

In Indonesia, regulation of crimes in the field of money laundering is outlined in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The form of accountability for ML perpetrators is regulated in this law, money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. In general, it can be said that money laundering is a method of hiding, transferring, and using the proceeds of a crime,

¹Suyanto, Introduction to Criminal Law, Deepublish Dumi Utami, Yogyakarta, 2018. p.1.

²Aziz Syamsuddin, Special Crimes, Sinar Graphic, Jakarta, 2011 p. 8.

³Adrian Sutedi, Crime of Money Laundering. Image Aditya Bakti. Bandung, 2008, p. 100.

organized crime, economic crime, corruption, narcotics trafficking, and other predicate offenses.

The handling of money laundering crimes in Indonesia began with the enactment of Law Number 15 of 2002 concerning Money Laundering Crimes as amended by Law Number 25 of 2003 concerning amendments to Law Number 15 of 2002 concerning Money Laundering Crimes and replaced Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Criminal provisions for the crime of money laundering have been regulated in Article 3 of Law Number 8 of 2010.

In recent years, the problem of money laundering has attracted the attention of various groups, from governments to researchers to the general public, because it does not only occur at the national or national level from time to time, but has even reached global proportions. On the scale of money laundering crimes are usually carried out by individuals or by involving a company, and these crimes involve individuals, nations and countries

The crime of money laundering, besides being very detrimental to society, is also very detrimental to the state, because it can affect or damage the stability of a country's economy. There are various negative impacts caused by proven money laundering, including:⁴

1. Undermining the integrity of financial markets

Money laundering crimes have an effect on undermining the integrity of financial markets, if profits in the form of assets or money originating from criminal acts enter financial institutions such as banks, securities, and others, thus we can ensure that this can cause liquidity problems in financial institutions.

2. Loss of control over economic policy

Money laundering crimes affect economic policies in a government, developed countries and developing countries will definitely still need investment from foreign countries. However, with the presence of money laundering crimes in the form of large fund investors against the state, it will create its own power against the country thanks to its investment.

3. Give birth to economic distortions and instability

⁴Ivan Yustiavandana, Arma Nefi, and Adiwarmarman, *Crime of Money Laundering in the Capital Market*, Ghalia Indonesia, Bogor, 2020 p. 14

The main purpose of money laundering crimes is not to make a profit, but to hide the proceeds from the crimes committed. For example, a group of criminals who get money from criminal acts of corruption finance the construction or hotel service industry to hide the proceeds of corruption. With this financing action, it only becomes a short-term plan, namely money laundering, so if the industry is no longer in line with the perpetrators of money laundering, they will withdraw their investment, which will cause the collapse of the industry that was originally given the investment.

4. Undermine the legitimate private sector

Industry in the private sector is the sector most affected by the crime of money laundering, this occurs because the perpetrators who commit the crime of laundering carry out their mode of using front companies by combining the profits from the crime committed together with the legitimate funds they have.

5. Incur social costs

Money laundering crimes also raise the focus of market economic power, citizens, the government on the perpetrators of laundering crimes. Money. This causes an increase in the budget from the government in order to increase law enforcement, to eradicate these crimes.

Currently, money laundering has penetrated into various fields and developed along with technological developments. Money launderers use technology as a means or means and providers of financial or banking services as a place to commit money laundering crimes. White-collar crime or white-collar crime uses technological sophistication ranging from manual to the most advanced or advanced or sophisticated cyberspace technology. Therefore, white-collar crime is called cyber-laundering, which is part of cyber crime or Cyber Crime which is supported by adequate knowledge of banking, business and electronic banking.

In the context of national interests, statutory regulations regarding money laundering are stipulated by establishing laws that prohibit acts of money laundering and severely punish the perpetrators of these crimes. With the existence of this Law, it is hoped that money laundering crimes can be prevented or eradicated, including the criminalization of all actions at each stage of the money laundering process, which consist of:⁵

1. Placement is an attempt to place cash originating from a crime into the financial system or an attempt to place demand deposits (cheques, bank drafts,

⁵R.Wiyono, Discussion of the Law on the Prevention and Eradication of Money Laundering, Sinar Graphic, Jakarta, 2014, p.4

certificates of deposit, etc.) back into the financial system, especially the banking system.

2. Transfer (layering), namely efforts to transfer assets originating from criminal acts (dirty money) that have been successfully placed with Financial Service Providers (especially banks) as a result of placement efforts to other Financial Service Providers. By layering, it will be difficult for law enforcers to be able to find out the origin of these assets.

