

The Corporate Criminal Liability Against Money Laundering Crimes Derived From Corruption Crimes

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Abstract. *In the modern era like today, crimes are very diverse and take advantage of the latest technology. In this case, the crime of money laundering originating from corruption is not only committed by individuals, but also by the corporations involved. If it is connected with a corporation as a subject of criminal law, then the corporation can be burdened with criminal liability. Where the crime of money laundering is regulated in Act No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Article 6 clearly states that corporations can be held accountable for their actions for a crime committed.*

Keywords: Criminal; Corporations; Corruption.

1. Introduction

Money laundering is a crime with an international dimension which is a new thing in many countries around the world, including Indonesia. The impact of this crime is very large, especially for the economy of a country. From such a large impact that can be generated, it is of great concern to countries and also various kinds of international organizations. Of the many predicate crimes, the crime of money laundering that has received the most attention is corruption. Where corruption accompanied by criminal acts of laundering can affect the economic system and cause many negative things. This is because funds are often used in the property sector in countries that are considered safe.

In practice, this crime of money laundering can not only be committed by individuals. However, it can also be done by corporations. Indonesia as a

developing country focuses on economic development in the private sector, especially corporations. With the rapid development of technology, it has an influence on money laundering crimes. Given that if money laundering crimes are committed by corporations, corporations can generate very large amounts of wealth.

One of the most important parts of a corporation is assets. So from this, many corporations make this an opportunity to benefit from the proceeds of corruption through money laundering. This is mutually beneficial for corruptors as active actors because assets resulting from criminal acts can be hidden by involving corporations as passive actors. Besides being detrimental to the state, this is also detrimental to society because the money from corruption is deliberately disguised in companies which can result in damage to economic stability.

Talking about crime and criminal responsibility, in principle, is an inseparable part of the discussion of the criminal law system¹. If it is related to a corporation that can be accepted as a subject of criminal law and can be held liable, the question arises when a corporation can be declared as the perpetrator of the crime of money laundering, and what criteria must be met.

2. Research Methods

This research is normative juridical, because this research is a library research or document study that is carried out or aimed only at written regulations or other legal materials, which includes research on legal sources, relevant laws and regulations.

3. Results and Discussion

3.1. How are Money Laundering Crime Regulations in Indonesia

In short, money laundering is the disposing of proceeds of crime. Meanwhile, in a general sense, the term money laundering does not have a universal definition because both developed and developing countries each have their own definitions based on different perspectives and priorities. However, legal experts in Indonesia

¹Mahmud Mulyadi and Feri Antoni Surbakti, *Criminal Law Politics Against Corporate Crime*, Jakarta: Softmedia, 2010, p. 6.

agree to use the term money laundering. Money laundering is a process or act that aims to hide or disguise the origin of money or assets obtained as a result of criminal acts which are then converted into assets that appear to originate from legitimate activities.²This term describes that money laundering is depositing or naming money or other forms of transferring or transferring money originating from extortion, narcotics transactions, and other illegal sources through legal channels. So the source of origin cannot be known or traced.³

The development of this crime of money laundering has raised international concern, because it is feared that it will create economic stability in the business world, due to the rapid circulation of large amounts of funds from one place to another. The origin of money laundering is carried out by criminal organizations which are often known as the mafia. Money laundering is usually carried out for several reasons, such as because the funds owned are the result of theft/corruption, proceeds of crime (for example in a criminal syndicate), selling marijuana, prostitution, tax evasion, and so on. For this reason, the money must be "laundered" or transacted to third parties, through legal entities, or through third world countries. So that the money can be received back by the original owner of the money as if it came from legal business results. For this reason, it is necessary to tighten supervision regarding the flow of funds, both the origin of the source and the purpose of using the funds. The aim is none other than to break and prevent the chain of unclear flow of funds that will be "laundered" by the owner.⁴

Money laundering activities have a serious impact, both on the stability of the financial system and the economy as a whole. The crime of money laundering is a multidimensional and transnational crime which often involves a sizable amount of money. The crime of money laundering (Money Laundering) is an organized crime so that its handling is the responsibility of the state of each country which is manifested in regional or international cooperation through bilateral and multilateral forums.

²Adrian Sutedi, *Money Laundering Crime*, Bandung: PT Citra Aditya Bakti, 2008, p. 12

³Juni Sjafrien Jahja, *Against Money Laundering*, Jakarta: Visimedia, 2012, p. 4.

⁴Hafis Mu'addab, "History of Money Laundering", <http://hafismuaddab.wordpress.com/2012>

Money laundering activities involve very complex activities. Basically, these activities consist of three steps, each of which stands alone but is often carried out together, namely placement, layering, and integration.

1. Placements

Placement is defined as an attempt to place funds generated from a criminal activity. In this case there is a physical movement of cash either through smuggling cash originating from crimes that are obtained by making demand deposits into the banking system, for example bank deposits, checks, or through real estate, or shares, and can also be converted into other currency.

2. Layering

Layering is defined as separating the proceeds of crime from their source, namely related criminal activities through several stages of financial transactions. In this case, there is a process of transferring funds from several accounts or certain locations as a result of placement to other places through a series of complex transactions designed to disguise or deceive these illegal sources of funds. Layering can also be done by opening as many fictitious company accounts as possible by utilizing bank secrecy provisions.

3. Integration

Integration is an attempt to establish a basis as a "legitimate explanation" for the proceeds of crime. In this case, the money that has been extorted through placement or layering has been diverted into official activities so that it seems completely unrelated to the previous criminal activities that were the source of the money that was extorted. At this stage the whitened money is put back into circulation in a form that is in line with the rule of law.

Currently, the crime of money laundering is regulated in Act No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Previously, the crime of money laundering was regulated in Act No. 15 of 2002 concerning the Crime of Money Laundering and Act No. 25 of 2003 concerning the Crime of Money Laundering. The regulation of money laundering in Indonesia can be observed from Act No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which is aimed at preventing and eradicating crimes in the form of money laundering practices in Indonesia. More specifically, Article 6

directly explains the corporation as a subject of criminal law. This is intended so that the intensity of crimes that produce and which are large in number can be minimized. so that the country's economic stability and security are maintained. And the criminal act of corruption which is the predicate crime of money laundering in Indonesia is regulated in Act No. 31 of 1999 concerning the Eradication of Corruption in conjunction with Act No. 20 of 2001.

3.2. Corporate Criminal Responsibility for Money Laundering Crimes Derived from Corruption

Talking about what actions are prohibited and who the perpetrators are responsible for is an issue that is constantly being discussed among experts. A criminal act or strafbaarfeit, is an act that contains elements of acts that can be punished or elements of criminal responsibility.⁵

In the beginning people did not accept corporate responsibility in criminal law. This is because corporations do not have feelings like humans, so it is impossible to make mistakes. Also imprisonment is not possible to be applied to corporations. However, because of the negative impacts arising from corporate activities, corporate responsibility arises in criminal cases.

At present, corporations or business entities can be held criminally responsible for a wide range of criminal acts committed. Corporations can be held accountable for the actions of their representatives, whether active or passive. In this case, usually corporations that commit money laundering crimes are passive actors, namely as recipients of funds resulting from corruption or where the funds are held.

Discussing about criminal responsibility cannot be separated from criminal acts. The basis for the existence of a crime is the principle of legality, while the basis for the punishment of the maker is the principle of error. This means that the perpetrator of a crime will only be punished if he has a fault in committing the act. When is someone said to have committed a crime, namely when he has a fault. This means that the perpetrator of a crime will only be punished if he has a fault in committing the crime.⁶

⁵Ibid

⁶Teguh Prasetyo, *Criminalization in Criminal Law*, Bandung: Nusa

Media, 2011, p. 48-49.

In other words, someone who has delegated authority to his subordinates to act on his behalf, must still be responsible for the actions taken, even if the recipient of the delegation does not know. Regarding the problem of intentionality in corporations, psychological problems and mental attitudes can be done by looking at whether the intentional actions of the management actually involve the company's political activities, or are in the real activities of a company.

According to Mardjono Reksodiputro stated that thinking in civil law can be taken over to criminal law. According to him, initially in civil law there were differences of opinion whether a legal entity could commit an unlawful act. However, through the principles of decency and justice as the main basis, civil law science can accept this.

This teaching is based on the notion that what is done by the management must be accountable to legal entities. Because the management in acting does not do so on its own right or authority, but rather the rights or authority of the legal entity concerned. Thus, that legal entity also cannot escape from mistakes (intentional or negligent) committed by its management.⁷

The explanation described above shows that corporations that commit money laundering crimes originating from criminal acts of corruption can be held criminally responsible if they have fulfilled the elements of punishment, namely the ability to be responsible for the corporation, the presence of errors, and no reason for criminal write-offs on the corporation.

4. Conclusion

In Indonesia, the crime of money laundering is regulated in Act No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Corporations that commit criminal acts of money laundering originating from criminal acts of corruption can be held criminally responsible if they have fulfilled the elements of punishment, namely the ability to be responsible for the corporation, the existence of errors, and no reason for criminal write-offs on corporations.

5. References

⁷Mahmud Mulyadi, Policies for the Prevention and Eradication of Money Laundering Crimes. In Eva Syahfitri Nasution's Journal of Law, Vol. 8 No. 2 of 2015, p. 142.

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