3. Using Assets (integration), namely efforts to use Assets originating from criminal acts that have successfully entered the financial system through placement or transfer so that they appear to be Halal Assets (clean money), for legal business activities or to refinance activities crime.

Basically, people receive money as a reward for the achievements or work they do. Money cannot be earned without working or managing a business for profit (benefit oriented). On the one hand, there is no single type of life that states accepting bad or criminal acts as actions that are justifiable to do.⁶

The Money Laundering Law provides for certain authorities, rights and obligations for related institutions such as law enforcement, supervisory and regulatory authorities, those who are required to report are financial service providers and providers of goods and/or services Other Financial Transaction Reports and Analysis Centers (hereinafter abbreviated as PPATK) as institutions whose duty is to prevent and eradicate money laundering crimes in tracing the process of concealing the origin of proceeds of crime (follow the money) for the enforcement of the TPPU Law for Money Laundering Actors.⁷

Investigations into criminal acts of money laundering are carried out by pre-criminal investigators in accordance with procedural law and provisions of laws and regulations, unless otherwise stipulated by Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. In contrast, pre-crime investigators are defined by law as officers or bodies authorized to conduct investigations of: the National Police, the Attorney General's Office, the Corruption Eradication Commission, the Directorate General of Taxes, the Directorate General of Customs and Excise. Pre-criminal investigators can conduct money laundering investigations if during the pre-criminal investigation they find sufficient initial evidence of money laundering within their jurisdiction.

⁶Ivan Yustiavandana, Arman Nefi, and Adiwarmarman, Op. Cit, p. 6.

⁷Hussein, Yunus. Anthology of Anti-Money Laundering. Books Terrace and Library, Bandung, 2007, p. 20.

According to Simons Loeb Logman, that in participating all participants must fulfill all the elements of the crime committed, for example A and B commit theft, both must fulfill the elements of the theft article, for example, if A only stands outside the victim's house while B is a person who enters entering the house and taking the victim's belongings is considered not involved in the crime of theft.

According to Satokhit, the relationship between each participant (people involved) in the resolution of the crime can take the following form:

- a) Several people who jointly commit an offense.
- b) Maybe someone has the will and plans the offense, but the offense is not carried out alone, he even uses other people to carry out the offense.
- c) It can also happen that one person commits the offense, while another person assists that person in carrying out the offense.

Based on the provisions of Article 55 of the Criminal Code, it can be seen that people who can be punished as perpetrators of criminal acts can be classified into:⁸

- a) Those who commit crimes (pleger)
- b) Those who order others to commit crimes (doen pleger)
- c) Those who participate in committing a crime (mede pleger)
- d) Those who direct others to commit a crime (uitlokker)

Basically, people receive money as a reward for the achievements or work they do. Money cannot be earned without working or managing a business for profit (benefit oriented). On the one hand, there is no single type of life that states accepting bad or criminal acts as actions that are justifiable to do.⁹

None of us like to see someone enjoying life by illegally acquiring wealth or possessions. Therefore, both the perpetrators of the crime themselves and those who use the proceeds of crime must be subject to different punishments.¹⁰

⁸ Abdul Jalal, Suwitno, Sri Endah Wahyuningsih, *Involvement of Notary Officials in Unlawful Acts and Participating in Crimes in Forging Documents*, Magistrates Program (S2) Notary Faculty of Law, Sultan Agung Islamic University, Semarang, 2018, p. 2

⁹Ivan Yustiavandana, Arman Nefi, and Adiwarmar, *Op. cit.* p. 6.

¹⁰*Ibid.*, p. 4.

Money proceeds from crime of money laundering comes from criminal acts of embezzlement, one of which is embezzlement of customer funds. The crime of embezzlement is a crime related to moral or mental problems and a belief in someone's honesty. Therefore, this crime stems from the existence of a party's trust carried out by the perpetrator of the crime of embezzlement.¹¹The results of the embezzlement crime were then disguised or hidden by the perpetrators.

2. Research Methods

The approach method used in this study is a normative juridical approach. The normative juridical approach is legal research carried out by examining literature or secondary data as the basic material for research by conducting a search of regulations and literature related to the problem being studied. Data collection was carried out through literature study by reviewing literature related to research problems. The data analysis technique is qualitative analysis in the form of presentation, description, and description of the research results.

3. Results and Discussion

3.1. The criminal responsibility of the perpetrators of criminal acts participates in committing money laundering crimes

The Criminal Liability Provisions Formed and included in the Criminal Code aim to make someone accountable and provide sanctions to those who have been involved and contributed both physically (objectively) and psychologically (Subjectively). The formation of laws feels the need to burden criminal responsibility and which is at the same time large for people whose actions are like that to become a guide for judges in imposing sentences.

Soedarto in Teguh Prasetyo's book intervened with a compromise and said that in terms of understanding determinism, even though humans do not have free will, it does not mean that those who commit crimes cannot be held accountable. He can still be accounted for, and receives a reaction for the actions he committed, but that reaction takes the form of an action for public order, and not a crime in the sense of "suffering as a mistake". Likewise, sassen in Teguh Prasetyo's book argues that the judge does not impose a sentence, but takes action that forces him to comply with social order. According to him, the criminal law is actually a "law of social defense".¹²

¹¹Mahendri Massie "Criminal Act of Embezzlement in Using Position Based on Article 415 of the Criminal Code", *Lex Crimen*, Volume VI, Number 7 September 2017, p. 101.

¹²Teguh Prasetyo, *Criminal law*, Rajawali Press, Jakarta, 2016. p. 84

At this time there was a compromise known as modern theory which wanted to carry out a middle way, namely adhering to the understanding of determinism, but still accepting guilt as the basis of criminal law.

Related to criminal responsibility, perpetrators of criminal acts participate in committing money laundering crimes. In order to be held criminally responsible, 4 elements must be met, namely:

- a. Have the ability to be responsible
- b. Error
- c. There is an element of error in the form of intentional or negligence
- d. No excuses

In criminal liability there is a principle, namely not being punished if there is no mistake (*Geen straf zonder schuld; Actus non facit reum nisi mens sir rea*).¹³Criminal liability, based on the point of view of the occurrence of criminal acts, a person is criminally responsible if his actions are against the law. In addition, the criminal act committed also has no justification or elimination of unlawful nature. Then from the point of view of the perpetrator's ability to be responsible, then only someone who is able to be responsible and meets the requirements of the ability to be responsible can be criminally responsible for his actions.

In accordance with the explanation above, both in theory and in legal facts during the trial, the Panel of Judges stated that the defendant was legally and convincingly guilty of committing the crime of "participating in the crime of money laundering" as stipulated and punishable by crime in the First Primary Indictment, the Public Prosecutor, and the Panel of Judges. The judge sentenced the Defendant therefore to imprisonment for 4 (four) years and a fine of IDR 100,000,000.- (one hundred million rupiah) provided that if the fine is not paid it is replaced with imprisonment for 1 (one) month .

3.2. Considerations of Judges in Delivering Decisions on Offenders Participating in the Crime of Money Laundering

Judge's or Court's decision is an important aspect and is needed to help clarify criminal cases and is useful for defendants to obtain legal certainty about their status and prepare for the next step towards the decision in the sense that it can

¹³Moeljatno, Principles of Criminal Law, Bina Literacy, Jakarta, 1983. p. 153.

be in the form of accepting a decision, appeal, cassation and clemency. Conversely, when viewed from the point of view of the judge who tried this case, the judge's decision is the culmination of a reflection of the values of justice. Obtaining the Highest Truth, Human Rights (HAM), Law or Facts in a way that is reasonable, quality and based on facts, and ethically, mentally and morally the judge concerned.) which the Criminal Procedure Code has not recognized as valid evidence.¹⁴

In examining cases the judge must pay attention to evidence, because the results of the evidence will later be used as material for consideration in deciding the case. Evidence is a very important stage in the examination at trial. The purpose of proof is to obtain certainty that an event/fact that is proposed actually happened, in order to obtain a correct and fair judge's decision. The judge will not be able to pass a decision before it becomes clear to him that the event/fact has actually happened, that is, the truth has been proven, so that a legal relationship exists between the parties.

According to Law No. 48 of 2009 concerning Judicial Powers the authority of a judge in deciding a case has three aspects, namely:¹⁵

- 1) Receiving reports that have been submitted to the judge, looking for information and evidence.
- 2) Examine, look carefully at the defendant's case file.
- 3) decide the sentence for a case being examined and tried by the judge.

When exercising that authority, especially in trying a judge's decision, it is the crown and culmination of a case being examined and tried by the judge. Therefore, it is natural that the judge in deciding must consider all aspects, namely the indictment, the facts of the judge in the trial process, and the condition of the community in court. With the reasons or considerations as the court's decision is the responsibility of the judge in carrying out his duties, to examine, try and decide cases.¹⁶

That in proving the indictment of the Public Prosecutor, in this study the Panel of Judges will refer to the provisions of Paying Attention, Article 3 in conjunction with Article 10 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes and Law Number 8 of 1981 concerning the Law Criminal procedures as well as other relevant laws

¹⁴Lilik Mulyadi. Criminal Procedure Code, Citra Aditya Bakti, Bandung 2017, p. 152-153

¹⁵Rimdan, judicial power, Jakarta: Prenada Media Group, 2012, p. 36

¹⁶Bambang Waluyo, Crime and Punishment, Jakarta: Sinar Graphic, 2008, p. 80

and regulations, which will see witness statements, expert statements, letters, instructions and statements of the Defendant.

In addition to the aggravating considerations for the defendant, there were also factors considered by the panel of judges to lighten the verdict against the defendant, including: the defendant was young and could still be expected to behave well after serving a sentence, the defendant had dependent children who still needed guidance, the defendant admitted guilt and promised not to repeat his actions again.

Based on the description above, it can be concluded that the considerations of the Panel of Judges in imposing a decision reflect the principle of Legal Certainty, proven by the fulfillment of the elements of Article 3 in conjunction with Article 10 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, taking into account the evidence along with criminal charges filed by the Public Prosecutor.

4. Conclusion

In order to find out the criminal responsibility that results in a person being punished or sentenced, several conditions must be met, namely committing a criminal act, an act that is against the law; Able to be responsible; Doing the act intentionally or because of negligence/carelessness; No excuses. The Panel of Judges stated that the defendant was legally and convincingly guilty of committing the crime of "participating in the crime of money laundering" as stipulated and punishable by crime in the Public Prosecutor's First Primary Indictment, and the Panel of Judges sentenced the Defendant therefore to imprisonment for 4 (four) years and a fine of IDR 100,000,000. That in proving the indictment of the Public Prosecutor, in this study the Panel of Judges will refer to the provisions of Paying Attention, Article 3 in conjunction with Article 10 of the Republic of Indonesia Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes and Law Number 8 of 1981 concerning the Law Criminal procedures as well as other relevant laws and regulations, which will see witness statements, expert statements, letters, instructions and statements of the Defendant. In addition to the considerations aggravating the defendant, there were also factors that were considered by the panel of judges to lighten the verdict against the defendant, including: the defendant is still young and can still be expected to behave well after serving a sentence, the defendant has dependent children who still need guidance.

5. References

1945 Constitution

Abdul Jalal, Suwitno, Sri Endah Wahyuningsih, *Involvement of Notary Officials in Unlawful Acts and Participating in Crimes in Forging Documents, Notary Masters Program (S2) Faculty of Law, Sultan Agung Islamic University, Semarang, 2018.*

Adrian Sutedi, *Crime of Money Laundering. Image Aditya Bakti. London, 2008.*

Aziz Syamsuddin, *Special Crimes, Sinar Graphic, Jakarta, 2011.*

Bambang Waluyo, *Crime and Punishment, Jakarta: Sinar Graphic, 2008.*

Hussein, Yunus. *Anthology of Anti-Money Laundering. Books Terrace and Library, Bandung, 2007.*

Ivan Yustiavandana, Arman Nefi, and Adiwarman, *Crime of Money Laundering in the Capital Market, Ghalia Indonesia, Bogor, 2010*

Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

Lilik Mulyadi. *Criminal Procedure Code, Citra Aditya Bakti, Bandung 2017.*

Mahendri Massie "Criminal Act of Embezzlement in Using Position Based on Article 415 of the Criminal Code", *Lex Crimen, Volume VI, Number 7 September 2017*

Moeljatno, *Principles of Criminal Law, Bina Literacy, Jakarta, 1983.*

R.Wiyono, *Discussion of the Law on the Prevention and Eradication of Money Laundering, Sinar Graphic, Jakarta, 2014.*

Suyanto, *Introduction to Criminal Law, Deepublish Dumi Utami, Yogyakarta, 2018.*

Teguh Prasetyo, *Criminal law, Rajawali Press, Jakarta , 2016.*

The Criminal Code (KUHP)